

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18930 of 2014

Date of Decision:-21.02.2017.

Subhash Chand

.....Petitioner

Versus

The Director of Industrial Training Institute and others

.....Respondents

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

Present: Mr. P.L. Verma, Advocate for the petitioner.

Mr. Sushil Gautam, DAG, Haryana.

Mr. R.K. Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate for
respondent No.4.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of Annexure P-7 by which respondent No.4 has been selected to the post of Workshop Attendant.

2.) The petitioner and the fourth respondent are candidates for recruitment to the post of Workshop Attendant pursuant to the advertisement issued in the year 2007. Method of recruitment to the post of workshop Attendant is Middle pass and three years of experience as a Workshop Attendant. The selecting authority have selected fourth respondent as well as one Ajit Kumar. Their names are reflected at Serial No.14 and 9, respectively. The petitioner's name appears at Serial No.6. The petitioner has been awarded $18.5+9=27.4$ marks whereas the fourth respondent has been awarded $18+9 = 27$ marks. Even though,

was not considered for the reasons that petitioner's certificate of experience as a Workshop Attendant is not from a Registered firm and salary drawn by the petitioner as a Workshop Attendant with that firm is not placed on record. Thus, the petitioner was not selected. In this regard, the petitioner has submitted representation on 25.7.2007 vide Annexure P-2 to the concerned authorities. The information sought by the petitioner was not made available. Consequently, he has filed application under RTI. The respondents have furnished information under RTI on 17.7.2014 vide Annexure P-6 while enclosing Annexure P-7. Learned counsel for the petitioner pointed out that petitioner has secured more marks. The respondents have rejected the petitioner's claim by not issuing necessary endorsement stating that he has secured 27.4 marks and his candidature has been rejected for want of valid experience certificate with reference to Workshop Attendant. In the absence of necessary material, the petitioner could not approach this Court. In other words, the selecting authority-respondents have withheld the information in hand without displaying the selecting list or announcing interview marks etc. Thus, there is a delay in approaching this Court. It was further contended by learned counsel for the petitioner that the advertisement do not reveal that the candidates are required to furnish experience certificate as Workshop Attendant from a registered firm and such certificate should disclose salary drawn by Workshop Attendant. In the absence of instructions to the candidates, the petitioner is not in a position to furnish the registration of the firm where he had experience so also what was the salary paid to him by the registered firm. Therefore, rejection of the petitioner's candidature is highly arbitrary and illegal. Moreover, in order to accommodate fourth respondent, the selecting authority have tampered the marks as is evident from Annexure P-7. Hence, the selection and appointment of the fourth respondent to the post of Workshop Attendant is liable to be set aside and rejection of petitioner's candidature is highly

3.) Per contra learned State counsel submitted that having regard to the certificate of experience produced by the petitioner, the same is not reflected with the registered firm and further salary drawn by the petitioner is not reflected. Therefore, the experience certificate produced by the petitioner has been rejected. Consequently, the petitioner's candidature rejected on the ground that the petitioner has not fulfilled the second qualification of three years experience as a Workshop Attendant. Therefore, no interference is called for insofar as selection is concerned. It was further contended that Annexure P-7 no doubt over written insofar as fourth respondent marks are concerned, however, no reasons have been assigned even though the third respondent has been made as a party he has not come forward to assist in the matter.

4.) On the other hand, learned counsel for the fourth respondent submitted that fourth respondent has joined service pursuant to the selection on 22.8.2007 and the writ petition was filed in the year 2014. At this stage, interference with the selection and appointment of the fourth respondent is not fair. Further he has pointed out from para 5 of the reply statement of the official respondents while pointing out that petitioner's experience certificate is not with a registered firm and there is no mention of salary in the experience certificate. Therefore, rightly the petitioner's candidature has been rejected.

5.) Heard learned counsel for the parties.

6.) The petitioner and the fourth respondent are candidates for recruitment to the post of Workshop Attendant. Perusal of advertisement, it is evident that prescribed qualification for the post of Workshop Attendant is Middle pass with 3 years of experience as a Workshop Attendant. Other than that nothing is stated that a candidate who had an experience of 3 years must have worked in a registered firm or what is the salary he is drawing etc. Therefore, rejection of the petitioner's candidature on the score that he does not have the experience

certificate in a registered firm and not disclosing salary drawn by him while

gaining the experience is not forthcoming is highly arbitrary and illegal and contrary to rules of recruitment governing the post of Workshop Attendant. Therefore, both the State counsel as well as fourth respondent's contention are hereby rejected. Coming to the issue of securing marks by petitioner and fourth respondent is concerned, perusal of Annexure P-7, it is evident that the petitioner has secured $18.4+9=27.4$ marks whereas the fourth respondent has secured $18+9=27$ marks. Perusal with the naked eye insofar as awarding marks to the fourth respondent, it is evident that marks awarded to the fourth respondent are tampered by over writing. While correcting or tampering the award of marks, no reasons have been assigned as to why the marks have been corrected if it is correction etc. In Annexure P-7 what has been stated is that Sr. No.9 and Sr. No.14 have been selected by the Selection Committee. Therefore, the fourth respondent's selection and appointment to the post of Workshop Attendant is in collusion with the members of the Recruitment Committee and the fourth respondent. Hence, selection and appointment of the fourth respondent is liable to be set aside. Consequently, the petitioner's case is required to be re-considered by the competent authority. Learned counsel for the fourth respondent vehemently contended that there is inordinate delay in filing the writ petition. No doubt, it is true that there is a delay. However, perusal of the representation and RTI information sought by the petitioner, it is evident that the official respondents purposely denied in furnishing the information. The post of Workshop Attendant is a public post. The process of selection and appointment should have been transparent. The marks awarded for each of the candidate should have been notified in the appropriate place or in the newspaper or it should have been made known to each one of the candidates. Without resorting to that procedure so also denying the documents and information sought to the petitioner timely, there is a delay in approaching this Court. That apart having regard to the tampering of records and obtaining appointment through fraudulent manner by the fourth

respondent in collusion with the selecting authority cannot be appreciated. And delay may not be hurdle. Interference in the matter of selection which are fraudulent and selection authority playing fraud in a selection is to be set aside mercilessly as held by the Supreme Court. In other words, fraudulent action cannot be upheld on technicalities. Therefore, question of delay in challenging the selection and appointment contention cannot be upheld. In view of these facts and circumstances, the selection and appointment of fourth respondent to the post of Workshop Attendant is set aside and the selecting authority is directed to reconsider the petitioner's claim for appointment to the post of Workshop Attendant on notional basis. However, it is made clear that petitioner if selected and appointed would not be entitled for arrears of pay for the intervening period. The above exercise shall be completed within a period of four months from today. Insofar as fate of the fourth respondent appointment is concerned, it is for the selecting and appointing authority to consider if the vacancy of Workshop Attendant is available, the fourth respondent may be appointed to the post of Workshop Attendant. If he is appointed in such circumstance, petitioner would be senior to the fourth respondent for extending all service benefits. Such action shall be taken within a period of six months.

7.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

February 21, 2017.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.