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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA-1248-2014 [O&M]
Date of Decision : November 16th, 2015

Manoj Kumar and others Appellants

Versus

N.H.P.C. Limited and others Respondents

2. LPA-1299-2014 [O&M]

Sunil Kumar Gupta and others Appellants

Versus

National Hydro Electric Power Corporation Limited and others.
.. Respondents

3. LPA-270-2015 [O&M]

Rajesh Kumar Mehta and others Appellants

Versus

National Hydro Electric Power Corporation Limited and others
.... Respondents

CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

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?

Present Mr. Rajiv Atma Ram, Senior Advocate,
with Mr. Arjun Partap Atma Ram, Advocate,
for the appellants in LPA Nos. 1248 and 1299 of 2014.

Mr. Sudhir Rana, Advocate, for
Mr. Virender Rana, Advocate,

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for the appellants in LPA No. 270 of 2015.

Mr. Lokesh Sinhal, Advocate,
for respondents No. 1 to 3.

Mr. Deepak Sharma, Advocate,
for proforma respondents.

SHEKHER DHAWAN, J.

This order shall dispose of three *intra-court* appeals, bearing LPA Nos.1248, 1299 of 2014 and 270 of 2015, filed by the unsuccessful petitioners, under Clause X of the Letters Patent against the common judgment dated 29.05.2014 passed by the learned Single Judge, whereby three separate writ petitions bearing CWP Nos. 8244 of 2008 and 5397 and 10298 of 2009, filed by petitioners were dismissed.

2. The appellants-petitioners had challenged the selection process for the posts of Trainee Engineer/Trainee Officer [for short "TE/TO"] in the discipline of Civil Engineering. Main grievance of the petitioners-appellants was that the official respondents introduced a new condition of obtaining at least 60% marks in the written examination for internal candidates to be declared successful, whereas, there is no such requirement in the N.H.P.C. (Previously known as National Hydro-Electric Power Corporation Limited Recruitment) Rules [for short, "the rules"] governing the service conditions of the appellants. It is also the case of the appellants that even during the last year selection process, cut-off percentage was taken to be 55% in the written examination.

3. Learned senior counsel for the appellants submitted that the entire selection process shows bias mind of the authorities as the eligibility condition of obtaining 60% marks in the written examination was introduced

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after the start of selection process for appointment to the posts of TE/TO. If at all, the Appointing Authority wanted to apply this condition of cut-off marks of 60%, the same should have been notified to all the candidates at the initial stage. That becomes more relevant as there is no such condition in the relevant rules governing the service conditions of the employees, who are otherwise eligible for appearing in the written examination for the post of TE/TO.

4. Learned senior counsel for the appellants has further submitted that this fact is most relevant keeping in view the fact that the process of selection was initiated for filling up 56 vacancies, against which 57 persons had applied and 55 persons appeared for written test. However, after applying criteria of cut-off marks of 60% in the written examination, only 8 candidates could qualify. It was not practically impossible to interview all the candidates as sufficient number of vacancies were available with the official respondents. The number of candidates, who had applied for the posts of TE/TO were not disproportionately larger than the number of posts advertised. In support of his arguments, learned senior counsel has placed reliance on the decisions of Hon`ble Supreme Court in **Bishnu Biswas and others Vs. Union of India and others, 2014(5) SCC 774; Arunachal Pradesh Public Service Commission and another Vs. Tage Habung and others, 2013(4) SLR 200; Tej Parkash Pathak and others Vs. Rajasthan High Court and others 2013(2) KLT 83.**

5. Learned counsel for the respondents, on the other hand, have submitted that the appointing authority was well within its rights to apply the criteria of obtaining minimum marks in the written examination so as to ensure selection of suitable and meritorious candidates. That way,

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condition of 60% cut off marks is reasonable and not arbitrary. However, learned counsel for the official respondents fairly conceded that requirement of having minimum 60% as cut-off marks in the written examination was imposed after the process of written examination was over. He has placed reliance on the decision of Hon`ble Apex Court in **Yogesh Yadav Vs. Union of India and others 2013 AIR(SCW) 4804.**

6. We have considered the rival submissions made by learned counsel for the parties and the facts of the case. There is no dispute that there were total 56 vacancies of TE/TO in the discipline of Civil Engineering and only 57 persons had applied out of which 55 had appeared for written test. After imposing condition of obtaining 60% marks in the written examination, only 6 candidates were appointed to the post of TE/TO. That way, there are total 47 more candidates who appeared for written examination, but they were not called for the interview because of condition of minimum 60% cut-off marks in the written examination, which was imposed after the commencement of selection process.

7. Identical matter was before Hon`ble Apex Court in **K.Manjusree v. State of Andhra Pradesh and another**, (2008)3 Supreme Court Cases 512, and their Lordships held as under:-

“33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe

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minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

8. Identical view was also taken by a Division Bench of this Court in in **Dr. Lovekesh Kumar and others v. The State of Punjab and others**, [CWP No.18179 of 1997 decided on 08.01.1998]. In **Amardeep Singh v. State of Punjab and others**, [CWP No. 149 of 1998 decided on 24.02.1998], the Division Bench set-aside the process of shortlisting when the number of candidates, who had applied, were not disproportionately larger than the number of posts advertised as is the case before this Court.

9. In view of the above, the present appeals are allowed and the impugned judgment dated 29.05.2014 passed by learned Single Judge of this Court is set-aside. The official respondents are directed to conduct interview for the remaining 47 candidates, who were not earlier called for interview and consider them for appointment against the available vacancies of TE/TO. Hence, the entire process be completed within three

months from the date of receipt of copy of this order.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

November 16th, 2015
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