

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-24636-2017

Date of decision : 08.12.2017

Makhan Lal

... Petitioner

Versus

Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.C.P.Tiwana, Advocate
for the petitioner.

Mr. Nilesh Bhardwaj, Advocate
for Mr.Surender Kumar Sharma, Advocate
for respondent no.1 -University.

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

Mr. Rajesh K.Kataria, Advocate
for respondents no.3 to 10, 12 to 16.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner seeks a writ in the nature of certiorari, quashing the impugned selection list Annexure P-10, in as far as the post of selected Operation Theater Technicians is concerned.

He further seeks the quashing of the corrigendum issued on 30.11.2016 (Annexure P-7), by which posts advertised in the general category have been reduced from 20 to 14, 6 posts having been carved out of the general category, for those in the Economically Backward Persons category (within the general category).

Yet further, he seeks a writ of mandamus directing the

the said post, pursuant to the advertisement published on 30.09.2016, a copy of which has been annexed as Annexure P-1 with the petition.

As regards the prayer for quashing the corrigendum, Annexure P-7, reserving 6 posts out of 20 general category posts for persons of the economically backward class category, that prayer has been actually rendered “presently redundant”, for the reason that the operation of the notification by which posts were created for that category of persons has been stayed by a Division Bench, on a challenge laid to the said notification. In any case, as would be seen further, even if such notification were to be quashed, the petitioner, as per the merit list, would not actually fall within the first 20 persons on the merit list. However, that issue would be dealt with at the end of this judgment.

As regards the question of quashing the selection process itself for the posts in question, on the ground that the criteria disclosed by the respondent University has been flouted by the respondents, the record pertaining to the selection process was directed to be produced in Court on the last date of hearing and pursuant to the order passed yesterday, the record has been produced, and though the petitioners' position in the merit list is not shown in order of merit, however learned counsel for the respondent-University submits that the petitioner would fall at serial no.19 as per merit in the general category, as regards the selection procedure for the posts of Operation Theater Technicians is concerned, if those from the Economically Backward Class category are excluded.

He further submits that there then being only 14 posts in the general category, obviously the petitioner is not anywhere near the cut off mark.

Learned counsel for the petitioner, on the other hand, has made a two fold submission; firstly, that as per the criteria framed by the University for selection to the posts in question (as given in Annexure P-8), 65 marks were assigned for academic qualifications, out of which under the head of “Basic Qualifications”, 30 marks were to be assigned for the basic qualification including professional qualification, 30 marks for the screening / written test and 5 marks for a higher qualification in the relevant subject/specialty, over and above the requisite basic qualification. However, no screening test has been held by the University for selection to the posts of Operation Theater Technicians.

Learned counsel for the respondent University on the other hand submits that as regards the contention of a screening test not having been held, it is stated in the criteria, Annexure P-8, itself, by way of a foot note, that the screening test / written test would be held for short listing of candidates; but as in the case of the posts in question, i.e. Operation Theater Technicians, 47 posts were advertised in all categories and only 73 candidates had applied, there was no need to hold such a screening test, which is only held to short list candidates where the number of candidates is far greater than the number of posts advertised.

Having considered the arguments, it may first be noticed that in terms of the ratio of the judgment of the Supreme Court in ***Indra Sawhney vs. Union of India and others, AIR 1993 SC 477***, the merit position was to be seen in respect of those who applied in the general category, after including those from the reserved category of economically backward persons as have obtained more marks than the candidates in the general category. The merit list in the general category was to be filled up

accordingly.

On that touch stone, learned counsel for the University submits that the petitioner would in fact fall at serial no.24, which is beyond the 20 posts advertised in the general category, (including the EBPG category), even if eventually the reservation for economically backward persons is struck down by this Court, (as 6 posts were reserved for that category in the current selection process, by virtue of the corrigendum issued after the original advertisement was issued).

Consequently, as regards the petitioners' contention with regard to a screening test not having been held, the contention is rejected in view of the fact that nothing has been shown from the statutory rules or regulations governing the post, that a written test must be held in any selection process. Though a general direction has been issued in that respect by the Government of Haryana by way of a notification, i.e. that for selection to all Class-III posts a written test would be held, however, nothing has been shown that the University is bound by that notification, or by any notifications and instructions issued by the State of Haryana, the University being an independent body.

Therefore, the number of applicants for the posts in question being less than double the number of posts advertised, I see no reason as to why a screening test was to be held to short list a perfectly manageable number of candidates to be called for interviews, for final selection to the posts in question (obviously after considering the marks for academic qualifications).

As regards the contention with regard to reduction in the number of posts from 20 to 14 vide the corrigendum Annexure P-7, the

reservation for those 6 posts having been stayed by the Division Bench, if the Division Bench eventually holds that such reservation could not have been made, the petitioners' case for appointment on merit, to those 20 posts, shall be considered along with all other candidates.

Dismissed, with the aforesaid observation.

(AMOL RATTAN SINGH)
JUDGE

December 08, 2017.
Davinder Kumar/dinesh

Whether speaking / reasoned	Yes
Whether reportable	Yes