

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16113 of 2010 (O & M)

Date of decision: 13.07.2017

Aruna Kumari

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. J.K. Goel, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Anil Malik, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 18120-CWP of 2013

Application for placing on record Annexures R4/3 to R4/5 is
allowed, subject to all just exceptions.

The same are taken on record.

CWP No. 16113 of 2010

The writ petitioner challenges the appointment of respondent no. 4-Suresh Yadav as a District Public Relations Officer vide letter dated 29.07.2009 (Annexure P-12) on the ground that the said respondent had, on an earlier occasion, applied for the said post against Advertisement No. 7 of 2006 and the experience certificate was found to be bogus and, therefore, was not given appointment. Resultantly, a writ in the nature of certiorari is being sought for quashing of the said appointment.

It is not disputed that vide advertisement no. 7 dated

07.09.2008 (Annexure P-2), two posts were advertised of District Public Relations Officer by the Respondent-Commission. The private respondent belongs to the backward class category and had applied for the second time and as per the advertisement, the essential qualifications were two years' media experience in a National Daily Newspaper or Television Channel or Publicity Organization of Government of Public Undertaking or University. The requisite qualifications read thus:-

“E.O Master's degree in Mass Communication or Journalism from a recognized University and two years media experience in a National Daily News Paper or Television Channel or publicity Organization of Government of Public Undertaking or University.”

It is the case of the petitioner that various representations were filed on the account of the appointment given to the private respondent that he did not have the necessary experience certificate and, therefore, the matter should be investigated specially in view of the fact that on an earlier occasion, the certificates furnished by him were not found to be genuine. A legal notice dated 31.08.2009 (Annexure P-5) was also served upon the respondents to that effect which was followed up by another legal notice dated 09.11.2009 (Annexure P-10) and also for intimating the Commission not to destroy the original record. Resultantly, this Court was approached for setting aside the said appointment.

The official respondents no. 1 and 2, in their reply, had justified the appointment on the ground that there were experience certificates from 15.01.2004 to 15.02.2005 and from 23.08.2005 to 02.04.2006 (Annexures R4/1 and R4/2. The said certificates had been duly verified by the Deputy

Director (Administration) and found correct. The present respondent had accordingly been appointed on the basis of the experience. It was, however, also admitted that on an earlier occasion, the certificate had been found to be bogus for the period from 01.01.2001 to 31.12.2003 and respondent no. 3 had been requested on 15.06.2007 (Annexure P-1) to take appropriate action at own level against the private respondent and no appointment letter had been issued to the said respondent on the basis of his selection qua Advertisement No. 7 of 2006.

The reply of respondent No.3-Staff Selection Commission is that the posts had been advertised and respondent no.4 had been selected in the BC category but while making recommendation, it was made clear that the antecedents and the documents of the selected candidates had to be checked before allowing them to join duties. Respondent No.1 was required to issue the appointment letter after meeting the requirements indicated in the recommendation letter of the Commission. It was, accordingly, submitted that the petitioner had also applied for the said posts and she had only secured 30.40 marks against 43.28 marks of respondent no.4 and could not make the grade in the selection list due to the lesser marks. The name of the next candidate was not to be forwarded as there was no provision of waiting-list in respect of Group-B posts and the said posts were required to be advertised on receipt of requisition. There were 9 more unselected candidates who had got more marks than that of the petitioner and therefore, no cause of action subsisted.

The private respondent, on the other hand, questioned the locus standi as such of the petitioner that she had not shown to the Court that she had applied for the interview and, therefore, she could not challenge the

selection as she was not aggrieved on any account. The educational qualification as such were also vouched for in the same terms and reliance was placed upon Annexures R4/1 and R4/2 to aver that the said respondent had worked from 15.01.2004 to 15.02.2005 with Hari Bhoomi, Rohtak which is stated to be a National Daily Newspaper. Reference was made to the said Annexures to show that it was also published at Bilaspur, Raipur and Delhi apart from having an office at Rohtak. Reliance was also placed upon the certificate issued by the Public Relations and Cultural Affairs Department, Haryana to show that the said respondent was engaged in job work basis on a consolidated wages of ₹10,990/- per month and working as Information Officer in Guru Jambheshwar University, Hisar. The details of the period for which he worked read thus:-

- “i) 23.8.2005 to 31.8.2005*
- ii) 13.9.2005 to 30.9.2005*
- iii) 2.10.2005 to 31.12.2005*
- iv) 2.1.2006 to 31.3.2006 & 2.4.2006 to till date.”*

Another experience certificate issued by the Administrative Officer, Public Relations and Cultural Affairs Department, Haryana for the period thereafter from 02.04.2006 to 24.01.2007 and 09.02.2007 to 28.02.2007 has also been placed on record as Annexure R4/3 by filing C.M. No. 18120-CWP of 2013. The said certificate dated 11.04.2008 reads as under:-

- “i) 23-8-2005 to 31-8-2005*
- ii) 13-9-2005 to 30-9-2005*
- iii) 2-10-2005 to 31-12-2005*
- iv) 2-1-2006 to 31-3-2006*
- v) 2-4-006 to 24-1-2007*
- vi) 9-2-2007 to 28-2-2007”*

A combined reading of the certificates, thus, would go on to show that the respondent does not have the requisite two years' experience with the National Daily Newspaper as his experience is only from 15.01.2004 to 15.02.2005.

