

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

CWP No. 4040 of 2007

Date of decision : 05.05.2016

Sanjay Vashisth

...Petitioner

versus

Guru Jambheshwar University & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Vashisth, Advocate
for the petitioner.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Arvind Seth, Advocate
for respondent No. 1

Mr. Y.P. Malik, Advocate
for respondent Nos. 2 to 25

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 ?

RITU BAHRI , J.

C.M. No. 6449 of 2015

The application seeking listing the case in urgent/ ordinary motion list for final disposal is allowed and the main case is taken up by today itself for final disposal of the case.

C.W.P No. 4040 of 2007

Petitioner has approached this Court by way of instant writ

petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the selection process qua all the selected candidates in pursuance to advertisement No. 1/05 dated 21.06.2005 (P-6) issued by the respondents in regard to category No. 3 whereby 54 posts of Lab Attendant-cum-cleaner were advertised.

Brief facts of the case are that petitioner was appointed on 08.01.2004 on the post of Lab Attendant-cum-Cleaner on contractual basis in the department by the Physiotherapy after the interviewing Committee found him suitable (P-2). Thereafter, the period of contractual appointment of the petitioner was extended from time to time. Subsequently, petitioner was terminated from service w.e.f. 09.07.2005 (P-5).

Thereafter, respondent-University issued the above advertisement wherein at Category No. 3, 54 posts of Lab Attendant-cum-cleaner were advertised. The essential qualification of the post reads as under:-

CATEGORY NO. 3 LAB ATTENDANT CUM CLEANER

Matric with science Ist Division or 10+2 with science in 2nd division.

Desirable

Familiarity with Laboratory working conditions.

various components/accessories used in Laboratories.

Petitioner was found to be eligible candidate for the said post and was allotted Roll No. 1556 and was issued interview call letter dated 30.06.2006 for 19.07.2006 (P-7). The petitioner appeared before the Interviewing committee wherein only 1 member was sitting who was a Lecturer/Reader/Professor in the MBA department. Petitioner was shocked as he did not find his roll number amongst the selected candidates in the newspaper Dainik Bhaskar dated 23.12.2006 (P-8) despite the fact that the petitioner was having the long experience and qualification, which has not been considered by the Committee while selecting the candidates. Petitioner thereafter, gave its representation dated 02.01.2007 in the office of respondent No. 1 with regard to the criteria adopted for selection, marks allotted to the petitioner/successful and candidates and their address (P-9). Vide letter dated 30.01.2007 (P-10), the petitioner received an information and the criteria for taking interview reads as under:-

1. Academic qualification : 40 marks
2. Experience : 05 marks per completed year,
subject to a maximum of 20 marks
3. Interview : 40 marks.

For allotment of marks for academic qualification, further criteria was as under:-

- (a) 30 marks for matric pass
- (b) 40 marks for 10+2 and above

Thus, it is clear that the petitioner was given 53 marks in total whereas the candidate last in merit in General category has secured 63 marks, who is not having any experience.

The petitioner is a graduate and has a long experience, as mentioned in para No. 17 of the petitioner. Further he is also having technical qualification as mentioned in para No. 18 of the petition. It seems that the petitioner has been awarded 30 marks for academic qualification instead of 40, 20 marks for experience and 3 marks for interview out of 40.

Keeping in view that the petitioner was awarded very low marks in the interview, the writ petition was admitted on 14.05.2009 and registry was directed to list this petition for regular hearing within a period of one year.

Thereafter, petitioner filed application seeking early hearing of the case and, vide order dated 22.07.2015, this Court observed that on 16.10.2008, respondent No. 1 seeks time to get instruction whether petitioner could be adjusted on some other post. Thereafter, respondent No. 1 was again directed to get instructions with regard to vacancy of posts.

Today, learned counsel appearing for respondent No. 1 on

instructions by way of email has informed that there are vacant posts of Lab Attendant. However, learned counsel for respondent No. 1 has expresses his apprehension that if the petitioner is appointed than such candidates who were higher in merit than the petitioner may approach this Court for appointment as well and after a gap of 09 years, the selection process could not be interfered with at a belated stage.

Heard learned counsel for the parties.

One fact which requires to be examined by this Court that at the time of initial appointment on 08.01.2004, the petitioner was interviewed by three members committee consisting of Registrar, Chairman of Department of Physiotherapy along with 2 other officials but at the time of regular selection, he was interview by one member only.

In the written statement as well, the respondents have admitted this fact but they have made an attempt to justify by stating that at the time of appointment of the petitioner on contractual basis, the particular post was advertised only for the department of physiotherapy, so the petitioner was interviewed by the Chairman, Department of Physiotherapy along with other members and for regular appointments, post of Laboratory cum Cleaner were sanctioned for various departments of the University, therefore, the Committee members were associated from various fields.

This justification given by the respondents does not hold good as for contractual appointment, interview was taken by the three members committee and for regular selection, interview was taken by one member.

Further, the petitioner was awarded only 3 marks for the interview out of 40.

But now keeping in view that two vacant posts are available with the university, reference at this stage can be made to judgment passed by this Court in a case of ***Sahil Aggarwal v. State of Punjab and others, 2014(3) SCT 813***, wherein written examination was held for the post of Inspector Grade-II but there was error in answer key and result was revised. This Court disposed of the writ petition and petitioner who secured more marks than the last appointed candidate in the process of selection in the first round or second round was offered appointment. In para 24 to 27, it has been observed as under:-

25. In the present case, 1289 posts of Inspector Grade-II in Food and Civil Supplies Department were advertised, out of which 643 posts were of general category. The appointments were to be made strictly on the basis of marks obtained in the written test. The last selected candidate secured 44.35% marks and the last person appointed from the waiting list had secured 43.15% marks. After the declaration of result, when the issues

were raised regarding wrong questions and the answer keys, the answer sheets were got re-evaluated. New merit list was prepared, in terms of which the candidate at Sr. No. 643 secured 46.58% marks. The private respondents in the petitions had secured marks less than 46.58% in terms of the revised merit list. In fact, respondent No. 4 in CWP No. 12835 of 2012 had secured minimum of them, namely, 42.63%. All the petitioners in the present petitions had secured marks more than him in terms of the revised merit list.

26. The stand of learned counsel for the State was that after the answer sheets were re-evaluated, 643 candidates were appointed in terms thereof, as was the number of posts advertised in general category. However, seven of them did not join and 636 candidates joined service. After re-evaluation of the answer sheets, when the cut off marks were upto 46.58% which went down to 45.86%, in 2nd counselling, 584 candidates, who were earlier selected, found place in the merit list. Remaining 52 candidates, who were appointed in the first round but could not find place in the merit list after re-evaluation of the answer sheets, were permitted to continue on compassionate grounds against the posts lying vacant with the department other than 643 posts, which were advertised. As 584 posts were filled up in

terms of the merit position after re-evaluation of the answer sheets, out of 643 posts advertised, 59 posts remained vacant. Inadvertently, 55 candidates in order of their merit on the basis of result declared after reevaluation of the answer sheets were called for verification of the documents. Out of 55 candidates, 35 candidates joined service, hence, the total posts filled in general category were 584+35, i.e., 619 and 24 posts remained vacant. It was submitted that even if those 24 posts are filled up as per the second merit list, the petitioners do not figure, hence, they cannot seek appointment.

27. In the present set of petitions, there are total 10 petitioners. Their definite case is that they have secured marks more than the candidates, who have been retained in service, though securing less marks than the petitioners even in the revised result. It is not that as a consequence of re-evaluation of the answer sheets the result of only general category candidates would have been affected. In general category, there were merely 643 posts as against total 1289 posts, but none of the candidates in other categories is before this court raising any grievance, hence, that issue is not being gone into. The petitioners herein are agitating their claim before the court.

Four of them had earlier filed petitions claiming that they

deserve to be appointed as persons lower in merit were still in service. Their petitions were disposed of with a direction to the authorities to consider their claim, which was rejected. Their plea that at that stage the appointment of the candidates, who could not find place in the merit list on the basis of revised result, could not be challenged as the revised result was not made known to the public. It was supplied subsequently in response to an application filed under the 2005 Act. Thereafter, by challenging the order passed in pursuance of the directions issued by this court in the first round of litigation, the appointment of the candidates, who did not find place in the merit list after re-evaluation of the answer sheets, was also challenged. Under these circumstances, the plea of constructive resjudicata raised by learned counsel for the private respondents deserves to be rejected, as there was no occasion to challenge the selection in the first round of litigation.

28. *However, as far as the plea of the petitioners that the candidates, who secured marks less than the petitioners in terms of the merit list prepared after re-evaluation of the answer sheets having been appointed, the petitioners also deserve to be offered appointment is certainly meritorious. It is the admitted case of the official respondents that 24 posts out of 643 posts*

advertised initially remained vacant. The petitioners in the bunch of petitions are 10 in number. The plea of learned counsel for the State that in case those 24 posts are to be filled up now, the offer of appointment has to be made on the basis of merit is merely to be noticed and rejected for the reason that advertisement pertains to the year 2010. The last appointment on the basis of first merit list was made in March, 2011. No other candidate than the petitioners felt aggrieved, who approached the court seeking any relief. The petitioners are agitating their claim. CWP Nos. 20226 and 22596 of 2011 and 3170 of 2012 were filed earlier, in which four petitioners had raised the issue, however, after the revised result was made public, the present petitions were filed by merely 10 candidates and no other candidate felt aggrieved. In Tridip Kumar Dingal's case (supra), Hon'ble the Supreme Court, while refusing to set aside the appointment of the candidates, directed appointment of the candidates who approached the court within reasonable time while declining relief to others before the court on account of delay and laches.

In the present case as well, the respondent advertised 54 posts of Lab Attendant-cum-cleaner and thereafter, the candidates who were on merit, joined the department. The petitioner was interviewed

by three members committee when he was appointed on contract basis, however, pursuant to the above said advertisement, he was interviewed by one member only. Further he was awarded only 03 marks in the interview out of 40 marks.

Applying the ratio of the *Sahil Aggarwal's case (supra)* and keeping in view the fact that two posts of Lab Attendant are lying vacant in the University, the petitioner can be adjusted on the post of Lab Attendant, as he was awarded only 03 marks in the interview. However, the appointment of selected candidates shall not be disturbed and the petitioner shall get fresh appointment and his seniority will be determined from the date he will join his services.

Accordingly, the writ petition is allowed and respondent No. 1 is directed to offer appointment letter to the petitioner to the post of Lab Attendant cum Cleaner on regular basis without disturbing the appointment of selected candidates. The seniority of the petitioner shall be determined from the date he will join his services.

(RITU BAHRI)
JUDGE

05.05.2016

G Arora