

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

Civil Writ Petition No.3651 of 2012 (O&M)

Date of decision: 11.8.2015

Minni Grover

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vivek Sharma, Advocate,
for the petitioner.

Mr.Ashish Sharma, Addl., AG., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner ranked 13th in the merit list for filling up of 114 posts of Medical Officers [Dental] advertised by the State of Punjab on 26th July, 2011. The criteria for selection comprised 95 marks for the written test and 5 marks for candidates belonging to rural areas. The written test was conducted on 16th October, 2011 and the result was declared on 20th October, 2011. After selection the counselling was due to be conducted on 16th December, 2011. One of the candidates, namely, Vinay Sharma filed CWP No.21638 of 2011 titled Vinay Sharma v. State of Punjab and others in this Court challenging the award of 5 marks to the candidates of rural areas as unconstitutional. During the pendency of the writ petition, the State

withdrew the weightage of 5 marks for rural area candidates on 6th January, 2012 and the writ petition was rendered infructuous and consequently dismissed as such on 16th February, 2012.

2. This paved the way of issuance of appointment orders on 7th September, 2012 to the selected candidates. Trouble began for the petitioner when on the last date of submission of applications in the advertisement, was on August 19, 2011, she admittedly had not passed the matriculation examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language which was the 4th condition of the terms of the advertisement dated 26th July, 2011 [P-1] issued by the Directorate of Health and Family Welfare Punjab, Chandigarh calling applications from eligible candidates for filling up several categories of posts in consolidated form including that of Medical Officers [Dental] which is the post in question. Indisputably, the petitioner holds the Bachelor's degree in Dental Surgery from a University recognized by the Dental Council of India and was registered in Part 'A' of the register maintained by the Punjab State Dental Council and was otherwise eligible for consideration in terms of the Public Notice. She, however, passed the Punjabi examination at matriculation level in March, 2012 during the currency of the recruitment process.

3. The petitioner has been held ineligible for the post since she did not possess the certificate of clearing paper in the Punjabi up to the required standard on or before the last date of submission of application forms. This is what has brought her to this Court seeking a mandamus to the respondents to offer her appointment.

4. It is her case that persons lower in merit than her have been appointed and are working on the posts but the petitioner despite being higher in merit than the candidates selected and appointed has failed to secure an appointment to service on the ground of not having acquired the necessary qualification by possessing proof of Punjabi knowledge.

5. In the earlier advertisements published for the same post in the recruitment processes initiated in the years 2010 and 2011, no such condition of passing Punjabi upto matric level was laid down prior to the cut-off date and knowledge of Punjabi was made dependent on passing Punjabi level examination within 6 months of appointment.

6. It is argued by the petitioner that the imposition of condition of Punjabi with matric in the public notice is not in consonance with requirements in rule 17 of the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994. These rules do not lay down as a condition precedent that acquisition of knowledge of Punjabi language at the required level should be demonstrated prior to the cut-off date fixed in Public Notices inviting applications for direct recruitment to public posts. The language employed by the rule making authority in rule 17 of the 1994 rules suggests that knowledge of Punjabi language as required by rule 17 should be available by proof before the appointment is offered to services in the State of Punjab is required on the date appointment and appointments are offered to selected candidates. Indisputably, persons lower in merit to the petitioner had passed Punjabi examination of matric level but at the same time the petitioner had successfully cleared the test in Punjabi language before appointments were offered to anyone. Mr.Vivek Sharma appearing for the petitioner places reliance on a decision of this Court

rendered in CWP No.14383 of 2013; **Baljeet Kaur v. State of Punjab and others** decided on 10th November, 2014 to gain relief.

7. Besides, there is another strain of litigation in this Court which requires to be noticed. Mr. Sharma draws attention of the court to the interim order placed at Annexure A-1 with CM No.8082 of 2012 in CWP No.5048 of 2012 in case titled *Sophia Sharma and another v. State of Punjab and another*. Learned Single Judge vide interim order dated 21st March, 2012 issued notice of motion to the State of Punjab on the strength of the argument raised before the Court relying on a previous judgment in **Dr. Parul Dham v. State of Punjab and others**; 2012 (2) PLR 149 wherein an issue was raised by the petitioners that the persons who had been registered with the Punjab Dental Council before the date of advertisement and the date of consideration and the persons who had passed Punjabi language examination during the interregnum were considered to be eligible. This petition was disposed of 29th May, 2013 as infructuous on the statement made by the State Government that the petitioners had been appointed to service and no dispute remained to be adjudicated. This case was filed against a similar advertisement as the present one. Not satisfied with its own statement made before the court, Punjab Government filed a review application pleading that the Government had made a wrong statement before the Court and it may be permitted to retract from it but the review application was dismissed. In the intra court appeal carried before the Division Bench in LPA No.414 of 2005 aimed against the candidates who were not registered with the Dental Council prior to the cut-off date, the Bench did not agree. The order of the learned Single Judge was upheld and the appeal was disposed of with a direction that if any candidate is

aggrieved against the selection, he is free to pursue his remedies independently in a separate writ petition. The order in appeal has been passed recently on 5th May, 2015 and according to Mr. Sharma revitalizes his prayer in the present petition by analogy, and delay of any kind is not to be used against him even if the post of Medical Officer (Dental) were advertised in the year 2011.

