

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 9055 of 2011(O&M)

Date of Decision: January 8 , 2016.

Bachan Singh

..... PETITIONER (s)

Versus

Panjab University, Sector 14, Chandigarh RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. Manpreet Singh, Advocate
for the petitioner.

Mr. B.L.Gupta, Advocate
for the respondent.

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?

LISA GILL, J.

Prayer in this writ petition is for setting aside communication dated 09.09.2010 Annexure P27, wherein appointment letter issued to the petitioner for the post of Assistant Registrar has been withdrawn and for quashing Para 2 (vi) (revised) dated 31.08.2010 of the Syndicate issued on 10.09.2010 (Annexure P29 Collectively) as well as Para dated 26.09.2010 (Annexure P34) whereby appointment of the petitioner to the post of Assistant Registrar has been cancelled. Further prayer for restraining the respondent-University from

carrying out a fresh selection process by inviting fresh applications during the pendency of this writ petition has also been made.

Brief facts are that, the petitioner joined the respondent-University as a Frash on 04.10.1977. He passed his matriculation examination in March 1979. He was selected and appointed as a Lab Technician by way of direct recruitment in December, 1980. Petitioner thereafter pursued higher studies and ultimately, completed his Masters in Political Science and Post Graduation Diploma in Gandhian Studies in April, 1986. He joined as a Clerk in the office of the Controller of Examination in the year 1987 after participating in the selection process. He was granted three special increments for acquiring higher educational qualifications from time to time. In the meantime he also completed his Bachelors in Laws. The petitioner was promoted to the post of Senior Assistant on 14.04.2007 and thereafter, transferred to legal cell of the respondent-University in July, 2007.

An advertisement was issued by the respondent-University on 01.07.2009 inviting applications for filling up the posts of Assistant Registrar (Gen. 2, SC 1) (Annexure P13 Collectively). Petitioner applied for the same under the Scheduled Caste category. A corrigendum dated 02.10.2009 (Annexure P13 Collectively) was issued whereby eligibility for the said post was prescribed as Master's degree with at least 50% marks from a recognized University or its equivalent qualification with five years administrative experience or a Bachelor's degree with at least 50% marks from a recognized University or its equivalent qualifications with seven years administrative experience for the external candidates. For internal candidates of the

University, minimum qualification prescribed was Graduation from any recognized University and having worked for a period not less than 25 years in the University out of which candidates should have worked for a period of not less than five years as Superintendent/P.A./A.S.O./A.S.O.(Stenography)/ Senior Assistant/Stenographer. Ninety Two (92) candidates including the petitioner applied for the post of Assistant Registrar. They were invited for interview and the Selection Committee after interviewing the candidates on 20.08.2010, recommended the names of three persons i.e., the petitioner against Scheduled Caste category, Mr. Lalit Sood and Mrs. Mahesh Johar. Two other candidates were placed in the waiting list.

Syndicate in its meeting held on 31.08.2010 vide Para 2(vi) approved the recommendation of the Selection Committee. Offer of appointment was made to the petitioner as well as other selected candidates vide letter dated 03.09.2010 (Annexure P19). Said offer of appointment clearly mentions that appointment was approved in anticipation of approval of the Senate. Petitioner joined on the post of Assistant Registrar on 03.09.2010 itself, Annexure P20. However, appointment letter issued to the petitioner was withdrawn on 09.09.2010, Annexure P27. Aggrieved of the action of the respondent of withdrawing his appointment letter, petitioner has approached this Court.

Learned senior counsel for the petitioner vehemently argues that the entire process of withdrawal of petitioner's appointment letter is vitiated. Petitioner fulfills the eligibility conditions for the post of Assistant Registrar. He has necessary administrative experience. It is averred that having once selected

the petitioner for the said appointment, Syndicate has no power to review its decision.

It is urged that the Vice Chancellor has acted in an illegal manner as the Vice Chancellor has no power to make a statement without preparing and circulating a proper agenda item for the prior notice of the Syndicate. Vice Chancellor has himself approved the eligibility of the petitioner thrice and even if it is assumed that he has given the statement under regulation 14 of the Chapter II (A)(ii) page 36 of the Panjab University Calendar Vol.I 2007, it has been made with a mala-fide intention to deprive the petitioner of his right. It is submitted that lack of bona-fide on the part of the respondent is apparent from the fact that once this writ petition was filed, petitioner was transferred from the Registrar's office to the Right to Information, Add-on Course Cell on 17.06.2011 and vide order dated 24.01.2012, petitioner's designation of Law Officer was withdrawn.

It is vehemently argued that administrative experience is not defined in the Panjab University Calendar and furthermore, the post of Assistant Registrar to the share of Scheduled Caste candidate arose in the year 2005 when no experience was prescribed for the said post in the Panjab University Calendar, Vol.III. Therefore, a condition subsequently imposed in the year 2009 qua administrative experience could not have been made applicable qua a post which had arisen in the year 2005.

It is further submitted that petitioner by sheer dint of his hard work attained higher educational qualifications while in service. He was practically discharging the duties of an Assistant independently since 04.01.1988 upto

August, 1997. He was promoted to the post of Senior Assistant on 14.04.2007. Therefore, approval for appointment to the post of Assistant Registrar has been wrongly withdrawn.

Learned counsel for respondent-University clarifies that offer of appointment was doubtlessly made to the petitioner and other selected candidates on 03.09.2010. However, while finalizing the minutes of the said meeting, Vice Chancellor as Chairman of the Syndicate noticed certain factual omissions in recording of the proceedings. Necessary correction was made in Para 2 (vi) under his own signatures, incorporating the exact text of the decision taken in the meeting. It is specified that Syndicate further resolved that the said appointments would be subject to the eligibility of the candidates as per the advertisement. Appointment letters were issued in anticipation of approval of the Senate. On a subsequent verification of eligibility, the present petitioner alongwith Lalit Sood were found ineligible in terms of the advertisement. Their appointments were cancelled. Lalit Sood had approached this Court by way of CWP No.5171 of 2011, which was dismissed on 22.03.2011, Annexure R3. This decision was upheld by a Division Bench of this court on 03.06.2011, Annexure R4. Hon'ble Supreme Court dismissed the Special Leave Petition preferred by Lalit Sood on 17.10.2013, Annexure R4. In this view of the matter, learned counsel for respondent prays for dismissal of this writ petition.

I have heard learned counsel for the parties and gone through the file.

It is not disputed that said selection to the post of Assistant Registrar was under scrutiny of this Court in CWP No.5171 of 2011. Similar contentions were raised in the said writ petition as well. Question of

“administrative experience” in a University or any other institute or organization of repute as relevant in the context of duties and responsibilities attached with the post of Assistant Registrar was considered by this Court. It is specifically observed as hereunder in decision dated 22.03.2011:-

15) Having heard learned counsel for the petitioner at some length and on perusal of the record, I do not find any ground to interfere with the impugned order. I say so for the reasons that the expression “administrative experience” inheres an element of managerial supervisory control over the subordinates, some independence in the day to day discharge of duties and the reflection of command of authority while monitoring or regulating the functioning of the subordinates. It may be true that this very creation of 'administrative experience' would apply even in the case of a Deputy Registrar but the degree and quality of experience shall undoubtedly vary. While building an administrative pyramid of any institution functioning, the expected experience is always referable to the one gained on the immediate subordinate post or equivalent thereto. Similarly, the requisite experience ought to have some relevance with the nature of duties attached to the superior post. In the context of 'administrative experience' required for the post of Assistant Registrar obviously means the experience earned by a person on the post immediate lower to that of Assistant Registrar or on equivalent post of the same stream.

16) The respondent-university has been established under the Punjab University Act, 1947 (hereinafter referred to as the '1947 Act'). Section 20 (1) of the 1947 Act vests the Syndicate with various executive powers including “appointment of officers of Class-A”. The post of Assistant Registrar is admittedly a Class-A post for which the Competent Appointing Authority is the Syndicate only. In my considered opinion, the Appointing Authority is not obligated to mechanically accept the recommendations of the Selection Committee and it shall be well within its rights to ascertain as to whether or not the recommended candidate possesses the prescribed qualifications. Similarly, no power of 'review' is required to be expressly vested for rectifying an administrative error. The

approval of the recommendations made by the Selection Committee is not a quasi-judicial function, rather is purely administrative exercise and any mistake/error having crept into it can always be rectified. It is only in a case where no tangible valid reason exists to ignore/over-look the recommendations made by the Selection Committee that the Appointing Authority cannot be permitted to act arbitrarily to deny appointment to a validly selected candidate. It is equally well settled that mere selection does not confer an indefeasible right in favour of a selected candidate and he can always be denied appointment for justifiable reasons.

Distinction sought to be raised by learned senior counsel that petitioner in this case was practically discharging the duties of the Assistant from the year 1988 to 1997, is not acceptable for the reason that it is a matter of record that he never worked or officiated against the post of Assistant. He was merely posted in the Accounts Branch against the post of a Clerk. It is specifically mentioned in the written statement that the post of Assistant held by the earlier incumbent, namely, Dev Bart Dwivedi ceased to exist. Petitioner was granted proficiency step-up increments twice on completion of 8 years and 16 years of service on 16.12.1995 and 16.12.2003, respectively, in the cadre of Clerk. This by itself reveals that he was working in the cadre of Clerk itself.

It is further explained that in view of notification dated 04.09.2000 adopted by the respondent-University on 03.05.2001 (Annexure R8), 50% of the posts of Clerks were re-designated as Junior Assistants provided the incumbents rendered five years' service as Clerk. Resultantly, petitioner alongwith others were re-designated as Junior Assistant and placed in the cadre of Clerks on 13.01.1999 on completion of five years' service as Clerk (Annexure R9). Nature and responsibilities of the post remained the same. He was promoted to the post

of Senior Assistant on 14.04.2007. Therefore, he did not possess the requisite experience of five years prescribed for internal candidates and seven years for external candidates as on 12.10.2009, which was the last date of receipt of applications for the post of Assistant Registrar. In this situation, approval has been rightly denied for the petitioner's appointment to the post of Assistant Registrar.

Another point of distinction sought to be raised from Lalit Sood's case is that, present petitioner had submitted his joining report on 03.09.2010 whereas, Lalit Sood had not joined on the said post therefore, Annexure P27 withdrawing the appointment letter could not have been issued without complying with the principles of natural justice. Though no show cause notice or opportunity of hearing was afforded to the petitioner before withdrawal of his appointment letter, I do not feel that at this stage and in the peculiar facts of this case, it would be in the interest of justice to set aside the impugned order on this ground and remit the matter back to the respondent-University to pass a fresh order. Competence of the University Syndicate to take a decision or the question of imposing a condition of administrative experience cannot be re-examined in view of decision dated 22.03.2011 in CWP No.5171 of 2011, which has admittedly attained finality. It has been specifically held in the abovesaid decision that approval of the recommendations made by the Selection Committee is not a quasi-judicial function, rather is purely an administrative exercise and any mistake/error having crept in can always be rectified as no power of 'review' is required to be expressly vested for rectification of an administrative error. It is only in a case where no tangible or valid reason exists to ignore/overlook the

recommendations made by the Selection Committee that the Appointing Authority cannot be permitted to act arbitrarily to deny appointment to a validly selected candidate. It is specifically mentioned in the appointment letter that offer of appointment is made in anticipation of the approval of the Senate. Similarly, there is no merit in the contention on behalf of the petitioner that the said eligibility condition could not have been imposed by the respondent-University qua a post which arose in 2005. Allegations of tampering of record are also unfounded and unsubstantiated. Learned counsel for the petitioner is unable to point out any ground for interference by this Court.

Consequently, this writ petition is dismissed, without any order as to cost.

January 8 , 2016.
'om'

(LISA GILL)
JUDGE