

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10250 of 2015

Date of Decision: 16.08.2017

Devinder Kumar

.....Petitioner

vs.

Director Medical Education and Research, Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Anurag Goyal, Advocate,
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Hiten Nehra, Advocate,
for respondent no. 4.

AMOL RATTAN SINGH, J.

By this petition, the petitioner has challenged the selection and appointment of respondent no. 4, Parmila, to the post of a Psychiatric Social Worker in the Bhagat Phool Singh Govt. Medical College for Women, Khanpur Kalan, Sonipat (respondent no. 2).

2. The petitioner and the said respondent along with other candidates applied for the post in response to advertisement No. 12/2013, issued in the month of January 2014, on the website of the official respondents. The essential eligibility requirements for the said post, as advertised at that time, were as follows:-

“(i) *M. Phil in Sociology; or Social Worker or Postgraduate diploma in Psychiatric Social Work;*

Or

(ii) *M.A. in Sociology or Social work;*

(iii) *Hindi/Sanskrit upto Matric standard”.*

Consequently vide a corrigendum issued, again on the website, the following addition was added in the eligibility conditions:-

“One year experience in Social Work or Research”.

3. The petitioner is stated to be a postgraduate in Sociology with M.Phil and Ph.D. Degrees also obtained in the said subject.

In response to his application, stated to have been made through proper channel, the petitioner being already employed as a Psychiatric Social Worker in the District Municipal Health Programme, General Hospital, Gurgaon, he was invited to appear for an interview on 03.07.2017, at the aforesaid college.

4. Two candidates were shown to be selected upon the result being declared, i.e. one Jogender Singh and respondent no. 4, Parmila, with the result published in the first week of August 2014.

5. The petitioner having made an application under the Right to Information Act, 2005, seeking therein the list of eligible candidates who had appeared for interview, along with their particulars, eventually, with the information not supplied completely to him even after a second appeal made under the RTI Act, he filed a second application, in response to which he was provided the criteria followed by the Selection Committee in the selection process.

Upon having received the aforesaid information, the present petition came to be instituted on 15.05.2015, contending therein that with M.A. in Sociology being the basic qualification, and an M.Phil degree being an alternative qualification, both the degrees had been virtually brought down to the same level by the respondents, in the selection process.

Further it is contended that marks were allotted as per the criteria under different heads, to determine the merit of the candidates:-

Sr. No.	Name of the candidate along with Fathers' Name	Addresses	Basic Qualification marks (25% of marks obtained)	Higher Qualifi. = 3 marks	Additional Qualifi. = 3 marks	Experience = 5 marks (1/2 marks per year)	Extra curricular activities	Written test marks (15% of percentage obtained in the written test)	Interview Marks=15	Grand Total=75 marks
1	2	3	4	5	6	7	8	9	10	11
Marks allotted			25	10	3	5	2	15	15	75

The criteria adopted by the Selection Committee was further clarified by giving examples as follows:-

“1. Example:

“Each higher qualification above the basic qualification in the same field will be awarded 5 marks each and maximum upto 10 marks for higher qualification. Ph.D. Candidate will be awarded maximum 10 marks. (The order of categories of qualification is secondary (Matric), senior secondary (10+2), graduation, Post Graduation, M.Phil and Ph.D.).

Note: The Higher qualification will be considered in the same field only.

2. Experience: 1/2 mark per year of experience and maximum upto 5 marks.

Note: Experience should have been obtained after acquiring the minimum educational qualification and not prior to that stage.

3. Additional Qualification in any field: 2 marks.

Note: Additional qualification in the related field as decided by the committee at time of interview (for diploma level=1 marks, Graduation Level=2 marks and above=3 marks).

4. Extra Curricular activities: (2 marks).

Participation/Position certificate in National Level/State Level/Sports or Blood Donation Certificate-at least four times or Participation in NCC/NSS Camps etc.

Written Test: 15 marks (15% of the marks obtained in the written test).

5. *Interview: 15 marks*

Note: The posts in which the number of applicants is less than 100, then no written test will be held in that case the interview will be of 25 marks.

Note: No. of the candidates called for interview will be five times the number of the posts advertised in the order of merit of written test.”

6. Mr. Anurag Goyal, learned counsel for the petitioner, drew attention to the fact that as per the first example, the petitioner, who possessed the Ph.D. Degree, was to be awarded 10 marks for higher qualification but has been actually awarded only 05.

He further contended that respondent no. 4, firstly, had obtained a postgraduate degree in sociology from the CMJ University, Meghalaya, in respect of which the MDU University, Rohtak, had taken a decision that in recruitment processes candidates who had obtained degrees/diplomas from the said University are not to be called for interviews and further, even those who had secured jobs on the basis of degrees awarded by the said University, their cases be reviewed on receipt of a decision from the University Grants Commission.

In the petition, in fact, it is further stated that even the Director Higher Education, Haryana, had issued a letter on 04.10.2013, directing that those who are from the CMJ University, Silong, are not be considered eligible for selection and appointment.

7. Other than the issue of the degree of respondent no. 4 from the

CMJ University, learned counsel pointed to the fact that respondent no. 4, as per the reply filed by the respondents, had obtained a total of 41.37 marks out of 70, with the petitioner shown to have obtained 40.93 marks.

He contended that if the petitioner had been awarded 10 marks as he was required to be awarded, for his higher qualification of Ph.D., he would have obtained 45.93 marks, thereby making him the second candidate in the merit list in place of respondent no. 4.

He further submitted that this was due to the fact that though Jogender Singh, i.e. the candidate at serial no. 1, has been awarded 45.62 marks, he possessed a Ph.D. degree and therefore, he would also have to be awarded 05 marks more for the said qualification, thereby making him his total of marks to 50.62.

However, respondent no. 4 not having any higher qualification, would continue to remain with 41.37 marks, though even the 02 extra marks awarded to her for extra curricular activities, as per learned counsel for the petitioner, are not in consonance with Clause 4 of the explanation given beneath the 'criteria chart'.

As regards that aspect, Mr. Goyal contended that 02 marks were to be granted only if a candidate had participated or obtained a position in sports at the National level or inter-State level, or had donated blood at least four times or had participated in NCC/NSS camps etc.

Hence, as per Mr. Goyal, respondent no. 4 actually deserves only 39.37 marks out of 70.

8. In response to the aforesaid arguments, Mr. Hitesh Pandit, learned Additional Advocate General, Haryana, has pointed to the fact that even as per the reply filed by the official respondents, the petitioner has not

been discriminated against, inasmuch as, even the candidate placed at the first position, i.e. Jogender Singh, had been awarded only 05 marks for Ph.D. and consequently, the petitioners' contention that 10 marks were to be awarded to him (petitioner), is wholly incorrect.

Hence, as per learned State counsel, the selection of respondent no. 4 is completely as per her merit.

Mr. Hiten Nehra, learned counsel appearing for respondent no. 4, other than reiterating the stand of the State as contended hereinabove, refuted the contention of Mr. Goyal, by submitting that Clause 1 below the criteria chart simply states that the maximum marks to be awarded for higher qualification to a candidate with a Ph.D. degree would be 10, which does not mean that a minimum of 10 marks must be awarded to all candidates possessing the said degree.

Mr. Nehra tried to justified his argument by pointing to the fact that “the order of marks of qualification”, as given in the example below the criteria chart, starts from a Secondary level qualification, with the next higher qualification being Senior Secondary and thereafter, graduation, post graduation, M.Phil and Ph.D. Hence, as per Mr. Nehra, the maximum of 10 marks as given in the example, is in view of the fact that six levels of educational qualifications have been given, and therefore if the basic qualification for any of the other posts advertised (along with the post in question), was a secondary level education, and a candidate for that other post had a Ph.D. degree, he would at the most be granted 10 marks, even with five higher qualifications than the basic qualification of Secondary education.

9. In rebuttal to the aforesaid arguments, Mr. Goyal, learned counsel for the petitioner, reiterated the fact that the official respondents have treated

the basic qualification (M.A.) for the post in question, i.e. Psychiatric Social Worker, on par with the next qualification of M.Phil, and thereafter have awarded the petitioner only 05 marks for a Ph.D. degree, completely ignoring that he also has an M.Phil degree after his post graduation (M.A. in Sociology), whereas respondent no.4 is only a post graduate without an M.Phil degree.

10. Having considered the aforesaid arguments, in the opinion of this Court, this petition deserves to be allowed, because it is very obvious that the Selection Committee treated M.A. and M.Phil degrees on par with each other, simply because the basic qualification required is shown to be M.Phil in Sociology or M.A. in Sociology. Admittedly, respondent no. 4 does not possess an M.Phil degree and is only a Master of Arts in Sociology (if her degree from the CMJ University, Meghalaya, is at all recognized by the University Grants Commission). Hence, had both, the petitioner and respondent no. 4, possessed M.Phil degrees and the petitioner had then been awarded only 05 marks for a higher qualification, i.e. for possessing a Ph.D. degree as was the other selected candidate (Jogender Singh), the petitioner possibly may not have had any grievance qua lesser marks awarded to him for his Ph.D. degree. The petitioner having both, an M.Phil and a Ph.D. degree to his credit after his post graduation (M.A.), he was necessarily to be awarded 05 marks for each of those two degrees, both those qualifications being more than the qualification possessed by respondent no. 4, with the basic eligibility qualification to be treated as an M.A. degree.

It is wholly arbitrary on the part of the official respondents to have made the basic qualification for the post to be “either an M.A. or an M. Phil degree, thus thereby treating a higher degree equal to a lower degree.

Thus, if the essential qualification for the post is an M.Phil degree, obviously respondent no.4 is not even eligible to be considered for the post. If, on the other hand, the respondents have accepted the M.A. degree to be the basic qualification, thereby enabling respondent no.4 and other post graduate degree holders (M.A. degree holders), to be eligible to apply for the post, then an M.Phil degree necessarily has to be treated as a higher qualification, for which 5 marks were to be awarded to the petitioner and another 5 marks for his Ph. D. degree.

Further, simply because Jogender Singh has also been awarded only 05 marks for Ph.D. would be no reason to completely ignore the M.Phil degree possessed by the petitioner, which degree (to repeat) is not possessed by respondent no. 4. In fact it has not been pointed out by counsel for any of the parties as to whether Jogender Singh also obtained an M.Phil degree prior to his having obtained a Ph.D. degree, or whether he obtained the Doctorate immediately after post graduation without having obtained an M.Phil degree. In the latter case obviously he could only have been awarded 05 marks for the Ph.D. degree, but the petitioner having two degrees more than respondent no. 4, in the opinion of this Court, simply because the basic qualification was given out as M.A. or M.Phil, treating two unequal degrees as equal, the petitioner could not have been put on par with respondent no. 4, whose simple qualification is a post graduate degree with neither an added M.Phil or a Ph.D. degree for her to receive any extra marks.

11. Thus, without looking into the issue of whether the postgraduate degree obtained by respondent no. 4, from the CMJ University, Meghalaya, is a recognized degree or not, in view of the fact that the petitioner on merit alone would score over respondent no. 4, this petition is allowed and

respondents no. 1 to 3 are directed to appoint the petitioner to the post of a Psychiatric Social Worker pursuant to advertisement no. 12/2013 having been issued, in place of respondent no. 4, who shall now rank at serial no. 3 in the merit list, the first selected candidate, Jogender Singh, not having been impleaded as a respondent, and it not being known as to whether he possesses a degree of M.Phil or not.

12. Even having held so, it needs to be observed that as regards Mr. Goyals' contention that respondent no. 4 could not have been awarded 02 marks for extra curricular activities in terms of Clause 4 of the notes below the criteria chart, that contention is rejected, in view of the fact that respondent no. 4 is shown to have participated in the Haryana State 15th Men and Women Championship organized by the District Circle Kabaddi Association, Rohtak, from 26.02.1995 to 28.02.1995.

Mr. Goyals' contention that this was a district level event and therefore no marks could have been awarded, it not being a State Championship, is obviously a fallacious argument, in view of the fact that the championship is shown to be a State Level Championship though organized by the District Circle Kabaddi Association.

13. Upon this petition being allowed, Mr. Nehra, learned counsel for respondent no. 4 had further submitted that the said respondent having now worked for about 03 years on the post of a Psychiatric Social Worker, a direction may be issued to the official respondents to adjust her against any other existing vacant post (of Psychiatric Social Worker), instead of dispensing with her services altogether, she also having been selected by a regular selection process.

The contention of Mr. Nehra is not found to be without merit by

this Court and consequently, it is directed that, provided the degree of post graduation held by respondent no. 4 is a duly recognized degree by the University Grants Commission, i.e. it being from a University recognized by the Commission, the said respondent may be absorbed as a regular appointee against any post of Psychiatric Social Worker which may have fallen vacant in the meanwhile, so as to ensure that she does not lose her job, having been otherwise selected through a regular selection process and having been in service for about 3 years now.

However, it is made clear that upon appointment of the petitioner to the said post, he would rank senior to respondent no. 4, he being obviously more meritorious than her with extra 05 marks now directed to be added to his merit score of 40.93.

He having been wrongly denied appointment at the time when respondent no. 4 was offered such appointment, he shall be deemed to have been in service from that very date itself and though he would not be entitled to any arrears of salary for the said period, however, he shall be placed in the same stage of the pay scale as respondent no. 4 is presently in. The period for which the petitioner has been denied appointment, will also counts towards his pensionary and all other benefits, other than actual arrears of pay, though correctly even those would be awardable to him even by way of damages, he having been wrongly ignored for appointment.

The petition is thus allowed as above, with costs of Rs. 30,000/-.

August 16, 2017

nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes