

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 9167 OF 2013

RESERVED ON: AUGUST 02, 2016

DATE OF DECISION: OCTOBER 05, 2016

Richa Mehta daughter of Sh.Hari Chand MehtaPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sanjay Kaushal, Senior Advocate with
Mr.Anurag Goyal, Advocate for the petitioner.

Mr.Rajesh Gaur, Additional Advocate General, Haryana.

Mr.HN Mehtani, Advocate for respondent No.3/HPSC.

Mr.Puneet Bali, Senior Advocate with
Mr.Ranjit Saini, Advocate and Mr.Arun Gupta, Advocate
for respondent No.4.

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TEJINDER SINGH DHINDSA, J.

Petitioner assails the selection and appointment of respondent No.4 to the post of Assistant Director (Biology) at the Forensic Science Laboratory, Madhuban (Karnal). A writ of mandamus is sought to direct the official respondents to appoint the petitioner on the post in question. Prayer for issuance of a writ in the nature of quo-warranto has also been raised to hold respondent No.4 to be ineligible even for appointment to the post

of Senior Scientific Officer (Scene of Crime), Forensic Science on the ground that she did not possess the requisite experience to be appointed as such.

2. The Haryana Public Service Commission (for short 'the Commission') issued advertisement dated 14.8.2009 inviting applications for recruitment to one post of Assistant Director (Biology) at the Forensic Science Laboratory, Madhuban (Karnal). The essential qualifications prescribed for the post were as follows:

"Essential Qualifications:

i) M.Sc. (at least 2nd Class) in Zoology/ Botany/ Physical Anthropology/ Human Biology/ Bio-Chemistry/ Forensic Science with specialization in Forensic Biology or equivalent qualification in any of the above subject.

ii) Hindi/Sanskrit upto Matric.

Experience: 8 years research and analytic experience in relevant subject/discipline."

3. The last date for submission of application forms was stipulated as 14.9.2009.

4. Petitioner claiming herself to be eligible i.e. possessing qualification of M.Sc. (Bio-Chemistry) Ist Class from Haryana Agricultural University, Hisar and having 11 years 11 months and 17 days of Research and Analytical Experience submitted her application form for the post. The petitioner was subjected to a process of selection and she duly appeared for the interview before the Selection Committee constituted for such purpose.

The final result was declared on 22.4.2010 and in which respondent No.4 was declared as the successful candidate. The recommendations forwarded by the Commission were accepted by the State Department and letter of appointment dated 4.6.2010 was issued in favour of respondent No.4 and who, accordingly, joined on the post in question. Being aggrieved of her non-selection on the post of Assistant Director (Biology) has led the petitioner to file the instant petition.

5. The prayer and claim in the petition for setting aside the selection and appointment of respondent No.4 on the post of Assistant Director (Biology) and to direct the official respondents to appoint the petitioner instead and with effect from the date respondent No.4 was so appointed is founded primarily on two counts:

i) It is submitted that information with regard to criteria followed for selection, distribution of marks as per criteria and total marks obtained by the candidates were supplied under the provisions of Right to Information Act. As per criteria, the maximum marks that could be awarded for experience were 10 i.e. one mark for each completed year of research and analytical experience after attaining the basic qualification and required experience of 8 years and the same to be reckoned upto the closing date of receipt of application forms i.e. 14.9.2009. As per final merit determined, petitioner has secured 63 marks, whereas the selected candidate, namely, Anita Rani-respondent No.4, has secured 65 marks. In the break up of marks disclosed

by the Commission, the petitioner has been awarded one mark towards experience. The precise contention raised is that the petitioner possessed a total experience of 11 years, 11 months and 17 days and, thus, she was entitled to be awarded four marks towards experience on account of the experience of 3 years, 11 months and 17 days over and above the basic requirement of 8 years. In support of such assertion, it has been pleaded that the petitioner had joined the Forensic Science Laboratory, Madhuban on 25.11.1998 as a Scientific Assistant (Biology) and thereafter had earned promotions to the post of Senior Scientific Assistant (Biology) on 22.12.2003 and as Senior Scientific Officer (Biology) on 7.3.2006 and worked as such continuously till the date of submission of application forms. It has been vehemently argued that denial of 3 marks towards experience and as per criteria formulated by the Commission towards experience possessed beyond the minimum prescribed of 8 years, is totally unjust and illegal. It is contended that had the Commission acted strictly as per criteria and had awarded the 3 marks towards experience, the petitioner would have then secured a total marks of 66 instead of 63 and would have resultantly ranked higher in order of merit in comparison to respondent No.4 who has secured a total of 65 marks. In furtherance of such submission, it is contended that the Commission has deliberately and on account of bias denied to the petitioner her rightful claim of 3 marks towards experience.

ii) Towards assailing the selection of respondent No.4 for the post in question, it has been submitted that in the light of information supplied under the Right to Information Act, respondent No.4 along with her application form had appended a certificate issued by M/s Venus Remedies Limited in support of her experience as Analytical Chemist. Such experience certificate was for the period 27.4.1995 to 28.4.1999. Petitioner questions such claim of experience put forth by respondent No.4 by adverting to certain documents placed on record. It is submitted that in her application form submitted for the post in question, respondent No.4 had claimed to be working as an Analytical Chemist "on regular basis", whereas while she had been selected earlier in point of time and in the year 2004 as Senior Scientific Officer, Forensic Science Laboratory, Madhuban, she had submitted an application form dated 2.1.2004 and in which she had claimed to have an experience as Analytical Chemist at M/s Venus Remedies Limited, Panchkula for the same period but "on temporary basis". According to the petitioner, information had been sought from the Commissioner, Food and Drugs Administration Haryana and as per which, no person by the name of Ms.Anita Rani/respondent No.4 was working as Analytical Chemist at M/s Venus Remedies Limited, Panchkula for the period 1995 to 1999. Likewise, information had also been sought from the office of the State Drugs Controller, Panchkula in respect of Analytical

Chemists, and as per records of the State Drugs Controller, respondent No.4 had not worked with M/s Venus Remedies Limited for the period in question. Case set up on behalf of the petitioner is that the experience certificate relied upon by respondent No.4 and accepted by the respondent-Authorities and which has facilitated her selection and appointment to the post in question is a forged and fabricated document. It is argued that if the period of experience claimed by respondent No.4 as Analytical Chemist with M/s Venus Remedies Limited, Panchkula from 27.4.1995 to 28.4.1999 i.e. 4 years and one day was to be excluded, respondent No.4 would not even meet the basic and essential requirement of possessing 8 years of research and analytical experience. It is on such ground that a writ of certiorari is sought for setting aside the selection and appointment of respondent No.4 on the post of Assistant Director (Biology).

6. Learned counsel for the parties have been heard at length.

7. The first issue that arises for consideration is as to whether the petitioner has been under-assessed as regards award of marks towards experience.

8. The Commission had laid down a criteria for assessing the relative merit of the candidates through viva voce for selection to the post of Assistant Director (Biology). The criteria as disclosed by the Commission was as follows:

"1. Personal Achievements

40 marks

a) Educational Qualifications: 25 marks

(i) Master Degree in Zoology/Botany/Physical Anthropology/Human Biology/Bio-Chemistry/Forensic Science with specialization in Forensic Biology or equivalent qualification in any of the above subjects:

Second Division 15 marks

First Division 20 marks

*(ii) Ph.D. in any of the subjects mentioned in (i) above
05 marks*

b) Experience: 10 marks

One mark per completed year of research and analytical experience after attaining the basic qualifications and required experience of 8 years and the same will be reckoned upto the closing date of receipt of application and maximum 10 marks will be awarded for experience.

c) Published works 5 marks

Publication work of high standard published in journals of National or International Repute. One mark will be given for each publication in National level Journals and two marks for each publication in International journals.

2. Interview 60 marks

The interview will be conducted through oral discussion and questioning. The questions and discussion will be taken up to ascertain the personal qualities, knowledge awareness, intelligence,

presentation, expression, poise, bearing, articulation & adaptability etc. 60 marks are assigned for the interview with the following break up:-

*i) knowledge, awareness, 20 marks
outlook & general interest etc.*

*ii) Intelligence, initiative, decision 20 marks
making, expression, presentation etc.*

*iii) Poise, bearing, behaviour, 20 marks
adaptability, articulation & other qualities.*

For the convenience of awarding marks and realistic assessment, a candidate is to be categorized as under by the Expert Advisor and marks to be awarded by the Commission as shown against such gradation for (i), (ii) and (iii) above:-

Very Good 14-20 marks

Good 7-13 marks

Average 1-6 marks

Total marks of the Viva-voce: 100 Marks."

