

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5709 of 2016

Date of Decision: 22.03.2016

Amit Tara and another

... Petitioners

Versus

Registrar, Guru Nanak Dev University,
Amritsar and another

... Respondents

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

Present: Mr. H.S. Brar, Advocate,
for the petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The Guru Nanak Dev University, Amritsar (GNDU) issued public advertisement No.2 of 2013 notifying vacancies in 32 categories of posts of which the one in question in the present case is at Sr. No.31 being the posts of Junior Library Attendant-cum-Peons. The advertisement was published on September 10, 2013 inviting applications from eligible candidates. The circular containing detailed instructions, qualifications, etc. for the posts, was made known at the University Website address mentioned in the advertisement. The post of Junior Library Attendant-cum-Peon is to be filled by direct recruitment alone. The minimum qualifications prescribed in the University Calendar, Volume-IV Ordinances and Regulations, 2007 page 184 for the post is Senior Secondary Certificate. The University Calendar also prescribes the duties and responsibilities of the post and lists them as follows:-

- “(1) Restoring/shelving of books*
- (2) To ensure that the books are kept neat and clean by them*
- (3) In addition to above4, any other duty to be assigned by the University Librarian from time to time.”*

2. The academic and professional qualifications held by the 1st petitioner are B.A., Diploma in Library Science and Certificate in Six Months Basic Computer Course from Punjab Infotech while the 2nd petitioner holds the degree of M.A. History and Diploma in Library Science. The petitioners in response to the advertisement applied for the post before the deadline i.e. October 14, 2013. Nothing was heard on the progress of the selection after the Employment Notice and it appears that it remained stultified till the University issued a Provisional Attempt Card for Theory Test for recruitment to the post of Junior Library Attendant-cum-Peon to the applicants while referring to advertisement No.2 of 2013. The date of the test is March 26, 2016 between 11 AM to 12.30 PM. Both the petitioners have received the Admit Cards. There is a note of Important Instructions and candidates are informed that the Theory Test will be on OMR answer sheet and the result will be made available on the University Website. Candidates have been asked to read the instructions on the Website before appearing in the test. The Provisional Admit Card (Annex P-2 and P-3) are dated March 15, 2016. The criteria of the theory test as per instructions/guidelines downloaded on the Website of the University prescribe the criteria as follows:-

- “1. There will be a theory test of 90 minutes duration.....*
- 2. The theory paper will consist of 75 objective-type multiple choice option of 2 marks each.*
- 3. To qualify for interview, the candidates will have to*

secure at least 50% marks i.e. 75 marks out of total 150 marks.

4. *The theory paper will be based on the following syllabus:*

General Knowledge/Current Affairs +2 level

General science Matriculation level

5. *The medium of instruction will be in Punjabi language.*

6. *There will be no negative marking”*

3. The prescription of the theory test is impugned in this petition on the ground that such a test was not prescribed in the advertisement dated September 10, 2013 and has been adopted all of a sudden to reflect in the Provisional Admit Card for Theory Test after a lapse of 30 months of the advertisement prescribing a written test and interview for the selection/recruitment when no such stipulation was contemplated either in the University Regulations or in the advertisement. These fresh terms were not advertised when the selection commenced and candidates had applied in response to the public advertisement. The action is dubbed as arbitrary, whimsical, unreasonable and irrational and is thus not sustainable in the eyes of law. It is prayed that the theory test be scrapped on a direction issued from Court. There can be no doubt that the Provisional Admit Cards dated March 15, 2016 relate back to the advertisement No.2 of 2013 and is thus part and parcel of the selection process initiated since 2013. Both the petitioners are qualified as per the Regulations, 2007 and thus eligible. In case they are selected their duties are prescribed.

4. The fact also is that the petitioners were in-service candidates appointed as Junior Library Attendants-cum-Peons on November 18, 2005 on contract basis for 89 days on a consolidated salary of Rs.3000/- per

month which tenure has been extended from time to time with notional breaks and their salaries have been gradually upgraded to Rs.8000/- per month w.e.f. February 01, 2016 and February 03, 2016 respectively. They have been working for the last 11 years. The petitioners have not sought regularization of their services but impugn only the prescription of a written test for recruitment to the post held by them on contract basis. They insist that the University should be restricted to the qualifications and criteria formulated in the University Calendar, 2007. The Regulations came into force after the petitioners were appointed on contract basis in the same University.

