

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 1641 of 2013 (O&M)

Date of decision : May 18, 2015

Amar Jeet and another,

..... Petitioners

v.

Chaudhary Charan Singh Haryana Agricultural University Hisar & Ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. SS Duhan, Advocate
for the petitioners.

Mr. Aman Pal, Advocate
for respondents No.1 to 3.

None for respondent No.4.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Vijay Pal, Advocate
for respondent No.5.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

No one has entered appearance on behalf of respondent No.4
and, thus, he is proceeded against ex-parte.

The petitioners have challenged the selection of respondent
Nos. 4 and 5 to the post of Computer Programmer in DSEM (General) and
General category respectively and claim appointment in their place. An

advertisement dated 23.7.2010 was issued by the respondent-University for filling up various posts. As regards the Computer Programmer, the following qualifications were prescribed :-

- “ Essential :- i) B.Sc with Computer and Math or Stat/BCA/MCA,
ii) Knowledge of computer language like Pascal, Fortran, Cobol/C,
iii) Operation knowledge of computer UNIX, DOS, BDMS, Office-97 SYBASE, C++ and other softwares.
iv) One year experience on computer operation.
v) Knowledge of Hindi or Sanskrit upto Matric standard.
Desirable : i) Diploma in Computer Operation and maintenance
ii) Knowledge of working on Internet/E-mail.”

The said advertisement also contained special instructions, relevant portion of which is quoted below :-

“ 1. The applicant must possess prescribed qualifications and experience on the last date of receipt of applications. The prescribed essential qualification does not entitle a candidate to be called for interview....”

There were general instructions also, relevant portion of instruction No.16 is quoted below :-

“ Candidates applying for a post must ensure that they fulfill all the eligibility conditions on the last date of application....”

The admitted criteria for selection for the post of Computer Programmer was as follows :-

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|---------------------|------|
| “ a) Written Test : | 50% |
| b) Interview : | 15% |
| c) Qualifications : | 20% |
| d) Experience : | 15%” |

It was further mentioned that for experience, three marks would be given for every completed year upto a maximum of five years. On the date when the application was made, petitioner No.1 had 5 years'

experience, petitioner No.2 had 3 years' experience, while respondent Nos.4 and 5 both had 2 years' experience. Admittedly, however, by the time the interview was held, 3 years more had elapsed and on the date of interview, respondent No.4 had 3 years' experience and respondent No.5 had 5 years' experience. As per respondent No.5, on the date of interview, her experience of 5 years was considered. It is this action which is essentially under challenge in this writ petition.

Counsel for the petitioners has argued that once it was prescribed in the special instructions that the applicant must possess the prescribed qualification/experience on the last date, it meant that only the experience up to the last date could be considered, whereas, as per respondent No.5, what these instructions meant is that on the last date a candidate should have essential qualification but it no where laid down that the experience which may be obtained by a candidate between the date of the application and the date of interview could be ignored.

In Mrs Rekha Chaturvedi (Smt) v. University of Rajasthan and others, JT 1993(1) SC 220, the Hon'ble Supreme Court held as follows :-

“ 5. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make

applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in [A.P. Public Service Commission, Hyderabad & Anr. v. B. Sarat Chandra & Ors.](#) (1990) 4 SLR 235 and [The District Collector & Chairman, Vizianagaram \(Social Welfare Residential School Society\) Vidanagar & Anr. v. M. Tripura Sundari Devi](#), (1990) 4 SLR 237.”

Counsel for respondent No.5 has relied upon [Roopa Sharma v. State of Punjab and others](#), 1997(4) SLR 283. In this case, the advertisement laid down that the candidates should have knowledge of Punjabi language of equivalent standard. The petitioner in that case had qualified Punjabi Prabodh Examination on 15.9.1996 while the last date for application was 30.4.1996 and she was sought to be excluded from the interview on the ground that she did not have the essential qualification on the last date. The Division Bench, on a construction of the words used in the advertisement and the rules, held that it was not a case where it was

prescribed that she should have passed the exam but only that she should have had knowledge, and held as follows :-

“ The stage for testing of knowledge of candidate regarding Punjabi language and its standard reaches only when the candidate is subjected to interview and not before that. It was, therefore, imperative for the Board to have interviewed the petitioner to find out whether she possessed knowledge of Punjabi language of matriculation standard or its equivalent. As on the date of interview the petitioner had passed Punjabi Parbodh examination conducted by the Language Department, and there is hot contest by the respondents that this examination is of matriculation standard. Thus, the petitioner must be presumed to be having the knowledge of Punjabi language of matriculation standard and the Board was clearly in error when it rejected the candidature of the petitioner on the ground that as on 30th April, 1996 she had not passed Punjabi Parbodh examination or any other examination of matriculation standard in Punjabi language.”

He has also relied upon the decision of the Hon'ble Supreme Court in Ashok Kumar Sharma and another v. Chander Shekher and another, 1993(1)SLR 379. In that case, the issue was with regard to promotion of the appellants as Assistant Engineers from the posts of Junior Engineers. The allegation made was that the appellants had been wrongly considered to be eligible for appointments as Junior Engineers because when they had applied for the posts of Junior Engineers, they had only appeared for exam of Bachellor of Engineering but the degree had been awarded to them after the last date. The Single Judge of the Jammu and Kashmir High Court had dismissed the attack about their initial appointments on the ground, among others, of delay and latches. A Division Bench of the Jammu and Kashmir High Court reversed that finding. In that case, the majority relied upon rule 37 of the Public Service Commission Business Rules of the Jammu and Kashmir Government where there was a

specific clause permitting those who had appeared for the examination to be provisionally considered but would not be permitted to take the interview if, even by that date, the result had not been declared. In the present case, there is no such enabling rule. In appeal, while agreeing with the view of the Division Bench of the J&K High Court, the Hon'ble Supreme Court held as follows :-

“..... In view of these clear and specific conditions laid down in the advertisement those candidates who were not possessed of the BE qualifications were not eligible for applying nor their applications were liable to be entertained nor could they be called for interview. Eligibility for the post mentioned in the notification depended on possessing the qualifications noted against each post. The expression 'shall be possessed of such qualification' is indicative of both the mandatory character of the requirement and its operation in presentii. That is a candidate must not only have been qualified but he should have been possessed of it on the date the application was made. The construction suggested by the learned counsel for the appellant that the relevant date for purposes of eligibility was the date of interview and not the date of application or 15th July 1982 the last date for submission of forms is not made out from the language of the notification.....”

In this view of the matter, it has to be held that the experience which respondents No.4 and 5 possessed on the last date could only have been considered. A perusal of the record reveals that petitioners No.1 and 2 secured marks 63.33 and 74 respectively and are at No.1 in the waiting list for the DESM(Gen) and General Category. As per the experience criteria, total marks secured by respondent No.4 come to 73.67 instead of 76.67 and is, thus, lower in merit than petitioner No.2 in general category. Similarly, marks secured by respondent No.5 are 55.67 instead of 64.67 and is, thus, lower in merit than petitioner No.1. Resultantly, this writ petition is allowed, the selection of respondent Nos.4 and 5 is set aside, and it is

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directed that the petitioners be appointed in their place.

May 18, 2015

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**(AJAY TEWARI)
JUDGE**