

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 26220 of 2014

Date of decision : 28.03.2016

Lalit Sahu

...Petitioner

versus

State of Haryana & ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Yesh Paul Malik, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

Mr. R.S. Malik, Advocate
for respondent No. 4

Mr. H.N. Mehtani, Advocate, for respondent No. 2

Mr. Tushar Chauhan, Advocate
for respondent Nos. 5 to 7, 13, 15, 16, 19, 23, 26, 27,
36, 42, 52, 54, 75, 76 and 78

Mr. S.S. Kharab, Advocate
for respondent No. 30.

Mr. Rajbir Sehrawat, Advocate
for respondent Nos. 11, 18, 20, 24, 25, 33, 35 and 60

RITU BAHRI , J.

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
dated 17.07.2014 (P-5) and appointment of private respondents dated
18.07.2014 (P-6) on the posts of Assistant Engineer (Civil) in Irrigation

Department, made by the respondents.

Respondent-State through Haryana Public Service Commission-respondent No. 2 advertised several vacancies for different posts, vide advertisement No. 2 dated 19.10.2012 including 90 posts of Assistant Engineer (Civil) in Irrigation Department, out of which 56 posts were meant for General Category. Petitioner being fully qualified for the above said posts, applied for the same, in the general category. Respondent No. 2 thereafter made an announcement dated 13.05.2014 that the Screening Test will be conducted on 01.06.2014 and also decided on 28.05.2014 that the candidates equal to the four times of the advertised posts including last bracketed candidates, if any will be declared qualified for interview. The copy of admit card is Annexure P-2.

The screening test was conducted on 01.06.2014 and result was declared on 09.06.2014 by the respondent-Commission. The petitioner qualified the test and total 358 candidates were shortlisted for interview, vide result (P-3). The petitioner along with other candidates was called for interview, vide letter dated 13.06.2014 and the petitioner was interviewed on 26.06.2014. The result was declared on 17.07.2014 but the petitioner was not selected.

Petitioner applied under the RTI Act regarding the result announced on 17.07.2014 viz complete selection list for the post of

Assistant Engineer (Civil) in Irrigation Department. The petitioner was supplied the information vide Annexure P-6 and P-7. The marks obtained by the candidates in interview is Annexure P-8. Thereafter, petitioner sought information with regard to the fact that how many candidates have joined till date. He was informed vide letter dated 04.12.2014 that selection of 50 candidates have been made in General Category and no post of General category is vacant.

Learned counsel for the petitioner contends that the qualification of some of the selected candidates were not found recognized by the State and they should not have been appointed.

Learned counsel for the petitioner further contends that the total marks for the viva voice were 100, out of which 40 marks were kept for personal achievement and 60 marks for interview whereas due to favouritism and arbitrarily, the selected candidates were given higher marks. The detailed of five candidates of general category and that of the petitioner reads as under:-

<i>Roll No.</i>	<i>Name</i>	<i>Marks in Personal Achievement</i>	<i>Marks in interview</i>	<i>Total marks</i>
1627	Khivesh	15	53	68
1776	Mohit	15	53	68
1865	Nishant	15	53	68
2257	Sandeep Kumar	15	53	68
2659	Vivek	15	53	68
1671	Lalit Sahu (Petitioner)	20	44	64

Learned counsel for the petitioner has give further example

of some of the candidates who had been awarded 20 marks in personal achievement but were awarded higher marks in the interview and were selected.

On the other hand, learned counsel for the respondent-Commission has argued that after participating in the selection process and after having failed, the petitioner now cannot challenge the selection process. The petitioner had taken a calculated chance and cannot challenge the selection on the ground that he had been awarded less marks in the interview.

Reference has been made to the following judgments mentioned below:-

1. Om Parkash Shukla v. Abhilash Kumar Shukla
AIR Supreme Court of India, 1986 Page 1043
2. Madan Lal and others v. State of Jammu Kashmir and others,
1995 (3) SCC 486
3. Chander Parkash Tewari and others v. Shakuntla Shukla and others
2002(3) SLJ 88
4. Devki Nandan Sharma v. State of Haryana and others,
2002(1) RSJ Page 64
5. Ajay Kumar Verma v. State of Haryana 2010(1) RSJ 245

Learned counsel has further submitted that the commission has recommended the names of 56 candidates for General Category, as per criteria (P-7). He has further denied that any selection was made of candidate belonging to District Mewat and Palwal.

It has further been submitted that the Commissioner has sent a requisition to the Secretary, HPSC, Panchkula vide letter dated 04.05.2012 to fill up 130 vacancies of Assistant Engineers (Civil, Mechanical and Electrical) in Haryana PWD Irrigation Department and BBMB (R-1).

Heard learned counsel for the parties.

Similar question came up for consideration before this Court in a case of ***Vandana Kaul vs. State of Haryana and anr, passed in CWP No. 17918 of 2012, decided on 30.07.2015*** whereby petitioner challenged the selection process of recruitment of 1317 temporary posts of Lecturers (School Cadre) HES-II (Grade-B) in various subjects in Haryana Education Department. This Court dismissed the writ petition and has held that once the candidate had participated in the selection, he cannot challenge on the ground that the selection committee did not give the marks as per criteria.

Further this Court in a case of Poonam Rani and others vs. State of Haryana and others, passed in CWP No. 19305 of 2013 and connected cases, decided on 18.01.2016 was examining a case of setting aside the appointment orders of private respondents who were appointed to the post of Lecturer in English (School Cadre) (General Category). This Court dismissed the writ petition relying upon ***Vandana Kaul's case (supra)***. In this case as well, selection was challenged by

the petitioners on the ground that the candidates who were not interviewed in the screening test have been selected. In this case reference has further been made to a case of “**Anzar Ahmad v. State of Bihar and others, 1994(1) SCT 484**” wherein in para 9, the Hon'ble Supreme Court observed as under:-

“The decision of this Court in R. Chitalekha and another vs State of Mysore and others, 1964(6) SCR 368, A. Peeriakaruppan, etc. vs State of Tamil Nadu and others, 1971(2) SCR 430, Nishi Maghu etc. vs State of Jammu and Kashmir and others, 1980(3) SCR 1253, Ajay Hasia etv. Vs Khalid Mujib Sehravardi and others, 1981(2) SCR 79 and Koshal Kumar Gupta and others vs State of Jammu and Kashmir and others, 1984(3) SCR 407, relate to admission to educational institutions and fall in the first category. Ajay Hasia's case (supra), it has been laid down that where selection is made on the basis of written test followed by interview, allocation of more than 15% of the total marks for interview would be liable to be struck down as constitutionally invalid. Although in that case the Court was dealing with admission to an educational institution viz., Regional Engineering College, a passing reference has been made to “public employment” in the

following observation :

“We would, however, like to point out that in the matter of admission to College or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are meant of high integrity, caliber and qualification.”

In the present case, the petitioner had participated in the selection process. The criteria was framed vide Annexure P-7 and in the absence of any written test, the allocation of 60 marks for interview and 40 marks for personal achievement is not on a higher side.

Applying the ratio of the above said judgments to the facts of the present case, no ground is made out for interfering in the selection process.

The writ petition is dismissed accordingly.

(RITU BAHRI)
JUDGE

28.03.2016

G Arora