5. One side of the coin is that when a selection process has begun then the rules of the game cannot be changed midway. This means that the prescribed criteria, qualifications etc. cannot be made to suffer change in such a way that the entire content of the recruitment process is altered by introducing brand new criteria which was not advertised. However, as I see the position, given that the 2016 process relates back to the 2013 advertisement still the prescription of the theory test is not destructive of the minimum qualifications prescribed for the post of Junior Library Attendants-cum-Peons. It is supplemental in nature. It is well recognized that a supplementary procedure can be adopted by putting candidates to a test to test ability and merit of candidates to be the benchmark of selection through theory test and interview to select the best talent. The University appears not to have changed the rules of the game midway. The University has only introduced a test to find the best talent from eligible and qualified candidates who had responded to the advertisement which may have been

otherwise impossible while dealing with a mass of applications that may have been received by the University to fill up not only the post at Sr. No.31 but the rest of them. The advertisement did not lay down any criteria for the selection to the post of Junior Library Attendant-cum-Peon. The advertisement only referred back to the University Website for candidates to acquaint themselves with the instructions/qualifications etc. for the post. They were never told in the advertisement that no test could be held which would not be only a screening test but a test to determine merit among the eligible candidates. Besides, the passage of 30 months may by itself justify the prescription of theory test and interview. The petitioners cannot I think be heard to insist that they have a right to be selected and appointed on the basis of the minimum qualification prescribed or complain that no advantage is given to possession of higher qualifications or the percentage of marks in the Senior Secondary examination achieved by the candidates. There is nothing arbitrary, illegal or unconstitutional calling candidates to appear in theory test or restrict the competition thereby to be called for interview only when they secure 50 marks in the theory test i.e. 75 marks out of total 150 marks. Therefore, the reliance of the petitioners on the judgment of the Supreme Court delivered in **Renu v. District & Sessions Judge, Tis Hazari and another**, 2014 (14) SCC 50 is distinguishable on facts. In *Renu*, the Court was confronted with situation where Peons in class IV were recruited to the establishment of Courts subordinate to the Delhi High Court arbitrarily without laying down any criteria whatsoever except the minimum qualification. *Renu* is a decision to cure a malaise in arbitrary selection which position has been rectified by the Supreme Court by issuing

various directions including enacting rules of recruitment for the post of Peons.

6. Moreover, the selection has nothing to do with the duties to be performed by Junior Library Attendants-cum-Peons. The post is classified in such a manner which may seem at first flush odd to have Junior Library Attendant who is a Peon but that is the way it is. The University is an expert body to classify posts suited to its genius of which the Library is an essential component in the process of learning, teaching and imparting education to students enrolled with the University and its regional Campuses in different places in Punjab within the territorial jurisdiction of the University. The University remains the best judge of its requirements in the Library.

7. I do not find any valid or cogent reason to interfere in the decision in prescribing a theory test followed by interview to select candidates. Merely because the petitioners have been working on contract basis for the last 11 years is not sufficient to give them special treatment or leeway in the face of open competition and the rights of other eligible candidates who have an equal right to compete for the post advertised. All candidates are stakeholders in the direct recruitment process. The method adopted by the University is not abhorrent to the constitutional scheme of public appointments when it is applied uniformly to all the candidates by testing on knowledge, skills and viva voce. Once the petitioners do not claim regularization of their contractual services of howsoever long duration they have no legitimate right to claim preferential treatment over the rights of other competitors as all of them form a homogenous class. The

criteria does not appear to supplant rule of recruitment, it only supplements it by filling in the gaps left in the advertisement which was silent on the point. Prescribing the test followed by interview does not change the rules of the game as canvassed by them. The position may have been different if the advertisement spoke of more than the qualifications for the post, say by introducing in the beginning the method of assessing merit on the basis of weightage of marks assigned for the minimum or higher qualifications. That is not the case pleaded.

8. As a result, there is no substance found in this petition and the same is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

22.03.2016
manju