

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 17145 of 2009 (O&M)

Date of Decision : 22.11.2016

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Sadhu Ram and others

.....Petitioners

vs.

Bhakra Beas Management Board through its Chairman
and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. K.S. Dadwal, Advocate for the petitioners

Mr. Sachin Mittal, Advocate for respondents No. 1 to 3.

Mr. S.S. Rana, Advocate for respondent No.4.

Mr. Harit Sharma, Advocate for respondents No. 5 to 7.

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P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioners have questioned the validity of the orders dated 15.9.2009 and 22.9.2009 Annexures P-6 and P-7, respectively, by which respondents No. 4 to 7 were promoted to the post of Leading Fireman. Further they have sought for a direction to the respondents to consider their names and promote them from the date private respondents were promoted with all consequential benefits, including seniority.

Before advertng to the facts of the case, during

pendency of the litigation, respondents No. 4 to 7 were subjected to heavy vehicle driving test, which is one of the qualification prescribed to the post of Leading Fireman. Before conducting the heavy vehicle driving test, the 5th respondent died. Consequently, other three respondents were subjected to heavy vehicle driving test, in which 4th and 6th respondent did not qualify and Mandeep Kumar - 7th respondent was qualified. In this regard, the respondent – BBMB has issued a show cause notice to Bali Ram and Pawan Kumar and it is pending consideration.

Now coming to the facts of the present case, the petitioners are in the cadre of Fireman, which is the source cadre to the post of Leading Fireman. Method of recruitment to the post of Leading Fireman reads as under :-

<i>Sr.No.</i>	<i>Method of appointment</i>	<i>Minimum educational & other qualification</i>	<i>Minimum experience</i>
1	By promotion from amongst Fireman.	Qualification in Sub Fire Officer's from National Fire Service College, Nagpur or equivalent degree with Heavy Vehicles Driving License	5 year experience in fire service.
		Or Qualified in Fire Course arranged by Ministry of Defence or Home Affairs with heavy Vehicle Driving License	7 year experience in fire service.
		Or Departmental Candidates without any course who show appreciable initiative & obtain good report with Heavy Vehicles Driving License.	10 year experience in fire service.

The BBMB while relaxing educational qualification promoted large number of Fireman to the post of Leading Fireman during the year 1996 to 1998 and thereafter on 15.9.2009 and 22.9.2009. However, when the case of the petitioners' name was under consideration, such a relaxation has not been granted. Thus the petitioners are questioning the validity of promotion of respondents No. 4 to 7 in the present petition and seeking a direction to promote the petitioners on par with the private respondents No. 4 to 7.

Learned counsel for the petitioners submitted that for the purpose of Leading Fireman one of the qualification is qualified in sub fire officers course from National Fire Service College, Nagpur or equivalent degree with heavy vehicles driving license, which is point for of consideration in the present case. One of the argument advanced by the petitioners counsel is that for the purpose of promotion to the post of Leading Fireman, sub fire officers course from National Fire Service College, Nagpur is sufficient and the respondents cannot insist for heavy vehicle driving license, which is one of the qualification prescribed and it is an alternative qualification to that of sub fire officers course from National Fire Service College, Nagpur, since the word used in between qualification is 'or'. The other contention of the petitioners' counsel is that when the BBMB have invoked Regulation 21 for the purpose of granting relaxation of educational qualification to other Firemen to promote them to Leading Fireman in the year 1996 to 1998 and further in the year 2009 to respondents No. 4 to 7. Similar benefit

should have been extended to them.

Per contra, learned counsel for BBMB submitted that for the purpose of promotion to the post of Leading Fireman, one must have basic qualification of sub fire officers course from National Fire Service College, Nagpur with heavy vehicles driving license. The petitioners do not fulfill the qualification of heavy vehicle driving license. Consequently, they are not entitled for promotion to the post of Leading Fireman. It was further contended that relaxation of educational qualification with reference to Regulation No.21, is concerned, it was submitted that it was the discretion of the Chairman for relaxation of any Regulation or a particular provision. Therefore, in the absence of relaxation of educational qualification by the Chairman of BBMB, the petitioners are not entitled.

