

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19326 of 2013

Date of Decision: November 28, 2015

Sachin Tayal

...Petitioner

Versus

Baba Farid University of Health
Sciences and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. P.K. Goklaney, Advocate for the petitioner.

Mr. Karan Singh Sandhu, Advocate
for respondents No.1 to 3.

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HARINDER SINGH SIDHU, J.

The petitioner in the present writ petition has prayed for quashing the selection of respondent no. 4 to the post of Lab Technicians. He prays that in turn he is liable to have been appointed being more meritorious than respondent no. 4.

Respondent No.1 advertised two posts of Lab. Technician vide advertisement dated Annexure P-1. The petitioner appeared before the Selection Committee for interview on 12.2.2013. But he was not selected. As per the proceedings of the Selection Committee which the petitioner has received under RTI, Ms. Neena Chawla was selected in the General Category and Ms. Aminider Kaur was selected against the reserved category. Deepak Pasricha (respondent No. 4) was kept in the

waiting list. As Ms. Neena Chawla did not join, respondent No. 4 was asked to join, which he did on 22.3.2013.

The petitioner assails the selection on the ground that that in terms of academic qualifications, the petitioner is more meritorious than respondent No.4. He further states that the proceedings of the Selection Committee do not indicate that any criteria was followed by the Committee in making the selection and hence the selection is vitiated.

In the written statement filed on behalf of the respondents it has been stated that the selection is absolutely fair and proper. It is mentioned that 58 candidates applied for the post of Lab Technician out of which only 12 candidates were found eligible and were called for the interview. Vide office order dated 30.1.2013, the Vice Chancellor of the University, in accordance with the norms and procedure laid down by the University Board of Management, constituted a Selection Committee to conduct the interviews of the posts.

The Committee comprised the following:

Dr. D.S. Sidhu Registrar, Baba Farid University of Health Sciences, Faridkot	Chairman
Dr. Neeraj Jindal Professor (Microbiology), Guru Gobind Singh Medical College & Hospital, Faridkot.	Member

Dr. Arun Kumar Principal, University Institute of Pharmacy, Faridkot.	Member
Dr. Navtej Singh Professor (Pathology) Guru Gobind Singh Medical College & Hospital, Faridkot.	Member
Dr. Harminder Singh Associate Professor, Department of Pharmacology, Guru Gobind Singh Medical College & Hospital, Faridkot.	Member
District Welfare Officer, Faridkot	Member.

All the twelve candidates including the petitioner and respondent No. 4 appeared for the interview. After interviewing the candidates and taking into consideration their work experience and interview performance, the Selection Committee unanimously recommended 2 candidates (one in general category and one in Scheduled Caste category. Respondent No. 4 was kept in the waiting list.

Denying the allegations of any unfairness in the selection, it has been stated that the selection was made by the Selection Committee in absolute good faith and with complete fairness, purely on the basis of the performance of the candidates and assessment by the Selection Committee of all aspects such as their personality, knowledge, academic qualifications, work experience and other skills enhancing the suitability of the candidates for the post of Lab. Technician.

The details of the qualifications of respondent No. 4

are as under:

Academic Qualifications

Academic Qualification	Year	Percentage	University/Institution
Class 10	2001	35%	Punjab School Education Board
Regular Diploma Medical Lab Technology	2006	65%	Punjab State Board of Technical Education and Industrial Training
Bachelor of Scicence	2009	61%	Punjab Technical University

Work experience

Post	Work Period	Employer
Training as Medical Lab Trainee in the Department of Pathology	6 months	General Hospital, Sector 16, Chandigarh
Lab Technician	1.6.2009 to 30.9.2011 (2 years and 3 months)	Patiala Hospital

I have heard Ld. Counsel for the parties and perused the record.

The qualifications for the post of Lab. Technician as specified in the advertisement are as under:

“Laboratory Technician-2 (consolidated pay Rs. 10,000/- p.m.)

Qualification: 10+2 or its equivalent from recognized board/University/ Institution with Science, B.Sc. (MLT) from a recognized institution, Two years experience in the relevant field, Punjabi

upto Metric level.”

