

CWP NO.6274-2014

and other connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP NO.6274-2014

Ashwani KumarPetitioner

Vs.

Punjab and Haryana High Court and anotherRespondents

2. CWP NO.8112-2014

Chander MohanPetitioner

Vs.

Punjab and Haryana High Court and anotherRespondents

3. CWP NO.18300-2014

Rakesh KumarPetitioner

Vs.

Punjab and Haryana High Court and anotherRespondents

Date of Decision 11.05.2016

CORAM HON'BLE MR. JUSTICE MAHESH GROVER

HON'BLE MRS.JUSTICE LISA GILL

1. To be referred to the reporters or not? Yes

2. Whether the judgment should be reported in the digest?Yes

Present:- Mr. R.K.Malik, Sr. Advocate

With Mr. Vijay Dahiya, Advocate

for the petitioner in CWP-6274-2014.

Mr. N.D.Achint, Advocate

for the petitioners in CWP-8112-2014.

Mr. S.K.Yadav, Advocate

for the petitioner in CWP-18300-2014.

Mr. Vikas Bahl, Sr. Advocate

with Ms. Divya Sharma, Advocate

for respondent no.1.

Mr. Sudeep Mahajan, Addl. A. G. Haryana.

MAHESH GROVER, J

This order shall dispose of all the aforementioned Writ Petitions bearing Nos. 6274, 8112 and 18300 all of the year 2014 as the common question of law is involved in all the writ petitions.

The petitioners were aspirants for the post of Haryana Superior Judicial Service (hereinafter called as HSJS) and responded to an advertisement issued by the Punjab and Haryana High Court dated 29.04.2013 inviting applications for 17 posts of HSJS by way of direct recruitment, out of which, eight posts were meant for General category, six for Scheduled Caste and three for Backward Class category.

The petitioners belonged to the reserve categories and are aggrieved of the selection process based on the decision of the High Court to prescribe that no candidate would be considered who have successfully qualified the HSJS examination unless he obtains 50% (45% marks for the SC/BC) in the aggregate out of the total marks fixed for written examination and viva voce. Carrying this decision forward the High Court has stated that merely acquiring these marks would confer no right of consideration on any candidate and the High Court may shortlist candidates equal to three times the number of vacancies to be called for viva voce.

All the petitioners qualified the main examinations and were called for interview. Selection list was displayed on 13.02.2014.

Petitioner in CWP-6274-2014 was amongst the first six candidates and was thus legitimately hopeful that out of six posts intended for Scheduled Caste / Scheduled Tribe candidates, he would be selected because

of his assignment in the seniority but he was denied consideration as he failed to attain the target prescribed by the High Court of attaining 45% marks in aggregate. Similarly petitioner in CWP-8112-2014 also attained less than 45% to be similarly denied consideration. Likewise the petitioner in CWP-18300-2014.

It has been urged before this Court that the rules framed under Article 309 of the Constitution of India known as Haryana Superior Judicial Service Rules, 2007 (hereinafter known as Rules) laid down the eligibility criteria and unless they were amended in accordance with law, no other condition could be read into it. Rule 7 of the Rules is extracted here below:-

“Rule 7

The High Court shall before making recommendations to the Governor invite applications by advertisement and may require the applicants to give such particulars as it may specify and may further hold written examination and viva voce test for recruitment in terms of rule 6(c) above and the maximum marks shall be in the following manner:-

- i Written Test 750 marks*
- ii Viva Voce 250 marks”*

It is the specific case that there being no prescription of 50% or 45% marks in aggregate to be attained by a candidate for consideration any decision taken by the High Court without amendment of the Rules would be illegal and liable to be struck down.

Attention of this Court has also been drawn to Rule 27 of the Rules to

contend that the Government necessarily had to be consulted if any decision had to be read into the Rules and as per the available information under the Right to Information Act, the Government has clearly responded to a query put by the petitioners that “ no proposal regarding written consultation from Hon’ble Selection and Appointment Committee of the Hon’ble Punjab and Haryana High Court has been received in this office till today.”

