

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 5833 of 2010(O&M)

Date of Decision: November 3 , 2015.

Sanjeev Kumar

..... PETITIONER (s)

Versus

Punjab National Bank and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. R.S.Bhatia, Advocate
for the respondents.

1. Whether reporters of local papers 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?

LISA GILL, J.

Prayer in this writ petition is for quashing of order dated 25.02.2010 Annexure P8, vide which the petitioner was denied appointment to the post of Peon by the respondent – Bank.

Brief facts are of the case that, respondent-Bank sent requisition, Annexure R1 to the Employment Exchange for filling up two posts of Peons lying vacant in its Branch at Gurdaspur. Petitioner's name was forwarded for

consideration by the Employment Exchange. He was called for interview vide communication dated 02.04.2009, Annexure P5. He appeared for the same on 15.04.2009 and was found suitable for appointment. Consequently, respondent-Bank vide communication dated 15.06.2009, Annexure P6 asked the Senior Superintendent of Police, Gurdaspur for verification of character and antecedents of the petitioner. Petitioner was asked by the respondent-Bank to come present on 19.08.2009 in its office. When appointment letter was not issued pursuant to his selection, he made inquiries and came to know that someone else has been appointed to the post of Peon despite petitioner being selected in the interview. Pursuant to petitioner's application under the Right to Information Act, he was informed vide impugned communication dated 25.02.2010 that he being a graduate is ineligible for appointment to the said post. Being aggrieved, present writ petition is preferred.

Learned counsel for the petitioner submits that having a higher qualification than the one prescribed does not bar the appointment of the petitioner to the post of Peon. He was duly selected and has been denied appointment illegally. Reliance is placed on decision dated 05.02.2010 of a Full Bench of this Court in CWP No.451 of 2008 (Manjit Singh v. State of Punjab and others) and other connected writ petitions.

Learned counsel for respondent – Bank submits that there is suppression and concealment of material facts by the petitioner inasmuch as he deliberately did not reveal that he is a graduate having attained a Bachelor's degree in the year 2001 itself. This fact is not mentioned in his application for appointment.

While referring to circular dated 10.03.2011, Annexure R3 issued by the Punjab National Bank, it is submitted that having passed XII Standard or its equivalent with basic reading/writing knowledge of English is the minimum as well as the maximum qualification for appointment to the post of Peon. It is due to this reason that petitioner was not appointed to the said post. Reliance is placed on decision of the Hon'ble Supreme Court in Kerala Solvent Extractions Ltd. A. Aunnikrishnan and another, (2006) 13 SCC 619.

Having heard learned counsel for the parties, it is apparent that petitioner was duly selected for the post of Peon and sole reason to deny him appointment is higher qualification of graduation held by him. Perusal of the requisition sent by the Bank to the Employment Exchange reflects educational qualification for the post of Peon as under:-

“Should be pass in XIIth Standard or its equivalent, with Basic reading/writing knowledge of English.”

Learned counsel for respondents is unable to point out anything on record to suggest that maximum qualification was ever reflected to be clearing the XIIth Standard examination or its equivalent. There is no rule or regulation prescribing a maximum qualification for the post of Peon. Reliance on communication dated 10.03.2011 in such a situation is clearly misplaced especially in the absence of any such indication in the requisition. Reply on behalf of the respondents to para 11 of the writ petition reflects that when the petitioner came present at the Bank on 19.08.2009, he himself disclosed his degree of Bachelor of Arts achieved by him in September, 2001. Copies of his degree and Mark Sheet were also supplied by him. Not having mentioned this

fact in the application submitted by the petitioner is not relevant in the facts and circumstances of the case. Question of suppression of material information does not arise in the present writ petition for the reason that no such cap was ever put forth by the respondent-Bank.

In view of the categorical finding of a Full Bench of this Court in Manjit Singh's case (supra) that a candidate having higher qualification cannot be denied consideration at par with a candidate possessing minimum prescribed qualification, action of the respondent-Bank is clearly arbitrary and manifestly unjust.

This Court on 14.09.2015 passed the following order:-

“The only stand taken by the respondents in the reply, as per the learned counsel appearing for them, is that the petitioner did not inform the Employment Exchange or the respondents that he had a higher qualification of Bachelors of Arts, other than the minimum qualification required for the post of Peon in the Bank, i.e. having passed the 10+2 examination.

After the petitioner was interviewed, the Chief Manager of the respondent-Bank wrote a letter dated 15.06.2009, to the Senior Superintendent of Police, Gurdaspur, seeking that the character and antecedents of the petitioner be got verified, obviously on the premise that the petitioner was to be appointed to the post of Peon.

The said letter is also not denied.

However, the petitioner was not issued an appointment letter and instead respondents No.3 & 4 were selected in his place. Since respondents No.3 & 4 have chosen not to appear before this Court despite service of notice on them, still with them having been in service for the past five to six years, respondent No.2 is directed to file an affidavit within ten days, as to the number of posts of Peons lying vacant with the Bank presently.

Adjourned to 05.10.2015. To be taken up immediately after the urgent list.”

Pursuant thereto, affidavit dated 01.10.2015 has been filed revealing that five vacancies of Peons are lying vacant in Amritsar circle out of which two are reserved for Scheduled Caste category. Circular dated 06.11.2008 has been attached to suggest that maximum qualification for the post of Peon is 10+2. Perusal of this circular also reveals educational qualification to be

“Pass in XIIth Standard or its equivalent, with basic reading/writing knowledge of English”.

There is no mention of maximum qualification in this circular dated 06.11.2008 as well. Respondents cannot derive any benefit therefrom.

Keeping in view the peculiar facts and circumstances of the case wherein the petitioner was found fit for appointment except his having a higher qualification, this writ petition is disposed of with a direction to the respondent-Bank to appoint the petitioner qua the vacant post of Peon against the reserved category. Appointment letter be issued within one month from the date of receipt of certified copy of this order.

However, petitioner would not be entitled to any benefits from a date prior to the date of his joining.

November 3, 2015.
'om'

(**LISA GILL**)
JUDGE