9. Perusal of the criteria clearly reveals that a maximum 10 marks had been assigned towards experience i.e. one mark per completed year of research and analytical experience after attaining the basic qualifications and over and above the required experience of 8 years.

10. Even though the petitioner claims a total research and analytical experience of 11 years, 11 months and 17 days, yet she has been awarded only one mark for 3 years, 11 months and 17 days beyond the basic required experience of 8 years. On

behalf of the respondents, such action is sought to be justified by submitting that after having joined the Forensic Science Laboratory on 25.11.1998 as a Scientific Assistant (Biology), the petitioner has remained on extra-ordinary leave for a total period of 886 days i.e. 677 days from 30.11.1998 to 5.10.2000, 100 days from 1.7.2000 to 8.10.2002 and 109 days from 14.10.2002 to 30.1.2003. As per respondents, the period spent by the petitioner on extra-ordinary leave is not to count towards research and analytical experience and as such, the petitioner has rightfully been denied extra weightage/marks for such period. Learned senior counsel appearing for the petitioner would join issue on such count. Even though the period of extra-ordinary leave and as afore-noticed is not disputed, yet it is contended that such extra-ordinary leave was duly sanctioned by the competent authority and was admissible under the Rules. Learned Senior Counsel would argue that leave as admissible be it extra-ordinary leave/maternity leave etc. having been sanctioned, such period is to count for grant of all service benefits and as a sequitur would also count towards experience while holding the post of Scientific Assistant (Biology), Senior Scientific Assistant (Biology) and Senior Scientific Officer (Biology), as the case may be, under the Forensic Science Laboratory, Madhuban.

11. Having heard the rival submissions advanced by the learned counsel for the parties on such aspect, this Court is of the considered view that the petitioner is not entitled to any extra weightage marks towards research and analytical experience for the period spent on extra-ordinary leave. Extra-ordinary leave

duly sanctioned by the competent Authority would not be treated as break in service and such period may enure to the benefit of an employee for grant of service benefits being a member of a particular service. However, such period spent on extra-ordinary leave even if duly sanctioned would carry a different connotation while reckoning experience towards eligibility seeking direct appointment to a higher post. As per criteria formulated by the Commission for the post of Assistant Director (Biology), a candidate apart from possessing the essential qualifications had to possess 8 years research and analytical experience in the relevant subject/discipline. Extra weightage of one mark per completed year of research and analytical experience after attaining the basic qualifications and over and above the required experience of 8 years was also provided. For a candidate to claim such extra weightage, the same has to be necessarily for a period spent on actual research and analytical experience. Such weightage would not be permissible only by way of a deeming fiction and in respect of a period of time when such employee has actually been on leave, be it sanctioned. The objective as per criteria evolved by the Commission is to reward a candidate towards possession of research and analytical experience and which is over and above the minimum required 8 years experience. It would certainly not lie in the mouth of the petitioner to claim weightage of 3 marks towards research and analytical experience while she had spent such period concededly on extra-ordinary leave. In taking such view, I would draw support from a judgment rendered by the Apex Court in **VB**

Prasad v. Manager, P.M.D. U.P.School and others, 2007(3) RSJ

35. The issue that arose in such case was with regard to appointment to the post of Head Master in a primary school known as P.M.D. Upper Primary School and which was governed by the provisions of the Kerala Education Act and Rules framed thereunder. Under the Rules, 5 years teaching experience was a requirement for appointment to the post of Head Master. The appellant, namely, VB Prasad was wanting period 1.6.1991 to 22.8.1993 spent on study leave to be reckoned towards teaching experience. While negating such claim, it was held that teaching experience cannot be a deemed teaching experience but only actual teaching experience. Relevant observations are contained in para 14 of the judgment and read as follows:

“Indisputably, Appellant was on study leave for the period 01.06.1991 to 28.02.1993. During the said period, he was not teaching. He did not gain any teaching experience during the said period. If the said period is excluded for the purpose of computing teaching experience as envisaged under Rule 45 of the Rules, the question of his being considered for promotion to the post of Headmaster would not arise. Eligibility condition must be satisfied before a person is considered for promotion/appointment in respect of a particular post.”

12. No infirmity, as such, is found in the action of the official respondents in having denied to the petitioner weightage/marks towards experience and for the period when she had been

on extra-ordinary leave while serving with the Forensic Science Laboratory, Madhuban. The argument and submission as regards the respondent-Commission being biased against the petitioner and she having been deliberately under-assessed, is wholly misconceived and has gone unsubstantiated. To the contrary, this Court finds that against the 60 marks assigned for interview, the petitioner has been awarded 42 marks and respondent No.4 i.e. the selected and appointed candidate, was awarded 39 marks.

13. The second issue raised by the petitioner is with regard to the eligibility of respondent No.4 and by stating that her experience for the period 22.4.1995 to 28.4.1999 with M/s Venus Remedies Limited is non-existent. In such regard, petitioner is seeking to raise disputed questions of fact and which cannot be gone into by this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India. Such question would not detain this Court for long as, concededly, the Director, Forensic Science Laboratory, Madhuban (Karnal) had issued the letter dated 26.6.2013 and addressed to the Manager (Pers & Admn.), Venus Remedies Limited, Panchkula, appended as Annexure R1 (colly) along with the written statement filed on behalf of respondent No.1 and on the subject of verification of the experience certificate issued in favour of respondent No.4, namely, Anita Rani. The verification was sought pertaining to experience certificate issued by Venus Remedies bearing Reference No.VRL/PERS/2003/604 dated 31.12.2003 and which was in the following terms:

" To Whom So Ever It May Concern

This is to certify that Mrs.Anita Kadian w/o Sh.Ajay Kadian r/o H.No.506, Sector 6, Panchkula (Haryana) was working with us from 27/04/1995 to 28/04/1999 as Analytical Chemist in Quality Assurance Deptt. She was working with great responsibility and enthusiasm and put on sincere efforts to learn maximum in the stipulated time. She was hard working, sincere and obedient performer. Her character and behaviour towards organization was excellent.

For VENUS REMEDIES LIMITED

*Sd/- Seal
D.P.ARYA
MANAGER (PERS & ADMN.)"*

14. In response thereto, the Chief Manager, Corporate Regulatory Affairs, Venus Remedies Limited has issued letter dated 8.7.2013 and addressed to the Director, Forensic Science Laboratory, Madhuban and appended as Annexure R1 (Colly) along with the reply filed on behalf of respondent No.1 duly verifying that the experience certificate dated 31.12.2003 and in favour of respondent No.4 has been issued by the Company. Suffice it to notice that the certificate dated 31.12.2003 and in favour of respondent No.4 was for the period 27.4.1995 to 28.4.1999 and of having worked as Analytical Chemist in the Quality Assurance Department.

15. The experience certificate dated 31.12.2003 issued by Venus Remedies Limited in favour of respondent No.4 as also the communication dated 8.7.2013 issued by the Company and duly

verifying the issuance of such experience certificate is not a subject matter of challenge in the instant petition. Under such circumstances, there would be no occasion for this Court to take a different view and to record a finding as regards respondent No.4 lacking in the requisite experience and as such, to be ineligible to hold the post of Assistant Director (Biology).

16. There is yet another aspect that has weighed with this Court to decline interference in the matter. Respondent No.4 was selected to the post of Assistant Director (Biology) and issued appointment letter dated 4.6.2010. The instant petition has been filed in the year 2013. Even though the delay in filing the instant petition is sought to be explained on the ground that relevant information had been sought under the Right to Information Act, yet there has been a delay of 3 years in having approached this Court. Challenge in the instant petition is not only against the selection and appointment of respondent No.4 to the post of Assistant Director (Biology) but a writ of quo-warranto is also sought to hold respondent No.4 to be a usurper on the post of Senior Scientific Officer (Scene of Crime), Forensic Science Laboratory, Madhuban. Such appointment relates back to the year 2004. Even for a writ of quo-warranto, it was imperative for the petitioner to have approached this Court within a reasonable time. Petitioner is clearly guilty of laches and delay. This would also be a relevant ground to reject the challenge raised by the petitioner to the appointment of respondent No.4 to the post of Senior Scientific Officer (Scene of Crime) as also on the post of Assistant Director (Biology) in the Forensic Science Laboratory,

Karnal.

17. For the reasons recorded above, this Court does not find any basis that would warrant interference in the matter.

18. Petition is dismissed.

OCTOBER 05, 2016
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether speaking/reasoned? Yes/No

Whether referred to Reporter? Yes/No