The qualifications and work experience of the petitioner are as under:

Examination Passed	Year of passing	Max. marks	Marks Obtained	%	University/ Institution
Matric	2004	500	293	59%	C.B.S.E.
DMLT	2007	2800	1963	70%	PSBTE (Chd.)
B.Sc. MLT	2009	4000	2804	70%	PTU
PGDCA	2011	1100	770	70%	NIMS Univ.

The qualifications and work experience of respondent No. 4 have already been indicated above.

Ld. Counsel for the petitioner has argued that the proceedings of the Selection Committee indicate that no objective criteria has been followed by the Selection Committee. There is no indication therein as to on what parameters the candidates were assessed. What to talk of separate marks under various heads, even lump sum marks have not been awarded. Merit list of the candidates has not been prepared, only the names of those selected has been indicated. He thereby contends that the selection is totally arbitrary.

To the contrary, the Ld. Counsel for the respondents states that the selection was made by the Selection Committee in absolute good faith and with complete fairness, purely on the basis of the performance of the candidates and assessment by the Selection Committee of all aspects such as their personality,

knowledge, academic qualifications, work experience and other skills enhancing the suitability of the candidates for the post of Lab. Technician. He states that the Selection Committee comprised of experienced academicians and was constituted by the Vice Chancellor as per the norms and procedure laid down by the University Board of Management.

The present selection was based only on interview. Though in the written statement it has been asserted that the selection was based purely on the basis of the performance of the candidates and assessment by the Selection Committee of all aspects such as their personality, knowledge, academic qualifications, work experience and other skills enhancing the suitability of the candidates for the post of Lab. Technician but there is no further elaboration. It is not known what was the weightage given to the different aspects and what was the performance of the candidates in relation to each aspect.

It is well settled that any public appointment can be made only after a proper advertisement inviting applications from eligible candidates is issued and thereafter selection through a fair and impartial body of experts or a specially constituted committee is held. The selection may be through a written examination or interview or some other rational criteria for judging the inter se merit of candidates.

In this regard, it was observed in UPSC v. Girish

Jayanti Lal Vaghela, (2006) 2 SCC 482, at page 489 :

*“Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words “employment or appointment” cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. **The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made.**”*
....”

Whatever be the method, interview, written test or a combination of both, whether in relation to admissions or public appointments, the necessity of the existence of rational and objective criteria has been repeatedly stressed. In **R. Chitralekha v. State of Mysore, (1964) 6 SCR 368**, it was observed:

“In the field of education there are divergent views as regard the mode of testing the capacity and calibre of students in the matter of admissions to colleges. Orthodox educationists stand by the marks obtained by a student in the annual examination. The modern trend of opinion insists upon other additional tests, such as interview, performance in extra-curricular activities, personality test, psychiatric tests

etc. Obviously we are not in a position to judge which method is preferable or which test is the correct one. If there can be manipulation or dishonesty in allotting marks at interviews, there can equally be manipulation in the matter of awarding marks in the written examinations. In the ultimate analysis, whatever method is adopted its success depends on the moral standards of the members constituting the selection committee and their sense of objectivity and devotion to duty. This criticism is more a reflection on the examiners than on the system itself. The scheme of selection, however perfect it may be on paper, may be abused in practice. That it is capable of abuse is not a ground for quashing it. **So long as the order lays down relevant objective criteria and entrusts the business of selection to qualified persons, this Court cannot obviously have any say in the matter.** In this case the criteria laid down by the Government are certainly relevant in the matter of awarding marks at the interview. Learned counsel contends that the ability of a student on the basis of the said criteria can be better judged by other methods like certificate from the N.C.C. Commander or a medical board or a psychiatrist and should not be left to a body like the selection committee which cannot possibly arrive at the correct conclusion in a short time that would be available to it. This criticism does not affect the validity of the criteria, but only suggests a different method of applying the criteria than that adopted by the committee. It is not for us to say which method should be adopted: that must be left to the authority concerned. If in any particular case the selection committee abused its power in

violation of Article 14 of the Constitution, that may be a case for setting aside the result of a particular interview, as the High Court did in this case. We cannot, therefore, hold without better and more scientific material placed before us that selection by interview in addition to the marks obtained in the written examination is itself bad as offending Article 14 of the Constitution.”