Rule 27 of the Rules is extracted here below:-

“If any question arises as to the interpretation of these rules the same shall be decided by the Government in consultation with the High Court.”

It has also been contended that the Selection Committee would have no authority in law to provide any additional criteria not intended in Rules.

The High Court has resisted the petition primarily on the ground that the petitioners having participated in the selection process were precluded from questioning it on its conclusion. Besides, it is contended that the writ petition suffers from a grave fallacy as selected candidates have not been impleaded as party respondents. Any attempt to answer the writ petition in favour of the petitioners would require re-assessment of marks likely to jeopardize the entire selection list which may not be permissible in the absence of selected candidates, who have by now acquired vested right in their favour.

That apart it has been stated that the High Court was very well within its rights to supplement the Rules to provide a higher standard to attain its merit.

Learned counsel for the petitioners have placed reliance on 1995(6)

SCC page 1 Dr.Krushan Chandra Sahu v. State of Orissa, where after

noticing several other pronouncements the Hon'ble Supreme Court held that the Selection Committee does not have the jurisdiction to lay down norms for selection unless they are authorized specifically in this regard by the Rules made under Article 309 of the Constitution of India.

For the purpose of references, the observations relied upon by the petitioners in **Dr. Krushan Chandra Sahu's case (supra)** are extracted here below:-

“35. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the Rule making authority to provide the basis for selection. This Court in State of Andhra Pradesh and another v. V. Sadanandam and others, JT 1989 (Supp) SC [232 : AIR 1989 SC 2060] observed as under:

"We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old Rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively

within the purview of the executive." (Emphasis supplied)

36. *The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In Ramchandra Iyer and Ors. v. Union of India, (1984(2) SCR 200), it was observed :*

"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm."

37. *Similarly, in Umesh Chandra Shukla etc. v. Union of India & Ors., (1985 Suppl. (2) SCR 367), it was observed that the Selection Committee does not possess an inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in Sh. Durgacharan Misra v. State of Orissa & Ors., (JT 1987(3) SC 459 : 1987(2) UJSC 657) and the limitations of the Selection Committee were pointed out that it has no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce test.*

38. *It may be pointed out that rule making function under Article 309 is legislative and not executive as was laid down by this Court in B.S. Yadav Ors. v. State of Haryana & Ors., AIR 1981 SC 561. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection."*

Further reliance has been placed on a Division Bench judgment of the Allahbad High Court reported as **2008(8) ADJ 484 Dr. Ravindra Kumar v. State of U.P and others** where it was observed as follows:-

“36. From a close analysis of legal position enunciated by Hon'ble Apex Court herein before, it is clear that the members of Selection Board or Selection Committee have no jurisdiction to lay down any criteria for selection either as to eligibility of candidates or as to suitability of candidates, unless they are authorised specifically in that regard by rules made for the purpose. The Selection Committee does not have even inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. The prescription of qualification for eligibility and suitability of candidates for recruitment in respect of a particular post is sole domain of rule making authority. The Selection Committee must select the candidates in accordance with rules. It cannot prescribe additional requirement for selection either as to eligibility or as to suitability of candidates by its own. Therefore, in view of aforestated legal position, in given facts and circumstances of the case, the Selection Committee was required to hold the selection in conformity with the procedure

prescribed under the statute of the University inasmuch as eligibility qualification prescribed in the advertisement in question. But before we proceed to examine the merit of the selection in question, we may indicate the scope of judicial review of such selection.

The petitioners have placed reliance on **AIR 1981 (Supreme Court) 561 B.S.Yadav and others v. State of Haryana** where the larger Bench of the Hon'ble Supreme Court observed that amendments in the State Judicial Service Rules should be made only with the consultation of the High Court.

Besides the above, the petitioners also relied upon **1985(3) Supreme Court Cases 721 Umesh Chandra Shukla vs. Union of India and others** where it was observed that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in the appendix.