Learned counsel for the 4th respondent submitted that he has driving license, however, when he was subjected to passing of driving test, in which he has failed, consequently, the BBMB has issued a show cause notice seeking his explanation. Learned counsel for 4th respondent submitted that once he has been promoted as he fulfills the qualification prescribed for the post, there is no infirmity in the order of promotion.

Heard the learned counsel for the parties.

For the purpose of promotion to the post of Leading Fireman, method of recruitment has already been noted above. Two questions would arise for deciding the present petition; one is whether Fireman who is eligible to the post of Leading Fireman, he

must have any one of the three types of qualifications in other words a Fireman should have either of the qualifications, which has been stipulated in the rules of recruitment. For the purpose of considering the present litigation, the 1st qualification is relevant. The 1st qualification is qualified in sub fire officers course from National Fire Service College, Nagpur or equivalent degree with heavy vehicles driving license. Reading of the above provision, for entitlement to the promotional post of Leading Fireman, Fireman must have qualification of sub fire officers course from National Fire Service College, Nagpur or equivalent degree with heavy vehicles driving license. Perusal of the 1st qualification, it is evident that firstly they have mentioned the course then 'or' equivalent degree with Heavy Vehicles Driving License. That means, 2nd qualification of driving license alongwith basic qualification, namely, sub fire officers course from National Fire Service College, Nagpur or equivalent degree. Therefore, Fireman must have qualification of sub fire officers course from National Fire Service College, Nagpur with heavy vehicles driving license. In the present petition, none of the petitioners fulfills the qualification of heavy vehicles driving license, which is one of the qualification prescribed for the post of Leading Fireman. Therefore, the petitioners have not made out a case so as to contend that they are qualified with reference to rules of recruitment contending that sub fire officers course from National Fire Service College, Nagpur is one of the qualification. The other qualification is equivalent degree with heavy vehicles driving license. In other words,

their contention is that they need not have qualification of heavy vehicle driving license, is not tenable. If the petitioners do not fulfill the qualification of heavy vehicles driving license, whether the BBMB can relax such qualification for the promotion to the post of Leading Fireman or not. On earlier occasions, in the year 1996 to 1998 and in the year 2009, the BBMB proceeded to relax the prescribed qualification including the heavy vehicles driving license for the purpose of promotion to the post of Leading Fireman. If such relaxation is not given to the petitioners, that amounts to discrimination.

The petitioners' contention is that the private respondents No. 4 to 7, even though they have the qualification of heavy vehicles driving license, but they do not know how to drive. Thus, they were subjected to driving test by the competent authority and the competent authority had declared that only 7th respondent Mandeep Kumar passed the driving test and the other two persons, namely Bali Ram and Pawan Kumar have not passed the driving test. In this regard, the respondents – BBMB have taken a separate decision by issuing show cause notice.

In so far as granting relaxation under Regulation 21 is concerned, could be used only for the purpose of experience qualification. Relaxation in so far as acquisition of heavy vehicles driving license is impermissible, for the reasons that Leading Fireman is required to drive the heavy vehicle. In the absence of valid heavy vehicle driving license, the same cannot be relaxed by the BBMB

under Regulation No. 21 for the reasons that under Motor Vehicles Act, 1988, for driving a heavy vehicle valid license is must. Therefore, relaxation provision of regulation of BBMB cannot override Motor Vehicles Act. In view of these facts and circumstances, the petitioner have not made out a case to seek relaxation of qualification prescribed for the Leading Fireman. Merely, the respondents BBMB have relaxed certain qualifications in the year 1996-98, the same cannot enure to the benefit of petitioners.

In view of the above facts and circumstances, the BBMB -respondents are directed to verify the validity of the driving license of the respondents No. 4, 6 and 7 as on the date of their promotion to the extent whether they had valid driving license or not, so as to consider their names to hold promotion post of Leading Fireman. If they do not have valid driving license as on that date, necessary action should be taken to cancel their promotion after giving due opportunity to them. Till a decision is taken do not permit them to drive vehicle as a Leading Fireman.

Accordingly, writ petition stands disposed of.

November 22nd, 2016
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(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No