

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 15950 of 2010
Reserved on: May 10, 2017

Date of Decision: May 17, 2017

Poonam

... Petitioner

Versus

Chaudhary Charan Singh Haryana Agricultural University & Others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Ms. Alka Chatrath, Advocate,
for the petitioner.

Mr. P.K. Mutneja, Advocate,
for respondents no.1 and 4 to 11.

Mr. Gunjan Mehta, Advocate,
for respondent No.2.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has assailed selection of the 2nd respondent to the post of Assistant Professor, Human Development and Family Studies (for short hereinafter referred as "HDFS") dated 29.06.2010 (Annexure P/8) and her consequential appointment. Further sought for directions to the respondent No.1 – University to appoint petitioner on the post of Assistant Professor (HDFS) in the first respondent – University.

2. First respondent – University issued advertisement No. 02/2009 on 17.08.2009 inviting applications from the eligible candidates

for various posts including Assistant Professor (HDFS). Only one post is earmarked for the aforesaid discipline. The following qualifications prescribed for the post of Assistant Professor (HDFS):-

“Assistant Professor (HDFS)

Master’s degree in Child Development/Human Development and Family Studies / Human Development / Human Development & Family Relations.

Besides fulfilling the above qualifications, candidates should have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC.

Note-1:

NET shall remain the compulsory requirement for appointment as Asstt. Prof. / equivalents, even for candidates having Ph.D. degree. However, the candidates who have completed M. Phil degree by 31st December, 1993 or have submitted Ph.D. thesis to the University in the concerned subject on or before 31st December, 2002 are exempted from appearing the NET examination. In case such candidates fail to obtain Ph.D. degree, they shall have to pass the NET examination.

Note-2:

The candidates, who have appeared in the NET before the last date for submission of applications, are eligible to apply and they will be allowed to appear in the interview only if they produce a certificate of having qualified the NET on the date of interview.”

Amongst others, petitioner and respondents no.2 and 3 were candidates for the recruitment to the post of Assistant Professor (HDFS). The interviewing committee awarded marks on various heads. Extract of marks-sheet proforma for Assistant Professor (HDFS) held on 29.06.2010 reads as under:-

Total Marks: 100

“Marks-sheet proforma for Assistant Professor / Equivalents
Assessment of merit of candidate for the post of Assistant Professor (HDFS)
Selection Committee meeting held on 29.06.2010

Important marks under all sub heads are required to be given strictly as per enclosed criteria

Sr. No.	Name of the candidate	Qualifications Acad. Addl.		Experience	Academic Awards	Publications in relevant field	Quality of Publications	Performance and expression in interview	Total	Grading of Candidates	Conduct/record / Performance / Image during stay / service in HAU
	(Marks)	(45)	(5)	(10)	(15)	(5)	(5)	(15)	(100)		
1	2	3		4	5	6	7	8	9	10	11
1.	Poonam	43.88	2	6	4	5	2	6	68.88		
2.	Sapna Lal	20.00	1	-	-	-	-	5	26.00		
3.	Meenakshi Singh	39.50	-	10	-	5	4	12	70.50	2 nd	
4.	Anju Aneja	39.01	-	10	-	5	3	6	63.01		
5.	Sunita	30.00	1	9	-	-	-	5	45.00		
6.	Santosh Sangwan	35.75	2	10	-	5	5	14	71.75	1 st	
7.	Poonam	29.26	1	10	-	1	1	5	47.26		
8.	Manju Chaudhary	35.63	1	10	-	5	3	7	61.63		
9.	Krishna Chaudhary	26.25	-	10	-	1	1	6	44.25		
10.	Anoopama Yadav	30.00	1	-	-	-	-	6	37.00		
11	Navita Abrol	39.01	2	-	-	5	3	7	56.01		

3. Petitioner feeling aggrieved by the award of marks assigned to her in respect of experience, publications in relevant field and quality of publications for which she has been awarded 6, 5 and 2 marks respectively. According to her, she is entitled more than the marks what has been awarded having regard to the educational records. It was submitted that 2nd respondent who has been selected and grading among the candidates assigned as 1st is disputed with reference to the award of marks of 10 for experience and 5 marks for quality of publications so also award of 14 out of 15 marks in respect of performance and expression in interview is questioned.

4. Learned counsel for the petitioner contended that 2nd respondent is over age as on the last date for submission of application, she does not possess Ph.D. certificate in the concerned subject, whereas 3rd respondent had the similar Ph.D qualification to that of 2nd respondent, whereas 1st respondent – University have rejected 3rd respondent's claim on the score that 3rd respondent does not possess the Ph.D. qualification in the concerned subject. It was further contended that 2nd respondent has not complied the following clause which reads as under:-

“Note: A candidate will be liable for rejection if his work and conduct in the past is not found to be satisfactory. For this purpose, the candidate would have to attach a character certificate from the institution last attended and/or from his last employer.”