When an objective criteria has been fixed, the imperative awarding separate marks as per the criteria fixed has been stressed upon. In **A. Peeriakaruppan (Minor) v. State of T.N., (1971) 1 SCC 38**, it was observed as under:

“16. It was next urged that no objective criterion was fixed for interview. We are unable to accept this contention as well. The selectors were asked to interview candidates on the basis of the five criterion prescribed to which we have made reference earlier. Those tests are sufficiently objective in character. Similar tests were held to be objective by this Court in Chitralekha case. It cannot be denied that extra curricular activities like sports, NCC, special services, general physical condition and endurance and general ability are objective tests. The aptitude referred to in the rule, in our opinion, is aptitude for medical profession.

It was next contended that separate marks had not been allotted for each one of the tests enumerated in the rule. A total of 75 interview marks were placed at the disposal of the selection committee and from out of those the committee could award marks according to its sweet will and pleasure. Such a power it was

said is an arbitrary power. We were told that the entire 75 marks could have been given to a candidate even if he satisfied only one out of the five criterion prescribed. It is true that the rule did not prescribe separate marks for separate heads. But that in our opinion did not permit the selection committee to allot marks as it pleased. Each one of the tests prescribed had its own importance. As observed at footnote 20 at p. 485 of American Jurisprudence, Volume 15, that the interviewers need not record precise questions and answers when oral tests are used to apprise personality traits; it is sufficient if the examiner's findings are recorded on the appraisal sheet according to the personal qualifications itemised for measure. A contention similar to those advanced by the petitioners came up for consideration before the Mysore High Court in D.G. Viswanath v. Chief Secretary of Mysore. Therein the court observed thus:

"It is true that Annexure IV does not specifically mention the marks allotted for each head. But from that circumstance it cannot be held that the Government had conferred an unguided power on the committees. In the absence of specific allocation of marks for each head, it must be presumed that the Government considered that each of the heads mentioned in Annexure IV as being equal in importance to any other. In other words, we have to infer that the intention of the Government was that each one of those heads should carry 1/5th of the 'Interview' marks."

17. We may note that the committee had not divided the interview marks under various heads nor were the marks given on itemised basis. The marks list produced before us shows that the marks were given in a lump. This is clearly

illegal.”

True, there may be some cases, where considering the peculiar nature and requirements of the post, non awarding of separate marks for each item may have been held to not vitiate the selection, (e.g., *Kiran Gupta v. State of U.P.*, (2000) 7 SCC 719, where the selection was to the post of Principal). But, the present cannot be considered to be such a case.

In a similar case i.e. **CWP No.16457 of 2010** titled '**Karamjit Singh vs. Punjabi University, Patiala**' where selection to the post of Laboratory Attendant was in issue, a Coordinate Bench quashed the selection. The Hon'ble Bench observed as under:-

“1. Both the writ petitions address the same issue containing a challenge to the manner of selection to the posts of Shop Attendants. To a query sought at the instance of the petitioners through RTI seeking for information for the norms or criteria adopted for the selection, the response by the University was that no marks had been awarded but the selection had been made on the basis of performance. Even if a selection were to be made on performance, there ought to be objective materials for the Court to see whether such selection conformed to fairness in the manner required to obtain for any conduct of public authority and that would specify the principle of Article 14 of the Constitution. Unfortunately, there exists none and it is not possible to uphold the selection adopted.

2. The counsel for the respondents stated that in the manner of short-listing, there had been surely

norms declared but only in the final choice they had not been noted. The private respondents contend that they have been in employment for more than 2 years but I would not find this objection to be relevant for allowing them to continue when the selection is per se faulty.

3. The selection of the private respondents is quashed and the University is directed to finalize a fresh selection after framing appropriate criteria for assessing the relative merits of the candidates from amongst persons, who had been shortlisted for the selection held on 31 st July, 2009. The entire process shall be completed within a period of 3 months from the date of receipt of copy of the order.

4. The writ petition is allowed with the above direction.”

Accordingly, this writ petition is allowed. The selection of the private respondent No.4 is quashed. The University is directed to make a fresh selection after framing appropriate criteria for assessing the relative merits of the candidates from amongst the twelve persons, who had appeared for the interview conducted by the Selection Committee on 12.2.2013. This exercise be carried within a period of three months from the date of receipt of certified copy of this order.

November 28, 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE