

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

CWP No. 5152 of 2011 (O&M)

Date of decision : 13.2.2015

Amit Arora and others

.. Petitioners

versus

Haryana Vidhan Sabha Secretariat and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Madan Pal, Advocate for
Mr. Sanjiv Sheoran, Advocate, for the petitioners.
Mr. Kuldeep Tiwari, Additional Advocate General, Haryana.
Mr. S. K. Monga, Advocate, for respondent no. 3.

Rajesh Bindal, J.

1. The petitioners, who were the applicants for the post of Liaison Officer advertised by the Haryana Vidhan Sabha, have approached this Court impugning the selection.

2. Learned counsel for the petitioners submitted that vide advertisement no. 1/2009, which appeared in "The Pioneer" and in "Dainik Bhaskar" on 15th /17th August, 2009 respectively, the applications were invited for various posts, namely, Deputy Secretary, System Analyst, Personal Assistant, Junior Programmer, Receptionist, Junior Translator, Peon, Mali including the post of Liaison Officer, the selection of which has been challenged in the present writ petition. The last date for submission of applications was 1.9.2009. The essential qualifications required for the post were Graduate with good physique, able bodied and impressive bearing, with ability to converse fluently in Hindi and English. Knowledge of Hindi upto Matric was required. The petitioners applied for the post. No criteria was laid down in the advertisement. The recommendation was made by the Selection Committee constituted for the purpose, vide note dated 22.12.2009. The recommendation made by the Committee contains the criteria adopted for selection, which was based totally on interview of 60 marks. Each member of the Committee was assigned to award marks out of 20. There being three members of the Committee.

3. Learned counsel for the petitioners submitted that though the

qualification prescribed in the advertisement required that the candidate should be Graduate with ability to converse fluently in Hindi and English but the candidate- respondent no. 3, who has been selected, had throughout been a below average student. He passed his Matriculation Examination in 3rd Division and secured 38/100 marks in Hindi and 33/100 marks in English. He passed his B.A. Examination with 46.9% marks (3rd Division), by securing 35/100 marks in English (passed with grace marks), and 35/100 marks in Hindi. He passed M.A. (Punjabi) with 54.9% marks.

4. While referring to marks secured by petitioner no. 2, in a table produced as Annexure P-6, learned counsel for the petitioners submitted that he secured first class in Matriculation, 10+2 and B.A. Thereafter, he got qualifications of M.B.A. and L.L.B., whereas petitioner no. 3 was having additional qualification of M.Sc. Geography and M.Phil.

5. It was further highlighted by counsel for the petitioners that sole reason for selection of respondent no. 3 was that he is sister's son-in-law of the then Speaker of Vidhan Sabha. The allegations to that effect made in para 13 of the petition have been admitted.

6. It was further argued that the criteria for selection was to be framed by the Government. Even if it was required to be framed by the Selection Committee, the same should have been prepared before the process of selection started. In fact, the criteria did not see the light of the day before the selection was finalised. It was totally based on interview, which resulted in arbitrary exercise of power. Otherwise also, the criteria was totally vague. Judgments of Hon'ble the Supreme Court in Ashok Kumar Yadav and others vs State of Haryana and others (1985) 4 Supreme Court Cases 417, Dr. Krushna Chandra Sahu and others vs State of Orissa and others (1995) 6 Supreme Court Cases 1, and of this Court in Vandana Dhadwal and another vs Punjab University, Sector 14, Chandigarh and others 2010 (4) SLR 725, were relied upon.

7. Learned counsel for the State while referring to the record pertaining to selection could not point out that the criteria for selection was laid down at any time prior to final selection. He could only find out from the record that on 6.11.2009, a Committee was constituted for the purpose of selection. The same was approved by the then Speaker of the Vidhan

Sabha. The Selection Committee made its recommendation on 22.12.2009, which contains the criteria for selection. The recommendation was approved on the same day by the then Speaker. Undisputedly, Speaker's close relative had been recommended for appointment. However, he submitted that the petitioners having participated in the process of selection cannot be permitted to raise all these issues at this stage. The contention that no criteria was laid down prior to selection should have been raised at the initial stage and not after the appointment had been made. Though the allegations have been made, but the then Speaker has not been impleaded as a party. It was further submitted that the Committee had adjudged the merit of the candidates. A candidate can be poor in writing but can be good in speaking of Hindi and English. It was for the satisfaction of the members of the Committee. He admitted that there were 891 applications. Though the post was one but no decision was taken to short list the candidates and all the applicants were interviewed from 23.11.2009 to 3.12.2009.

8. Learned counsel for the selected candidate- respondent no. 3, submitted that this court cannot sit in appeal against the award of marks by the Members of the Selection Committee on the basis of performance of a candidate at the time of interview. He did not dispute the fact that the selected candidate is related to the then Speaker of the Vidhan Sabha. However, he sought to explain that relative of a person at the helm of affairs cannot be deprived of filing application for appointment. There are no allegations of malafide. A committee was constituted for the purpose of selection. Once the requirement in the Rules was that the candidate should be fluent in speaking Hindi and English, the same cannot be adjudged by a written test. It could be adjudged by the interview. The Committee devised its own criteria to ensure that the best candidate is selected. Had there been process of short listing, good candidate, who may be proficient in speaking English and Hindi, would have been ignored. In support of his submissions, reliance was placed on judgment of Hon'ble the Supreme Court in Madan Lal and others vs State of J&K and others (1995) 3 Supreme Court Cases 486.

9. Heard learned counsel for the parties and perused the relevant referred record.

10. In the case in hand, one post of Liaison Officer was advertised by the Haryana Vidhan Sabha on 17.8.2009. The qualifications required for the post were as under:-

<i>Sr. No.</i>	<i>Designation</i>	<i>Academic Qualification and Experience, if any for Direct Recruitment</i>	<i>Academic Qualification Experience for Appointment other than by Direct Recruitment</i>
1.	2.	3.	4.
2.	Liaison Officer	(i) Graduate with good physique, able bodied and impressive bearing; (ii) Ability to converse fluently in Hindi and English; (iii) Knowledge of Hindi upto Matric.	Five years' experience as Watch and Ward Officer. Reception officer, Legal Assistant or Research Assistant.

11. Total 891 applications were received. Respondent no. 3, who has been selected, is the sister's son-in-law of the then Speaker of the Vidhan Sabha, namely, H. S. Chatha.

12. The challenge has been made by the petitioners on various grounds. The process adopted by the appointing authority/selecting agency was merely the interview. The criteria adopted for selection has neither been laid down in the Recruitment Rules, nor by the appointing authority or by the selecting agency before the issuance of advertisement or even after the receipt of applications. Even from the record produced, it could not be pointed out by the official respondents that the criteria was ever laid down. In the recommendation made for selection to the appointing authority, it was mentioned that the Committee appointed for the purpose had fixed total 60 marks for interview. Due consideration was given to other aspects such as general knowledge, intelligence, awareness, speaking ability and the higher qualification. It was nothing but justifying the selection. This was not even notified when the result was declared. There is no dispute with the proposition of law that the criteria for selection should be laid down when the recruitment process starts. In fact, fixing of criteria where the candidates were to be interviewed only seems to be tailor made to ensure selection of respondent no. 3, who otherwise had a very poor academic record, whereas the Recruitment Rules require a candidate, who is fluent in speaking Hindi and English.

13. The fact has not been disputed that respondent no. 3, who has been selected, is the sister's son-in-law of the then Speaker of Haryana

Vidhan Sabha, namely, H. S. Chatha. He has been directly involved in the process of selection. A perusal of the record produced shows that after the post was advertised and the applications were received, a note dated 6.11.2009 was put up that 891 applications have been received, out of which 884 have been found to be eligible. Note dated 6.11.2009 at page 9 of the file is reproduced as under:-

**“Subject :- Recruitment to the post of Liaison Officer.
(Advt. No. 1/2009).**

It is submitted that one post of Liaison Officer was got advertised vide advertisement No. 1/2009 through the Director Public Relations, Haryana, inviting applications within 15 days from the date of publication which appeared in “The Pioneer” and in “Dainik Bhaskar” on 15th /17th August, 2009 respectively. In response to the said advertisement 891 applications have been received for the said post of Liaison Officer with in the stipulated period, out of which 884 applicants are found eligible, list placed below and 7 applicants are not found eligible. The applications have been processed by Shri Dharam Pal Sandhu, Superintendent assisted by Shri Jaswant Singh, Assistant. However, discrepancy, if any found later on, may be allowed to rectify.

As desired by the authorities, the eligible candidates from Sr. No. **1 to 100** may be called for interview on **23rd November, 2009 at 10:00 A.M.**, from **Sr. No. 101 to 200** may be called for interview on **24th November, 2009 at 10.00 A.M.**, from **Sr. No. 201 to 300** may be called for interview on **25th November, 2009 at 10.00 A.M.**, from **Sr. No. 301 to 400** may be called for interview on **26th November, 2009 at 10.00 A.M.**, from **Sr. No. 401 to 500** may be called for interview on **27th November, 2009 at 10.00 A.M.**, from **Sr. No. 501 to 600** may be called for interview on **30th November, 2009 at 10.00 A.M.**, from **Sr. No. 601 to 700** may be called for

interview on **1st December, 2009 at 10.00 A.M.,** from **Sr. No. 701 to 800** may be called for interview on **2nd December, 2009 at 10.00 A.M.,** from **Sr. No. 801 to 884** and the remaining candidates who could not appear for interview in the above dates may be called for interview on **3rd December, 2009 at 10.00 A.M.,** for the said post of Liaison Officer in the Committee Room in the Haryana Vidhan Sabha Secretariat. A Committee of the following three officers may also kindly be constituted by the Hon'ble Speaker to conduct the interview of the eligible candidates for the post of Liaison Officer:-

- i) Shri Rajinder Kumar Nandal,
Deputy Secretary;
- ii) Shri Dayanand Sheokand,
Under Secretary; and
- iii) Shri Puran Mal Saini, Under Secretary.

And in case of leave of any member of the said Committee on the date (s) of interview, another officer may be allowed to associate the Committee for the said purpose, by the order of the Secretary.

Draft of interview letters are placed below for favour of approval and the same may kindly be allowed to send to eligible candidates accordingly.

Submitted for consideration and order please.”

14. The aforesaid note was approved by H. S. Chatha, the then Speaker of the Vidhan Sabha on the same day i.e. 6.11.2009.

15. At page 15 of the same file are the recommendations dated 22.12.2009 of the Committee constituted for selection, which are as under:-

“Recommendations of the Committee for selection of Liaison Officer

One post of Liaison Officer was advertised vide Haryana Vidhan Sabha Secretariat Advertisement No. 1/2009 in leading Newspapers having wider circulation. In response to the said advertisement in total 891 applications were received in the Haryana Vidhan Sabha and after scrutiny of the

applications 884 candidates were found eligible as per provisions of Haryana Vidhan Sabha Secretariat Service Rules, 1981. It is pertinent to mention here that a CWP No. 17299 of 2009 was filed by Shri Narender Singh in the Hon'ble High Court against the Haryana Vidhan Sabha Secretariat. He requested for granting stay against the selection process for the post of Liaison Officer and the Hon'ble High Court passed the interim order that the interview process will continue, however, the selection result shall not be declared without the prior permission of the Court. Accordingly, these eligible candidates were called for interview from 23rd November, 2009 to 27th November, 2009, 30th November, 2009 and from 1st December, 2009 to 3rd December, 2009. Actually 509 candidates appeared for interview. One candidate namely Sh. Aman Sharma S/o Sh. Dinesh Sharma R/o Panchkula, Roll No. 84 signed the attendance sheet but actually did not appear before the Committee for interview. Now the Counsel for the petitioner Shri Ramesh Hooda, Advocate vide his certificate dated 22.12.2009 has informed that the above said CWP No. 17299 of 2009 – Narender Singh V/S Haryana Vidhan Sabha Secretariat has been dismissed as withdrawn through Civil Misc. Application No. 20358- CWP of 2009 on 21.12.2009. The certificate issued by Shri Ramesh Hooda, Advocate, has been referred to the Selection Committee by the Private Secretary to Secretary, Haryana Vidhan Sabha Secretariat. As such no case is pending against the selection of the post of Liaison Officer.

The Committee for interview consisting of Deputy Secretary-I, Under Secretary-I and Under Secretary-III was constituted by the order of the Competent Authority on dated 6-11-2009 wherein it was also observed that in the absence of any officer mentioned above the next officer will be associated to conduct the Interview. On dated 30th November, 2009 and 2nd December, 2009 Deputy Secretary-I was on leave

therefore, the Under Secretary-IV was associated with the Committee. On 1st and 3rd December, 2009, Under Secretary-II had to attend the Court case therefore Under Secretary-IV was associated with the Committee. As per prevailing practice and precedent the total marks for interview was fixed by the Committee itself and accordingly the Committee fixed total marks for interview as 60 and for qualifying the test a candidate was required to obtain at least 20 marks. Each member of the Committee was to award marks out of 20. The minimum qualification as per appendix B Group-C Sr. No. 2 appended with the Haryana Vidhan Sabha Secretariat Service Rules, 1981 for selection were as under:-

	<u>For Direct</u>	<u>By Promotion</u>
2. Liaison Officer	1. Graduate with good Physique, able bodied and impressive bearing 2. Ability to converse fluently in Hindi and English. 3. Knowledge of Hindi upto Matric.	Five years' experience as Watch and Ward Officer, Reception officer, Legal Assistant or Research Assistant

However, to select the best candidate for the lone post of Liaison Officer by direct recruitment, due consideration was given to other aspects with regard to general knowledge, intelligence, awareness, speaking ability and higher qualification. On the basis of overall performance of the candidate, the merit prepared was as under:-

<i>Sr. No. & Roll No.</i>	<i>Name and Address of the Candidate</i>	<i>Total Marks Obtained</i>	<i>Remarks</i>
1. 220	Gurvinder Singh S/o Sh. Manmohan Singh Vill. Ajrana Khurd, P. O. Ajrana Kalan, Teh. Thanser, Distt, Kurukshetra.	37/60	Recommended for selection
2. 398	Mahesh Kumar S/o Sh. Harender Singh, # 916, Sector-11, Panchkula	32/60	waiting
3. 241	Harish Chander S/o Sh. Ishwar Chader Gupta, VPO Dappar, Distt. Mohali- Punjab- 140506	30/60	waiting
4. 32	Ashok Kumar S/o Sh. Jagdish Lal, # 1483, Ward No. 5, Jyoti Nagar, Kurukshetra – 136118	28/60	
5. 80	Ashok Kumar S/o Sh. Suraj Bhan, C/o Smt. Suman Lata # 1183, Sector-13, Urban Estate Kurukshetra	26/60	
6. 168	Dinesh Kumar S/o Sh. Hukam Singh, VPO Baroda, Teh. Gohana, Distt. Sonapat -131304	23/60	
7. 643	Sanjay Kumar S/o Sh. Jagdish Singh, C/o Sh. Sinil Kumar Rohila, 1306/2 Gali No. 1/A, Shanti Nagar, Kurukshetra.	23/60	
8. 631	Sunita Rani D/o Sh. Om Parkash, VPO Madina (Korsan), Teh. Meham, Distt. Rohtak – 124111.	22/60	

<i>Sr. No. & Roll No.</i>	<i>Name and Address of the Candidate</i>	<i>Total Marks Obtained</i>	<i>Remarks</i>
9. 557	Ram Niwas Sharma S/o Sh. Kishori Lal Sharma, # 906, VPO Bhattu Kalan, Teh.& Distt. Fatehabad- 125053	21/60	
10. 384	Mohit Aggarwal S/o Sh. Parveen Agarwal, Mohit Medical Hall, Near Civil Hospital, Naraingarh, Distt. Ambala.	21/60	
11. 226	Harinder Singh, S/o Sh. Kashmir Singh # 324/5-A, Bhagwan Nagar, Pipli, Distt. Kurukshetra – 136131	21/60	

The remaining candidates did not qualify the test as they secured less than 20 marks. After assessing the overall performance of the candidates, the Committee recommends that the candidate at Sr. No. 1 bearing Roll No. 220 highest in merit is most suitable and fit for regular appointment on the lone post of Liaison Officer so he may be offered appointment as Liaison Officer in the sanctioned pay scale of Rs. 9300-34800 and Grade Pay Rs. 4200+Rs. 200/- S.P. + usual allowances on probation of two years as per provisions of Rule 10 of the Haryana Vidhan Sabha Secretariat Service Rules, 1981 and the candidates at Sr. No. 2 and 3 bearing Roll Nos. 398 and 241 respectively are recommended for waiting list which shall be valid for six months. The chart of marks showing the marks obtained by each candidate and awarded by each Member of the Selection Committee is also enclosed herewith and the same may be kept in safe custody by the Incharge of Establishment Branch as per law. A photo copy of the recommendations of the Committee showing merit of the candidates who have qualified in the interview test may also be displayed on the Notice Board in front of the Secretary's Room for information of all concerned as per past practice.

Sd/- 22.12.09
Deputy Secretary-I
(Rajender Kumar Nandal)

Sd/- 22.12.2009
Under Secretary-I
(Daya Nand Sheokand)

Sd/- 22.12.09
Under Secretary-III
(Puran Mal)

Sd/-
Under Secretary-IV
(Joga Singh) 22.12.09

SECY Submitted for orders of H.S.

Sd/-Sumit Kumar 22/12/2009

H/S Sd/- H. S. Chatha
22/12”

16. The note while referring to the essential qualifications for the post required also mentioned that, “However, to select the best candidate for

the lone post of Liaison Officer by direct recruitment, due consideration was given to other aspects with regard to general knowledge, intelligence, awareness, speaking ability and higher qualifications.” The name of respondent no. 3 was recommended for appointment. The recommendations were approved by the then Speaker H. S. Chatha on the same day i.e. 22.12.2009. The appointment letter was also issued on the very next day.

17. A perusal of the official record, as has been referred to above, clearly shows that H.S. Chatha, the then Speaker, whose close relative was one of the candidates for the post, had been involved at every important step in the process of selection, namely, how the candidate was to be selected, appointment of Selection Committee and thereafter even approval of the recommendation of the Selection Committee, which vitiate the entire process of selection. The file produced in Court dealing with the subject does not show that the same has been maintained in due course of business as there were cuttings/ over writings on the page numbers.

18. The marks secured by the selected candidate and petitioner nos. 2 and 3, as have been reproduced by the petitioners in a chart in Annexure P-6, are extracted below:-

	GURVINDER SINGH (RESPONDENT NO. 3)	MAHESH KUMAR (PETITIONER NO. 2)	HARISH CHANDER (PETITIONER NO. 3)
CLASS	% OF MARKS OBTAINED	% OF MARKS OBTAINED	% OF MARKS OBTAINED
Matric	30%	63.3%	45%
10+2	--	67.4%	58%
B.A.	46.9%	61.4%	57%
M.A. Punjabi/ M.Sc. Geography/ M.B.A.	54.8% (M.A. Punjabi)	50.48% (M.B.A.)	55% (M.Sc Geography)
L.L.B.	--	56.17%	
M.Phil	--	--	74%

19. Further it is evident from the mark-sheet of the selected candidate- respondent no. 3, that he passed his Matriculation Examination in 3rd Division and secured 38/100 marks in Hindi and 33/100 marks in English. He passed his B.A. Examination with 46.9% marks, in 3rd Division, by securing 35/100 marks in English (passed with grace marks), and 35/100 marks in Hindi. He passed M.A. Punjabi examination with 54.9% marks. Even though 891 applications had been received for the single post but still the authorities did not choose it appropriate to go for short listing process, which could either be by way of a written test or on the basis of academic

record. What can safely be opined from the facts on record is that this process was not chosen as in either of two, the candidate, who was targeted to be selected and for whom probably the post may have been advertised, would not have been short listed. The authorities decided to interview all the eligible candidates and make selection on the basis of marks awarded in the interview.

20. Further though in the recommendations made by the Members of the Selection Committee one of the factor mentioned for making selection is the higher qualification, however, the record produced before the Court does not suggest that any such exercise was done and, if yes, how the marks were awarded to different candidates. There were candidates having qualifications of Graduation in Engineering, M.Phil, MBA, L.L.B., Mass Communication, Computer Education, etc., but none of them could secure even 20 marks out of 60 total marks in the interview on the basis of so called selection criteria where weightage was also to be given for higher qualification.

21. Though as per the schedule approved on 6.11.2009, the interview of the candidates was to start from 23.11.2009 and to be continued till 3.12.2009, but still as is evident from the sheets containing marks awarded by the Committee, some of the Members had awarded the marks on 22.11.2009, as is evident from the date mentioned by them under the signatures on the sheets. It means that the marks were not awarded by the Members of the Interview Committee immediately after the interviews were concluded, rather the exercise was done on the date when the recommendation was to be made.

22. Further the speed at which the entire process of selection was completed also shows that the same had some force behind. The advertisement was published on 15th /17th August, 2009. The last date for receipt of applications was 1.9.2009. After interview of 884 candidates, the result was declared and the final selection was made on 22.12.2009, whereas in many other cases coming before the Court, it is seen that the process of selection remained pending for years together. There are two notings on the file of 6.11.2009. The first noting shows that the competent authority, namely, the then Speaker had decided that the advertisement no.

1/2009 inviting the applications for different posts may be withdrawn/ treated as cancelled except for the post of Liaison Officer. The same was approved by the then Speaker on the same day. Meaning thereby the entire exercise was being done only for recruitment of the close relative of the then Speaker.

23. The contentions raised by learned counsel for the State as well as the private respondent that interview was found to be best criteria for making the selection and further that the candidate may not be good in writing Hindi and English but he could be good in speaking English, are merely to be noticed and rejected. A written test always brings out a talent in a person. It is how he express things. For the post of Liaison Officer, expression is very important. It also shows his depth of knowledge on the subject. A person cannot write properly Hindi or English if he has no knowledge. The plea sought to be raised by the respondents that such a person could be very good in speaking Hindi and English, cannot be accepted.

24. Even the contention raised by counsel for the respondents regarding participation of the petitioners in the process of selection and challenge thereafter for rejection of the petition is concerned, even that also deserves to be discarded. In the case in hand, the petitioners were not aware of the fact that the person going to be selected ultimately will be the close relative of the then Speaker, who is the final authority in the matter. The entire issue has to be examined in that light and if considered in the light of the discussion above, the same cannot be said to be a bar for entertaining the petition on behalf of the candidates, who participated in the process of selection.

25. For the reasons mentioned above, the writ petition is allowed. The selection of respondent no. 3 as Liaison Officer is set aside. The authorities are directed to proceed further in accordance with the statutory Rules.

13.2.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)