2nd respondent has not produced character certificate as one of the requirement for the purpose of selection and appointment to the post of Assistant Professor (HDFS). Petitioner relied on the documents at pages 92 and 129 of the writ petition. Annexure R1 at page 129 of the writ

petition date of document is 28.06.2010 and date of interview was 29.06.2010. In other words, at the time of interview, experience certificate has been issued. Such certificate should have been prior to last date for submission of application, namely, 15.09.2009, therefore, acceptance of Annexure R1 dated 28.06.2010 by the University and selecting 2nd respondent to the post of Assistant Professor (HDFS) is for extraneous consideration.

5. It was further submitted that petitioner is entitled for more marks in the head of “Academic Awards”, instead of 4 marks she is entitled for 16 marks. Therefore, selection of 2nd respondent is liable to be set aside.

6. Learned counsel for the petitioner further contended that 2nd respondent has been awarded interview marks arbitrarily to the extent of 14 out of 15 marks, whereas, petitioner has been awarded 6 marks out of 15 even though the academic qualification and experience is better than the 2nd respondent. 2nd respondent is not entitled for 10 marks of experience for the reasons that certain experience certificate has been taken into consideration after the last date, therefore, there is arbitrariness in awarding marks among the petitioner and respondents no.2 and 3.

7. Per contra, learned counsel for 1st respondent – University submitted that petitioner’s contention that 2nd respondent is over age cannot be accepted for the reasons that no age criteria has been prescribed for the post of Assistant Professor (HDFS). Ph.D qualification has not been prescribed that must have in the concerned subject. 3rd respondent’s Ph.D qualification has not been rejected as her candidature has been

considered and she stood second in the selection process. Therefore, petitioner's contention that third respondent's candidature has been rejected on the score that she does not possess Ph.D. degree in the concerned subject, cannot be accepted. Insofar as character certificate is concerned, 2nd respondent was already working in the respondent-University as Research Associate, even though page 92 document of the writ petition do not title as a character contents are suffice to hold that 2nd respondent's character certificate. Annexure R1 also do not title as a character but the contents is sufficient to hold that 2nd respondent has complied the aforesaid note relating to attachment of character certificate. Regarding entitlement of more marks in the academic award to the petitioner is concerned, it is to be noted that award of 4 marks would be given to particular degree and award certificate. Petitioner possessed under graduate award certificate since the criteria for award of academic award stipulates graduate certificate – award is entitled for 4 marks, accordingly petitioner has been awarded 4 marks and she is not entitled for 16 marks for 4 awards. Petitioner has been awarded 6 marks in the interview, whereas 2nd respondent has been awarded 14 marks, therefore, there is arbitrariness in awarding interview marks contention cannot be accepted. It all depends on her performance before the interviewer (committee). This Court cannot re-assess the marks awarded by the Interviewer. Thus, petitioner has not made out a case so as to interfere with the selection and appointment of 2nd respondent.

8. Learned counsel for 2nd respondent vehemently contended that having regard to the educational qualification records and experience

certificate of the 2nd respondent, the selecting authority has appropriately awarded marks for various heads which is in accordance with law. Petitioner having participated in the process of selection and after surrendering her rights to the selection, she cannot turn around and question the award of marks for various heads. In support of this, learned counsel for 2nd respondent relied on two decisions, namely, **(1995) 3 SCC 486 – Madan Lal and others vs. State of Jammu & Kashmir** and **(2007) 8 SCC 644 – Trivedi Himanshu Ghanshyambhai vs. Ahmedabad Municipal Corporation and Others**. The principle laid down in the aforesaid decisions is that writ court cannot sit as a Court of appeal for the purpose of re-assessing the relative merits of concerned candidates and it was not open to the unsuccessful candidate to challenge the selected candidates.

8. Heard learned counsel for the parties.

9. Petitioner has questioned validity of the 2nd respondent's selection and appointment to the post of Assistant Professor (HDFS) on the ground that 2nd respondent has been awarded 10 marks for experience, whereas experience qualification acquired by her was a subsequent to the last date for submission of application. Said contention is accepted having regard to the date of experience certificate. It was contended that 2nd respondent is over-age as on the last date for submission of applications. Said contention is not tenable in view of non-prescription of age criteria for the post in question. The 2nd respondent does not possess Ph.D certificate in the concerned subject, whereas the 3rd respondent who possessed the same Ph.D certificate, has been turned down by the

selecting authority, therefore, in considering the 2nd respondent's Ph.D certificate is incorrect. While prescribing qualification for the post, nowhere it is stated that one must have Ph.D. qualification in the concerned subject. Therefore, contention of the petitioner is hereby rejected. The 2nd respondent has not complied the instructions given to the candidates vide Note which reads as under:-

“Note: A candidate will be liable for rejection if his work and conduct in the past is not found to be satisfactory. For this purpose, the candidate would have to attach a character certificate from the institution last attended and/or from his last employer.”

Pursuant to the above Note, the 2nd respondent has not produced character certificate from the institution last attended and/or from his/her last employer which is evident from the certificate placed on record which is not a character certificate, it is only an information that the 2nd respondent has worked in an institution. Insofar as the other document, namely, Annexure R/1 dated 28.06.2010 is concerned, even though it is also not a character certificate, that apart it was dated 28.06.2010 i.e. subsequent to the last date for submission of application i.e. 15.09.2009, therefore, selecting authority in entertaining the document produced by the 2nd respondent as character certificate is not correct and fair. When an authority specifically instructed the candidates for complying certain things which should be done in the same manner, there cannot be any deviation. Moreover, perusal of the document produced by the 2nd respondent, as well as, Annexure R/1, it does not speak of character of the 2nd respondent, therefore, selection of the 2nd respondent in non-compliance of Note cited supra, her selection is liable to be set aside.

10. Learned counsel for the petitioner submitted that petitioner is entitled for additional marks for the academic awards. Perusal of the record, it is evident that petitioner possesses academic award at the degree/graduate level only one and she relying on under graduate level award and also contended that she stood first in the post graduation etc. The same cannot be accepted for the reasons that academic award is with reference to graduate level, therefore, rightly the selecting authority has awarded 4 marks to the petitioner. Therefore, the above contention of the petitioner is hereby rejected. It was further contended that petitioner is more qualified than the 2nd and 3rd respondents as she has secured qualifications academic and additional marks to the extent of 43.88, whereas the 2nd respondent 35.75 and the 3rd respondent 39.50, therefore, awarding of 6 marks in the interview to the petitioner and so also awarding 14 and 12 marks respectively to the 2nd and 3rd respondents for 15 marks are highly arbitrary and illegal. It was further contended that for the following qualifications, fixed marks have been assigned while introducing criteria for award of marks, namely, qualifications academic + additional, experience, academic awards, publications in relevant field and quality of publications. For these heads, straightway candidates would get particular marks, whereas performance and expression in interview, it is the discretion of the interviewer committee. Before the interviewer committee, selecting authority should not have made available marks awarded to the aforesaid heads. In providing marks awarded for the aforesaid heads the interviewer committee has led to arbitrary in awarding marks as is evident from the interview marks awarded to 11 candidates

except 2nd and 3rd respondents, rest of them have been awarded below 8 marks, whereas the 2nd and 3rd respondents have been awarded 14 and 12 marks respectively for 15 marks which has led to arbitrariness in awarding marks. Therefore, on this count also, the 2nd respondent's selection and appointment to the post of Assistant Professor (HDFS) is liable to be set aside.

11. Learned counsel for selecting authority submitted that selection and appointment of the 2nd respondent is in accordance with the procedure and she is more merited than petitioner, therefore, petitioner has not made out a case to interfere. It was further submitted that expert committee was constituted for the purpose of awarding marks, therefore, there is no infirmity whatsoever. Said contention is not tenable in view of fact that the 2nd respondent has been awarded marks for experience certificate, such experience certificate is subsequent to the last date for submission of applications and further 2nd respondent has not produced character certificate as per the instructions given to the candidates. Therefore, there is serious lacuna in the selection and appointment of the 2nd respondent.

12. Learned counsel for 2nd respondent submitted that this Court cannot re-assess the marks awarded by the selection committee. In support of this contention, learned counsel for 2nd respondent relied on decisions, namely, *(1995) 3 SCC 486 – Madan Lal and others vs. State of Jammu & Kashmir* and *(2007)8 SCC 644 – Trivedi Himanshu Ghanshyambhai vs. Ahmedabad Municipal Corporation and Others*. No doubt, it is true that Court cannot re-appreciate or re-assess the marks

awarded to the candidates in the selection process. At the same time, it is to be noted in the present case that the 2nd respondent has been favoured despite the experience certificate is subsequent to the last date for submission of applications and in the absence of character certificate of the 2nd respondent relied on irrelevant document, which is not a character certificate. Further, interview committee members are biased in awarding marks for the reasons that they have been provided marks secured in respect of qualifications academic + additional, experience, academic awards, publications in relevant field and quality of publications, whereby the interview committee members were aware that who should be given what marks so also to eliminate, therefore, this Court is not re-assessing the marks awarded by the selection committee, on the other hand, arbitrariness in award of marks to the candidates is noticed from the statement of marks which were provided to the interview committee. Further award of marks for experience certificate which were issued subsequent to last date of submission of application. Hence, the 2nd respondent contention is hereby rejected.

13. In view of the above facts and circumstances, selection and appointment of the 2nd respondent to the post of Assistant Professor (HDFS) is set aside and selecting authority is hereby directed to re-do the interview process and further directed that interview committee shall not have the benefit of looking into the marks awarded to each of the candidate in respect of qualifications academic + additional, experience, academic awards, publications in relevant field and quality of publications so that interview committee members would not be influenced by any

marks for the aforesaid heads in order to avoid arbitrariness in award of marks for the performance and expression in interview. The above exercise shall be completed within a period of two months from receipt of copy of this order.

14. Accordingly, instant writ petition stands allowed.

May 17, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes