

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.5708 of 2013

Isha Khasa ... Petitioner

Versus

State of Haryana and others ... Respondents

2. CWP No.4685 of 2013

Saroj Bala ... Petitioner

Versus

State of Haryana and others ... Respondents

Date of Decision: 13.07.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Sangita Dhanda, Advocate,
for the petitioner in CWP No.5708 of 2013.

Mr. Y.P. Malik, Advocate,
for the petitioner in CWP No.4685 of 2013.

Ms. Shruti Jain Goel, AAG, Haryana.

Mr. Karan Singh Sandhu, Advocate,
for respondents No.2 & 3 in CWP No.5708 of 2013
for respondents No.2 to 7 in CWP No.4685 of 2013.

Mr. Tejpal Singh Dhull, Advocate,
for respondents No.8 to 10 in CWP No.4685 of 2013.

Mr. Vikas Thakur, Advocate,
for Mr. Vivek Singla, Advocate,
respondent No.11 in CWP No.4685 of 2013.

Mr. R.K. Malik, Sr. Advocate,
with Mr. Kuldeep Sheoran, Advocate,
for respondents No.13 to 16 in CWP No.4685 of 2013.

RAJIV NARAIN RAINA, J.

This order will dispose of aforesaid both petitions as common questions of law and fact are involved arising out of the same selection to public office which can conveniently be disposed of by a common order.

CWP No.5708 of 2013

Challenge in this petition is to the selection and appointment of respondents No.4 to 7 on the post of Hostel Supervisor. Four vacancies in the general category were advertised vide advertisement No.01/July/2012 amongst other posts by the respondent University. The advertised qualifications for the post required candidates to be at least Graduates with one year experience of supervising a hostel. Preference would be given to diploma holders in Hotel Management. As against four vacancies, 265 applications were received. The Selection Committee comprised the Registrar of the University to be its Chairman, including the Dean Student Welfare and the Chief Warden. The selection process comprised a written test followed by interview. The criteria of selection was not mentioned in the advertisement which when revealed to the petitioner was 75 marks for written test and 50 for the interview. The Screening Committee eliminated 122 candidates as eligible, including the petitioner and the private respondents, while the names of 143 candidates were eliminated when found not eligible. The list of eligible and the ineligible candidates were entered in the report of the Screening Committee dated October 09, 2012. The Vice-Chancellor ordered for conducting a written test to short list the candidates. The decision was taken on October 11, 2012 by the Vice Chancellor with test to be conducted on November 25, 2012. One hundred

four candidates appeared for the written test. The petitioner scored 41 marks out of 75. The candidates who cleared the written test were called for interviews to be held on December 24, 2012. The petitioner was notified for interview. A total of 31 candidates were interviewed by the Selection Committee on December 24, 2012 and marks were awarded according to their performance. The petitioner scored 20 marks out of 50 in the interview. Combining the marks of the written test and the interview, the petitioner scored 61 out of 125. A comparative chart has been tabled at the end of para.6 of the written statement. The same is reproduced:-

Selected Candidates	Written Test Marks	Interview Marks	Total
Respondent No.4	37	36	73
Respondent No.5	38	38	76
Respondent No.6	38	36	74
Respondent No.7	34	48	82
Petitioner	41	20	61

It is evident that the petitioner topped the written with 41 marks but the interview let her down. Accordingly, she was not offered appointment and respondents No.4 to 7 were appointed after the recommendations of the Selection Committee were approved by the Vice Chancellor on January 02, 2013. The letters of appointment were issued on January 03, 2013 to the successful candidates. The petitioner complains that she was not informed of the result of the interview that she had not been selected due to her merit being lower as compared to respondents No.4 to 7.

On notice, the University asserts in the written statement that marks awarded in the interview to all the candidates appearing were assigned in absolute good faith and with complete fairness, purely on the

basis of the performance of the candidates and on an objective assessment of their worth by the Selection Committee on all traits required for the job, such as personality, knowledge, experience and other skills tested by suitability for the post of Hostel Supervisor. A comparative chart of the petitioner and selected candidates with reference to academic qualifications and experience is part of the written statement at page 77 of the paper-book.