To the similar effect is the judgment relied upon by the petitioners reported as **1987(4) Supreme Court Cases 646 Durga Charan Misra v.State of Orissa.**

The respondents-High Court, on the other hand, has placed reliance on **2006(6) Supreme Court Cases 395 K.H.Siraj v. High Court of Kerala and others** acknowledging the power of the High Court approvingly to prescribe condition that supplement the rule with a view to obtain the best talent.

Reliance has also been placed on **2008(4) Supreme Court Cases 171**

Dhananjay Malik and others v. State of Uttranchal and others in support of the plea that incumbents who have participated in the selection process are precluded from questioning subsequently having failed on taking a chance.

To the similar effect is a decision of the Hon'ble Supreme Court reported as **1995(3) Supreme Court Cases 486 Madan Lal and others v. State of Jammu & Kashmir** and a Division Bench of this Court reported as **1998(1) SLR 558 Mrs. Pushpa Sharma v. State of Haryana.**

We have heard learned counsel for the parties and are of the view that the petitioners were exposed to the condition which they now question when the advertisement was given out to which they responded. For one year, they did not question this advertisement and rather participated in the selection process heartily. Therefore, they cannot now turn round to question the selection process on this ground. We may notice the observations made by the Hon'ble Supreme Court in **K.H.Siraj's case (supra)**

“62 Thus it is seen that apart from the amplitude of the power under Rule 7 it is clearly open for the High Court to prescribe benchmarks for the written test and oral test in order to achieve the purpose of getting the best available talent. There is nothing in the Rules barring such a procedure from being adopted. It may also be mentioned that executive instructions can always supplement the Rules which may not deal with every aspect of a matter. Even assuming that Rule 7 did not prescribe any particular minimum, it was open to the

*High Court to supplement the rule with a view to implement them by prescribing relevant standards in the advertisement for selection. Reference may be made to the decision of this Court in **State of Gujarat v. Akhilesh C. Bhargav.**”.*

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“73. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in paragraph 9 of Madan Lal & Ors. Vs. State of J & K & Ors. , (1995) 3 SCC 486 as under:

"Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the

Commission who interviewed the petitions as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In Om Prakash Shukla vs. Akhilesh Kumar Shukla, 1986 suppl SCC 283, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protestt and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

75. *The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties also.*

Besides the plea of estoppel, the petition also has to fail as the

petitioners have not impleaded the selected candidates as necessary parties.

In **K.H.Siraj's case (supra)**, it is observed that the plea of the petitioners if accepted would result in re-assessment of the result of all the candidates resulting in a reshuffle or probably an entire over all which cannot be done unless all the affected parties were present before us.

Apart from the above, we do not find any infirmity in the decision taken by the Selection Committee of the High Court acting as a delegate of the High Court to supplement the Rules by prescribing marks which are intended to ensure merit by providing a benchmark.

It is a settled proposition of law that the power of the authority to supplement the Rules cannot be denied. In **Dhananjay Malik and others v. State of Uttranchal & Ors. 2008(4) Supreme Court Cases 171**, it was observed that the Government cannot amend or supersede statutory Rules by administrative instructions, but if the Rules are silent on any particular point Government can fill up the gaps and supplement the Rules and issue instructions, not inconsistent with the Rules already framed.

To a similar effect is the judgment of the Hon'ble Supreme Court in **AIR 1967 SC 1910 Sant Ram Sharma v. State of Rajasthan.**

A perusal of Rule 7 of the Rules shows that 750 marks were prescribed for written examination while 250 marks were for viva voce. The Rules are silent insofar as attainment of particular benchmark for being called for viva voce. It is this gap that the High Court has filled up by prescribing as such which can neither be considered to be an amendment of statute nor an abrasion thereof. It merely to supplement the Rules.

Similarly the plea of the petitioners that Rule 27 of the Rules warrants consultation with the Government is meaningless. Such a course is

permissible if any question arises as to the interpretation of these Rules which being nonexistent in the present case, would offer no occasion for consultation process.

For the aforesaid reasons, we do not find any merit in the writ petitions which are accordingly dismissed.

(Mahesh Grover)
Judge

May 11, 2016
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(Lisa Gill)
Judge