Similarly, if the benefit of the two years experience is to be taken with the Public Organization of the Government of Public Undertaking, the respondent also does not fulfill that criteria since admittedly, his service was only from 23.08.2005 till 28.02.2007. The cut off date was 06.10.2008 and, therefore, the requisite period of two years experience with Public Relations and Cultural Affairs Department was also not there for the said period. The conduct of the said respondent is not above board. On an earlier occasion, he has admittedly been found to have got a bogus certificate issued, by virtue of which, he was not appointed on an earlier selection. The report dated 12.04.2007 (Annexure R-1) received from his alleged earlier employee reads as under:-

*“Shri Rajiv Khosla
Joint Director (Production)
Public Relations & Culture Affairs Department,
Haryana
Design Centre Building,
Sector 10-C, Chandigarh.*

Sub. :- Verification of experience certificate

Dear Sir,

This is in reference to your letter No.7788 dated 3rd April, 2007, regarding tenure of Mr. Suresh Yadav S/o Shri Mewa Singh at The Pioneer. According to our record Mr. Yadav was never on our pay rolls and hence issuance of Experience Certificate is not possible. The certificate, which he possesses has not been issued by

us.

This is for your information and records.

Yours faithfully,

Om Parkash Gupta

Manager-Human Resources”

For reasons best known to him in spite of the recommendation, no criminal proceedings were lodged against him for furnishing false certificate. If that had been done, his entitlement for the post of District Public Relations Officer on a subsequent occasion would not have been tenable on account of the criminal proceedings itself. Due to inaction of the respondents on that account, he has been successful in securing Government appointment and his essential qualifications were never properly verified by respondent no. 2.

Keeping in view the stance taken by the respondent-Commission and the fact that the petitioner is not the next candidate in the order of merit, the claim for appointment of the petitioner, as such, cannot be allowed as there were more meritorious candidates than the petitioner and therefore, her claim of appointment cannot be accepted and the same is, accordingly, denied.

The stand of respondent No.4 is that the petitioner has no such *locus standi* to challenge his selection, is also without any basis, as the petitioner was also a candidate in the said selection process and therefore, was entitled to raise the issue. The Apex Court has time and again held that a person who does not have the requisite qualifications mentioned in the advertisement, his appointment cannot be continued and a person with inferior qualifications cannot be appointed until it is stated that the

qualifications are relaxable and the Court cannot be party to such fraudulent applicants. Reference can, accordingly, be made to the judgment of the Apex Court in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram Vs. M.Tripura Sundari Devi 1990 (3) SCC 655**. The said view was followed in **Union of India Vs. M.Bhaskaran 1995 (Supp.4) SCR 526**. Reference can also be made to the observations of the Apex Court in **Nidhi Kaim & another Vs. State of M.P. & others (2017) 4 SCC 1**, which pertains to admissions taken in the MBBS course by fraudulent manner. It was, accordingly, held that if the benefits had been taken by resorting to trickery and fraud, it could not be sustained and resultantly, the cancellation of admissions were held to be justified, to do complete justice in the matter, by holding that it could not be overlooked.

It would be clear from the stance of the said respondents that they have admitted that on an earlier occasion, effort was made to seek employment on the basis of a bogus certificate and accordingly, the appointment was not granted. The subsequent experience certificates, which have now been relied upon, have also been not explained as to whether they are in consonance with the terms of the advertisement which provides for the 2 years' experience in either a National Daily Newspaper or a publicity organization of the public undertaking. It has not been justified that whether these 2 experiences could be clubbed together to get the requisite experience and whether there was any such exercise done, since admittedly, the said respondent does not have the said 2 years' experience separately in either of the 2 organizations, firstly, with 'Hari Bhumi' from 15.06.2004 to 15.02.2005 and secondly, as Information Officer with the Guru Jambheshwar University, Hisar. It was the duty of both respondents

no.1 & 2 and the Commission to entirely examine the eligibility criteria and then only to issue recommendation for appointment, which has wrongly been done in the present case. It is settled principle that a person who suppresses material information and gives false information, cannot be given the right of continuity of service and once the foundation of the appointment of respondent no.4 collapses, there was no justification to consider and issue a recommendation in his favour as he cannot be allowed to take the benefit of the said certificates.

In such circumstances, this Court is of the opinion that the appointment letter as such which has been issued is not *per se* in terms of the advertisement. The State has unfortunately tried to cover up its lapses for reasons best known to itself to adjust the respondent in spite of his dubious past and ineligibility even now.

Accordingly, the writ petition is well founded and is allowed and the appointment offered to respondent no.4 vide letter dated 29.07.2009 (Annexure P-12) is quashed by issuing a writ of certiorari.

13.07.2017
shivani/sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No