8. Coming to the facts of the present petition, Mr. Sharma draws the attention of this Court to the first motion order dated 27th February, 2012 passed by the learned Single Judge where his argument was noticed, upon which, the State was put to notice of the petition. The interim order reads as follows : -

“Learned counsel has argued that the rule is in the following terms :

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“Rule 17. Knowledge of Punjabi Language : - No person shall be appointed to any post in any service by direct appointment unless he has passed Matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi Language, which may be specified by the Government from time to time.”

By an advertisement published in 2010 (Annexure P-4) the following condition was imposed : -

3(ii) Educational and other Qualifications for Medical Officer (Dental) : Knowledge of Punjabi Language upto Matriculation Standard. Candidates who do not possess the qualification shall have to acquire this qualification within six months of their joining the service failing which their services shall be terminated.”

By an advertisement dated 26.07.2011 (Annexure P-1) the following condition was imposed : -

Knowledge of Punjabi Language. No person shall be appointed to any post in any service by Direct appointment unless he has passed matriculation examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi

language at time of submission of application, which may be specified by the Govt. from time to time.

Provided further that where a ward of Defence Service Personnel, which is a bona fide resident of Punjab State, is appointed by direct appointment, he shall have to pass an examination of Punjabi language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of Punjab Govt. within a period of two years from the date of his appointment.”

Learned counsel has also shown to the Court the photocopies of two advertisements dated 24.02.2012 and 25.02.2012 in which also the similar condition is imposed. He has further stated that he would place the said documents on record. The argument raised is that in interpreting the same rule differential criteria cannot be adopted at different times.”

9. The motion order notices both rule 17 and the terms and conditions of the advertisement published in the year 2010 and of the present advertisement.

10. When the order was passed, Mr. Sharma had relied on two subsequent advertisements of 2012. Those advertisements have been placed on record in the accompanying application and the terms and conditions suggest clearly in favour of the principles expounded by Mr. Sharma before this Court at the final hearing that knowledge of Punjabi language could be demonstrated before the appointments came. If appointments came earlier then he may not have had a case to contest. This is a fortuitous circumstance on which his contention rests that his client had made herself eligible well before appointments came. I find the contention is not without merit.

11. Rule 17 of the 1994 rules is the operative rule on the subject matter and all advertisements and public notices inviting applications for direct recruitment in Punjab have to comply with rule 17 of the rules.

Bylanes and side lanes cannot be carved out from Rule 17 which is couched in the negative form that no person shall be appointed to any post unless he has passed matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi language which may be specified by the Government from time to time. Therefore, clause 3(ii) of the advertisement published in 2010 [P-4] is compliant of rule 17 but the condition in the present advertisement imposes a restriction circumscribed by the cut-off date with reference to submission of the applications and is clearly in excess of the mandate of rule 17 and is, therefore, not compliant of rule 17 as it imposes a condition which does not exist in the rule. The terms and conditions of the advertisement are to be treated as the instructions and guidelines of the recruitment process which cannot supplant the rules but only supplement them. Delay in direct recruitment process in the State of Punjab are well known as in other States and are a bane in litigation and therefore the conditions which are qualifying in nature but not essential conditions of eligibility ought not to be measured from the date of submission of the application forms when there is delay in the process. Passing of the Punjabi language examination is one such qualification which is not part of essential qualifications, at the stage of receipt of applications, to hold the post of a Medical Officer [Dental] which is appointment based. The Government was after all looking for Dentists to serve its dispensaries and hospitals and it is not fair to ignore pure merit altogether, as after all the petitioner has ranked 13th amongst 114 candidates to fill advertised posts in open competition and is otherwise within the zone of consideration in offering and making appointments.

12. In any case, the recruitment process had been mired in litigation by wrong actions of the employer State in making statements and then attempting to retract them before this Court. There is no dispute raised by the State that the petitioner had qualified Punjabi examination to the prescribed standard in rule 17 in March, 2012 and the first appointment came later in September, 2012 and thereafter further appointments as a result of litigation in May, 2013 with rights kept alive on May 5, 2015 in LPA No.414 of 2005.

13. In *Baljeet Kaur v. State of Punjab* [supra], I had dealt with a somewhat similar situation in a case of recruitment of Staff Nurses. The facts were that the candidature of Baljeet Kaur was faulted by the Scrutiny Committee at the time of counselling on 18th January, 2012 when she failed to produce the testimonials in original to show amongst other criteria that she had cleared the subject of Punjabi language in matriculation examination as a compulsory or elective subject. She was declared not eligible. She came to this Court stating that she made a representation on 13th September, 2012 the very day she cleared the Punjabi language examination up to matriculation level, the test of which was held in March, 2012 after the written test and the counselling conducted. Baljeet Kaur was high in merit just as the petitioner is. It was also her case that she was a ward of a defence personnel who was a bona fide resident of Punjab and there was a special rule in her favour where concession was given to the candidates who schooled outside Punjab due to the postings and transfers suffered by their parents to serve in other States and thus could not pass out from school located in the States of postings in Punjabi language since it

was not taught as subject, were given liberty to pass the Punjabi language examination within the prescribed period on and after appointment. Rule 17 was also pressed into service by Baljeet Kaur. Note : Bullet 4 of the terms and conditions carved out a special case for defence personnel. I had occasion in *Baljeet Kaur* case to examine the effect of the 4th proviso with reference to wards of defence personnel and not dependants of Ex-servicemen and how rule 17 of the 1994 rules impacts the 4th proviso by observing :

“It is also argued by the petitioner that the fourth proviso is meant for the “wards” of defence personnel and not for the “dependent” of ex-serviceman

since the petitioner competed as a general category candidate and not as a dependant of ESM and in which competition she remained successful by qualifying for selection on merit as the result bears. The fourth proviso is a special proviso designed for wards of defence service personnel and not for the dependents of ex-serviceman. The former is a concession while the latter is a species of horizontal reservation. Between the two there is a vast difference in cause and effect. Quite apparently, the fourth proviso operates ex-post facto, that is, after the event when appointment is offered and accepted. The starting gun of the two year race in rule 17 starts from that tape. The rule is both creative of a right and declaratory in its nature. This leads to an irresistible conclusion that by not qualifying the Punjabi language subject in the matriculation examination at the time of submission of the application form is not determinative or conclusive of the issue when compliance stands postponed by rules of general and common conditions of

service which the Govt. thought fit to incorporate as a substitute qualification achievable after direct appointment. Even assuming that there is an ambiguity in the advertisement and rule 17 of the 1994 rules, such an

ambiguity deserves to be interpreted in favour of petitioner to secure her an appointment as she ranks higher in merit than a large number of selected candidates. I am not able to persuade myself, however hard I try, to ignore this crucial aspect of meritocracy that a supplicant to this Court should be left to sink in the quicksand of time.”

14. Mr. Sharma cites this judgment to draw an analogy from it to suit the facts of the present case and relies on rule 17 of 1994 rules to mean demonstration of knowledge of Punjabi language at the required level on the date of appointment, if offered. Such an interpretation should be placed that merit is not diluted and rule 17 affords such an opportunity and therefore if appointment is offered to the petitioner, Articles 14 and 16 would not be breached flagrantly.

15. It is trite that appointments conclude recruitment processes which begin with selection and the cut-off dates to do acts and things. I find that Rule 17 is structured around appointment but not selection. This means that no person shall be appointed who does not possess knowledge of Punjabi language but this does not mean that such a person will not be selected or would be non-suited without a fair chance of demonstrating knowledge of Punjabi language in the manner required by rule 17 and if proof comes by before any appointments are offered, then I am inclined to think that a meritorious candidate should not be dropped from the race to appointment particularly when he/she has cleared the Punjabi language in the meanwhile. The barrier was crossed by the petitioner in March, 2012 while the selected candidates came to be appointed six months thereafter in September, 2012.

16. It would remain a debatable issue where the advertised posts are filled by appointments and thereafter a candidate comes forward with a plea that he or she has now qualified the examination in Punjabi language, therefore he or she should be appointed, then in such a case, a mandamus may not issue howsoever high the merit position may be, but the fact that the acquisition of the prescription of qualifying the examination in Punjabi language was successfully overcome six months before the appointments were made for the first time, then I am also inclined to think, that appointment should not be denied since after all the State Government is looking for the best dentists and it may be deprived of talent if the rule is absurdly applied to the case in hand. Merit alone must govern appointments even at the cost of some allowance relented here or there provided that the selection process is otherwise fair and proper and above board.

17. For the foregoing reasons, this petition is accepted. The petitioner is declared eligible for consideration for the post of Medical Officer [Dental]. The condition that the examination in Punjabi language in all circumstances is mandatory on the date of receipt of applications is held unreasonable and arbitrary and not justified under rule 17 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. Rule 17 is appointment based and not selection oriented so far as passing of the examination in Punjabi language is concerned as a qualifier. Therefore, a writ of mandamus is issued to the State to consider the case of the petitioner for appointment as a Medical Officer [Dental] in the light of this judgment and order. The process be completed within 6 weeks and in case, the petitioner is found eligible in all other respects, she may be offered

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appointment to the post of Medical Officer [Dental] after following the formalities. It is declared that in the event of appointment, her seniority will relate back to the merit position in the 2011 batch but she will not be entitled to any monetary benefits.

(RAJIV NARAIN RAINA)
JUDGE

August 11, 2015
Paritosh Kumar