

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

CWP No.3376 of 2013 (O&M)
Date of Decision: **November 27, 2015**

Sandeep

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Dinesh Arora, Advocate
for the petitioner.

Mr.D.K.Mittal, DAG, Haryana.

Mr.P.S.Poonia, Advocate for
respondent No.2.

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HARINDER SINGH SIDHU, J.

On 2.7.2011, respondent No.2 – Haryana Staff Selection Commission issued advertisement in the newspaper for filling up 4131 vacancies of Assistant Linemen (Annexure P-9). The educational qualifications and the necessary forms required to be submitted as per the advertisement were as under:

“E.Q. i) Matric with 2 years ITI in Electrician/Wireman trade or having 2 years Vocational Course under the trade of Lineman or Electrician (Maintenance and Repair of Electrical and Domestic Appliances) conducted by Director, Industrial Training & Vocational Education, Haryana or National Apprenticeship certificate awarded under the Apprenticeship Act, 1961 from any institute recognized by the State Government.

1. Hindi/Sanskrit upto Matric Standard.

Age:. xxx xxx xxx

Fee: xxx xxx xxx

Documents to be attached with the application form:

1. to 3. xxx xxx xxx.....
4. *Attested copy of fresh eligibility certificate in case of DESM candidates duly issued by the respective Zila Sainik Board."*

The petitioner had passed his Secondary School Certificate Examination from the National Institute of Open Schooling in April, 2003, passed his diploma in Electrician Trade in 2006 and received his apprenticeship training and passed the prescribed trade test and was awarded the National Apprenticeship Certificate. Thereby, being fully eligible, he applied for the same in the category of Dependent of Ex-Serviceman. He was issued Roll No.006552 and called for the interview on 1.6.2012 at 9.30 A.M. (Annexure P-11). At the time of appearing for interview, the eligibility of the petitioner under the Ex-serviceman category was checked and he was orally informed that as the last date for the application was 18.7.2011, but his Eligibility Certificate was dated 20.7.2011, i.e., after the last date, hence he would be considered under the General Category as he did not fulfill the condition of the eligibility under the Ex-serviceman quota of submitting the certificate along with the application form.

Later, a notice dated 6.9.2012 (Annexure P-15) was issued in the newspapers, whereby, all candidates, who were treated ineligible by the respondent – Commission for the post of Assistant Lineman, which included the petitioner were required to contact the office with their original certificates on the dates indicated therein. As required by this notice, the petitioner appeared before respondent No.2 and It was orally disclosed to him that because he had passed matriculation examination from the

National Open School, New Delhi with five subjects only namely English and Hindi as compulsory and three other subjects i.e., Mathematics, Social Science and Science, this examination was not equivalent to the Matric level examination of the Board of School Education, Bhiwani for which six subjects were required. Therefore, he was not eligible for the post. However, nothing was communicated to him in writing despite repeated requests.

It was only in response to an application under the RTI Act that he was intimated vide communication dated 21.11.2012 (Annexure P-18), that the qualification of the Matric examination passed by him was invalid for the post of ALM against Advt.No.112011 category No.01.

Hence, the present petition.

The respondents have filed separate written statements. The stand on behalf of respondents No.1 and 2 is that the petitioner has passed the Secondary Examination from National Institute of Open Schooling, New Delhi (Annexure P-3) in five subjects i.e. Hindi, Social Science, Science, Mathematics and English. The Director, Secondary Education, Haryana vide letter dated 25.1.2012 (Annexure R-1) has intimated the respondent – Commission that the Secondary Level Examination passed from National Open School, New Delhi is equivalent to Matric Level Examination of Board of School Education, Haryana, Bhiwani subject to the condition that candidate must have passed Hindi and English as compulsory subjects and has passed three subjects out of Mathematics, Social Studies, Science and one elective subject in Secondary Level Examination. The petitioner has passed Hindi and

Social Science and Science and he has not passed one more elective subject from National Open School, New Delhi and as such his certificate is not equivalent to Matric level examination of Board of School Education, Haryana, Bhiwani and accordingly, the petitioner has been considered ineligible for the post of ALM. Further, it is stated that as per condition of the Advertisement while applying for the post, the candidates were required to attach the Eligibility Certificate to substantiate their claim under Dependent of Ex-Serviceman category, whereas, the petitioner had attached the Discharge-Book of his father with the application. As he did not append the Eligibility Certificate in support of his claim under DESM category along with the application therefore, he was not eligible as a DESM candidate in the absence of Eligibility Certificate.

At this point, it needs to be noted that the petitioner has annexed the requisite certificates certifying him to the the ward of Ex-serviceman as Annexures P-12 to P-14 with the writ petition. The respondents have not disputed the same, but only asserted that at the time of applying for the post, the petitioner had only annexed the Discharge Book of his father and hence he was not eligible in the DESM category.

The written statement filed on behalf of respondent No.3 is also on the same lines.

I have heard Learned counsel for the parties and gone through the paper-book.

In my view the petition deserves to succeed as neither of the two objections of the respondents is sustainable.

The objection to the non consideration of the case of the petitioner in the dependants of Ex servicemen category is that he had not

annexed the requisite certificates along with the application form, but had only attached the Discharge- Book of his father. The petitioner in his petition has specifically stated that when the petitioner appeared for interview on 1.6.2012 he had produced the ex-servicemen eligibility certificates dated 20.7.2011 issued by the competent authority, but despite that he was considered in the General category only on the ground that the certificates were issued after the last date of application i.e. 18.7.2011. In the written statements in reply thereto, it has been stated that as per the advertisement the certificates were required to be attached with the application form. As the petitioner had only attached the discharge book of his father and not the certificate, hence he could not be considered under the Dependants of Ex-Serviceman category. From this, it is clear that the only objection to consideration of his claim in the Dependants of Ex-Servicemen category is the non- submission of the required certificates along with the application form. No dispute is raised with regard to the validity of the certificates. The question is can this objection legally sustain?

Similar questions have been considered by the Hon'ble Supreme Court in various cases. In the context of admissions, the Hon'ble Supreme Court deprecated the practice of sacrificing the substance of the matter for mere form and prescriptions regarding procedures. Taking note of the difficulty and delay in obtaining certificates in the prescribed form and within the time as stipulated, it was observed that a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. In **Charles K. Skaria v. C. Mathew (Dr)**, (1980) 2

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application.”

This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: Has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but unorthodox probative process. Equity

shall overpower technicality where human justice is at stake.

22. *The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.*

23. *We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.*

24. *It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the*

selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.”

Similar view was reiterated by the Hon'ble Supreme Court in a later case

Dolly Chhanda v. Chairman, JEE, (2005) 9 SCC 779, at page 781 :

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

The ratio of the aforesaid decisions would be fully applicable to this case. The claim of the petitioner for being considered under the Dependents of Ex-Servicemen category cannot be denied only on the ground that he did not submit the requisite certificates along with the application form, considering the fact that he had applied under that

category and had submitted the certificates at the time of interview and his father was an Ex-Serviceman at the time of application as is evident from the Discharge-Book annexed with the application form.

Similarly, the other objection that the petitioner is not eligible as the Secondary Examination passed by him is not equivalent to the Matric level examination of Board of School Education, Haryana, Bhiwani also cannot sustain.

This very question has already been considered by this Court in **CWP No.25210 of 2012** titled as **Sanjit vs. State of Haryana and anr.** decided on 12.1.2015 and a Division Bench judgment in **CWP No.17441 of 2001** titled as **Om Parkash and another vs. State of Haryana and others**, decided on 4.3.2008 and it has been held that the Secondary School Examination from National Institute of Open School, New Delhi is equivalent to Matriculation Examination of Board of School Education , Bhiwani.

It appears that after the aforesaid decisions, the Board of School Education, Haryana has accorded equivalence to the Secondary Examination of National Institute of Open Schooling Noida with the Matriculation Examination of the Haryana School Education Board. This is evident from the communication dated 19.10.2015 of the Board of School Education, Haryana on the subject placed on record by the Ld. State counsel. In this, it has been stated that the Secondary Examination of the National Institute of Open Schooling Noida will be considered equivalent to the Secondary Examination of the Board of School Education Haryana on the condition that the candidate had passed the examination

in any five subjects.

This the petitioner has done.

Accordingly, this petition is allowed. The action of the respondents in holding the petitioner ineligible for the post of Assistant Lineman and his non-consideration in Dependents of Ex-Servicemen Category is held to be illegal.

The petitioner is accordingly liable to be held as eligible for the post of Assistant Lineman in the Dependents of Ex-Serviceman Category.

It is directed that if the posts are available, the petitioner be considered for appointment as per his merit in the DESM category.

November 27, 2015

gjan

**(HARINDER SINGH SIDHU)
JUDGE**