Perusal thereof shows that there is nothing significant in the inter se academic qualifications of the competitors which may make the petitioner stand out on educational qualifications from the 10th class onwards to invite adversely the attention of the Court. As far as experience is concerned, the experience of the selected candidates was far richer. Respondents No.4, 6 and 7 had over five years of previous service in the line either as Hostel Wardens, Hostel Supervisors or Assistant Wardens, while respondent No.5 had to her credit experience of Hostel Supervisor for three years and three months as against the petitioner's total experience of one year and five months. There is thus certainly a wide gap between the experience of the selected candidates and the petitioner. The petitioner's allegation of discrimination, favouritism etc. are refuted as vague, baseless and unfounded.

In challenge to the selection, the petitioner's contentions are two-fold. One, that the marks for interview as against the written test are highly disproportionate to the total marks. Besides, far too much weightage has been assigned to the interview which has resulted in arbitrary selection.

The rule in Ashok Kumar Yadav and others v. State of Haryana and others,

AIR 1987 SC 454 is advanced to persuade the Court to hold that interview

marks should not be more than 12.2% of the total including the written test.

When the Supreme Court laid down the principle in *Yadav* it was dealing with a case of direct recruitment of the Haryana Civil Service where previous experience was not part of the criteria since the Civil Service Examination was open to fresh Graduates. When experience is part of criterion, then higher marks in interview may be justified since the effort is to appoint those with higher experience due to the nature of the duties and responsibilities attached to the post of Hostel Supervisor where the University expects skills developed in the line through hands on experience while looking after hostels on campus to manage the welfare of hostlers studying in the University. Therefore, the principles in *Yadav* cannot be blindly applied to the instant case and this Court finds nothing per se illegal or arbitrary in assigning 50 marks for the interview where the Selection Committee may have many considerations in mind to look for an astute manager for running a hostel or that any unfair discrimination has been practiced by the criteria adopted which criteria was universal to the selection.

The second ground of attack is that two of the selected candidates i.e. respondent No.4 and respondent No.5 were related either to the Registrar of the University or to a politician. In para.14 of the written statement, the University has denied as totally and blatantly false the allegation that Seema Rani – respondent No.4 was related to Ms. Asha Kadian, the Registrar of the University. The averment that respondent No.5 – Kavita Rani is related to a politician has been denied for want of knowledge and rightly so.

A replication has been filed by the petitioner reiterating the assertions in the petition. With the replication, an affidavit has also been filed dated November 23, 2013 by the petitioner Isha Khasa which reads as follows:-

- “1. That Smt. Asha Kadian is resident of village Chimni, District Jhajjar (Haryana).*
- 2. That Seema Rani daughter of Sh. Dhoop Singh is Kadian resident of Village Dubaldhan, District Jhajjar (Haryana).*
- 3. That the boundary of both the village i.e. Chimni and Dubaldhan touches each other.*
- 4. That there is close relationship between both the families i.e. Smt. Asha Kadian and Seema Rani daughter of Sh. Dhop Singh Kadian.*
- 5. That Seema Rani daughter of Sh. Dhoop Singh Kadian is niece of Smt. Asha Kadian in relation.*
- 6. That the caste of both the families are also Kadian.”*

If the boundaries of the two villages touch each other and Seema Rani is the daughter of Sh. Dhoop Singh Kadian then it is not enough to establish a case of nepotism. It is also not enough to use the word “niece” when the exact relationship is not established. Nieces and nephews, uncles and aunties in India are plenty. There must be a filial or blood relationship to entertain the plea. The Court may have considered the assertion if Smt. Asha Kadian, Registrar of the respondent-University was named as a party, in absence of which, the affidavit cannot be relied on as evidence. The challenge on this ground is therefore rejected.

In the case of Kavita Rani – respondent No.5 the same rule applies. The politician adverted to has not been named or made party to answer the allegation. In any case, suspicion cannot take place of proof of

relationship disqualifying a candidate. The burden was on the petitioner to plead and prove relationship as a vitiating factor in the selection. The criterion of selection is not open to declaration as being in violation of Article 14 of the Constitution of India or that it led to denial of fair chance of selection to the petitioner. The petitioner participated in the selection process and offered herself for interview and if she did not perform well in the interview as viewed by those who conducted the viva voce she has only herself to blame and merely because the petitioner was a topper in the written examination does not lead to an inevitable conclusion that she was more suitable for the post than those selected.

There is another submission which requires to be dealt with which is that the petitioner applied for re-checking of her written paper on December 20, 2012 as she was confident of securing very good marks, but the respondent did not respond to her letter or allow re-checking or re-evaluation. In the matter of direct recruitment, re-checking of written papers is unheard of. Re-checking or re-evaluation of papers in academia cannot be claimed as matter of right; See, Maharashtra Board of Secondary Education & Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth etc., AIR 1984 SC 1543 holding that there is no such enforceable right and re-checking and re-evaluation would depend on whether there is a provision in the statutory rules to allow. If the petitioner was shocked to see that her roll number does not figure in the list of selected candidates there is nothing to be surprised about as it was consequence of failure to achieve the desired mark of success. The respondents were not under a bounden duty to inform the petitioner that she was unsuccessful. Otherwise, it would entail

postponing the result of direct recruitment to an indeterminate future jeopardizing appointments to man public posts. As a corollary to the above reasons, I would find no valid or legitimate ground to interfere with the selection on such feeble grounds as are taken in the petitions.

CWP No.4685 of 2013

Reliance of the petitioner in the case of Mohinder Sain Garg v. State of Punjab and others, (1991) 1 SCC 662 is misconceived. That case dealt with direct recruitment to the post of Excise and Taxation Inspectors conducted by the State Subordinate Services Selection Board, Punjab where experience was not part of the criteria of selection and, therefore, the Supreme Court applying its earlier dicta *Ashok Kumar Yadav* case and the ruling in Liladhar v. State of Rajasthan and others, (1981) 4 SCC 159 is inapposite. *Liladhar* case dealt with selection to the Rajasthan Judicial Service by written examination followed by an oral viva voce test etc. would also not apply since in that case, the selection was from amongst eligible candidates who came from raw academics earning their essential qualifying graduate degrees were free to apply for which posts no previous experience was required as training and experience are earned on the job.

The Court has consistently observed that there cannot be any hard and fast rule regarding the weight to be given to interview as against the written examination.

In *Mohinder Sain Garg*, the Supreme Court observed while dealing with marks for interview in the light of the earlier dicta in *Liladhar* case. Their Lordships observed that “another factor worthy of consideration was that candidates expected to offer themselves for selection were not Law

graduates freshly out of college but were persons who had already received a certain amount of professional training”. In *Liladhar* the interview test was conducted by a body consisting of a Judge of the High Court, the Chairman and Member of the Public Service Commission and a special invitee expert. Thus, there could be no legitimate grievance or hint of arbitrariness against such a selecting body. Besides, in the instant case the petitioner has not given a recap of the interview she faced, its duration and by clearly spelling out what questions were asked of her by the interviewers, and which of those questions were answered correctly and which she failed to answer. There is no pleading in this behalf in the petition. In absence of such record, which is personal to the knowledge of the petitioner, duly projected in the petition, it would not be possible to say anything in this regard except for court to rely on the defence of the action with the respondents averring that the interviews were conducted in a fair and proper manner. Though assigning 50% marks for the interview may at first blush appear somewhat excessive in view of the case law developed but the entire selection cannot be set aside on the mere assertion of the petitioner that the marks were disproportionate and excessive to the total marks.

In this petition [filed by Saroj Bala] there is an additional ground to be dealt with on merits with regard to the experience certificate issued to selected candidate Urmila Arya – respondent No.15 by Divyadham Gurukulam Village Agwanpur Tehsil Ganaur, Sonipat on the basis of information received under the Right to Information Act, 2005 which disclosed that the experience certificate as Hostel Warden from April 2004 to August 2009 relied upon by Urmilla Arya has been falsified by the

Gurukul itself on information supplied to one Mr. Sushil Kumar vide their letter dated February 27, 2013 saying that “Acharya Rajhans was the convener of the Divyadham Gurukul Agwanpur. He used to give free education for Shastri examination conducted by Maharishi Dayanand University, Rohtak. All 35-40 students used to give their examination from any examination centre as per their own choice. Acharya Rajhans Matrey Ji went to Uttarkashi after closing the Gurukul in the year 2007. From then onwards Gurukul is not working. Only the name of the place remains Gurukul” and for this reason the selection should be quashed. It has been stated that another candidate Seema Rani – respondent No.16 submitted documents which revealed that she did her B.A. from MDU Rohtak in the year 2006 and thereafter B.Ed. from the same University in the year 2007 and Masters of Arts from Osmania University, Hyderabad in the year 2009 and thereafter M.Ed. from Kurukshetra University, Kurukshetra in the year 2010 bears testimony that the experience certificate relied on by Seema Rani that she was working as a Hostel Warder in BDM Nursing College Chhuchhakwas, Jhajjar w.e.f. October 17, 2006 to May 22, 2012 is not reliable on the strength of these facts.

Mr. Y.P. Malik, learned counsel appearing for Saroj Bala submits that prima facie the experience certificate produced by Seema Rani is a forged and fabricated document. There are other instances also narrated in the petition of facts discovered through personal investigation which all lend credence to the plea that the selection of Hostel Supervisors was not fair and was a result of manipulation, use of illegal means and undue influence over the Screening and Selection Committee. These assertions

have been refuted by the non-official respondents/institutions from where experience certificates were obtained by filing separate replies. Respondent No.8 – School is on record to assert in the short written statement filed on August 28, 2013 that selected candidate Kavita Rani respondent had worked as Hostel Supervisor in their school from December 01, 2008 to March 31, 2012. Similarly, respondent No.10 – Nursing College has filed its reply dated August 28, 2013. It is explained that Seema Rani worked as a Hostel Warden from October 17, 2006 to May 22, 2012. She obtained leave without pay to appear in B.Ed. course from December 27, 2006 to July 15, 2007. She appeared in M.A. Education through Distance mode with due permission of the Institution and obtained leave without pay when she appeared in the examinations. Respondent No.13-Sarita Devi has also filed a short written statement refuting the chart of the petitioner based on the petitioner's personal inquiry explaining therein that where the experience was earned i.e. Jagsamba Boys & Girls Hostel is only a private house and that relying on a mark sheet of B.Lib. is totally false averment since the respondent No.13 has never passed Bachelor of Library Science as alleged by the petitioner. Interestingly, she had rendered services as Warden in the respondent-University itself engaged on contract basis from March 01, 2010 to March 02, 2011 through an outsourcing agency and then once again in the respondent-University itself from November 10, 2008 to February 28, 2010 and then again from March 03, 2011 to January 02, 2013 as against the one year experience of supervising a Hostel as required and advertised for the post. The separate written statement has been filed by Kavita Rani – respondent No.14 averring that she has worked as Hostel Supervisor in

Deen Dayal Modern Senior Secondary School, Village Bindhroli, District Sonipat from December 01, 2008 to March 31, 2012. It is also averred in the reply that as per the criteria adopted marks were not assigned for experience so a candidate who has one year experience supervising a hostel is eligible for the post. Therefore, experience was a condition of eligibility alone and inter se merit of the candidate did not depend on the experience.

Similarly, Seema Rani – respondent No.16 has also filed a written statement to the same effect defending her selection. Respondent No.9 – Divyadham Gurukulam, Agwanpur, Tehsil Ganaur, Distritt Sonipat dated January 04, 2014 is on record by filing a short written statement. The Gurukul asserts in the reply that the petitioner relied on information under the RTI Act which was not complete information. Even the answering respondent has clarified to the District Education Officer that Shashtri Course was closed in the year 2007 but the Hostel of the school is still in operation. They have attached photographs of students and teachers for the session 2008-09 with the reply and deposed that supplementary information was supplied to the District Education Officer [which negates the petitioner's yarn]. They have even the original attendance registers wherein in the presence of students, non-teaching staff including of Warden Urmila Arya were offered for production in Court. They assert that the certificates of Urmila Arya (@ Urmila Rani prove that she rendered services as Warden from April 2004 to August 2009 and the same is genuine.

Urmila Arya – respondent No.15 has also filed a separate short written statement. She states that she is a Graduate from MDU qualifying in the 1st Division. She holds the degree of MA in Sanskrit\ in the 1st Division.

She has also passed a Computer Course. She has more than five years of experience to her credit and her does not suffer from any infirmity and is on merit.

In view of all this, even if this Court were to doubt the experience certificates even then what will be left in residue are seriously disputed questions of fact which cannot be adjudicated in writ jurisdiction since the writ court would not enter disputed questions of fact which alone is the role of the civil court.

For the foregoing reasons, both the writ petitions are dismissed without any order as to costs finding hardly any merit therein warranting interference in writ jurisdiction.

(RAJIV NARAIN RAINA)
JUDGE

13.07.2016
manju

Whether speaking/reasoned	Yes
Whether reportable	No