

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

(1)

CWP No.4635 of 2015 (O&M)
Date of Decision: January 27, 2017

Mandeep Kaur

...Petitioner

Versus

State of Punjab

...Respondent

(2)

CWP No.5392 of 2015 (O&M)

Shalini and others

...Petitioners

Versus

State of Punjab

...Respondent

(3)

CWP No.7201 of 2015 (O&M)

Kanwaljeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

(4)

CWP No.5287 of 2016 (O&M)

Sumit Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kapil Kakkar, Advocate
for the petitioner in CWP No.4635 of 2014.

Mr. Mohit Garg, Advocate
for the petitioner(s) in CWPs No.5392 and 7201 of 2015.

Mr. Rajender Kumar, Advocate for
Mr. P.S. Dhaliwal, Advocate
for the petitioner in CWP No.5287 of 2016.

Mr. Pankaj Malwani, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

By this order, this court shall dispose of four petitions i.e. Civil Writ Petition No.4635 of 2015 titled as '*Mandeep Kaur vs. State of Punjab*', Civil Writ Petition No.5392 of 2015 titled as '*Shalini and others vs. State of Punjab*', Civil Writ Petition No.7201 of 2015 titled as '*Kanwaljeet Singh vs. State of Punjab*' and Civil Writ Petition No.5287 of 2016 titled as '*Sumit Kumar vs. State of Punjab and others*' being arisen out of the similar facts and a common question of law is involved. In order to avoid repetition and

for sake of brevity, facts are being taken from Civil Writ Petition No.4635 of 2015 titled as '*Mandeep Kaur vs. State of Punjab*'.

The instant writ petitions have been filed under Articles 226/227 of Constitution of India seeking a writ, order or direction in the nature of certiorari for quashing public notice dated 29.09.2014 and the merit list issued on 05.03.2015, being against the statutory rules namely Punjab Civil Secretariat (State Service Class III) Rules, 1976 for short the Rules of 1976

In brief, the facts are that the petitioners are possessing minimum qualification as prescribed in an advertisement issued on 29.09.2014 and applied for the post of Senior Assistant. Pursuant thereto a written competition test was held on 01.04.2015 and on securing the necessary marks in Paper-I and Paper-2, they were called to appear in the computer test held on 21.02.2015. The result was issued and the merit list was uploaded on the website of the Department, in which, the name of the petitioners were not reflected as successful candidates. Aggrieved against denial of appointment, the instant writ petitions have been filed.

Mr. Kapil Kakkar, Advocate, for the petitioner in CWP No.4635 of 2014, Mr. Mohit Garg, Advocate for the petitioner(s) in CWPs No.5392 and 7201 of 2015 and Mr. Rajender Kumar, Advocate for Mr. P.S. Dhaliwal, Advocate for the petitioner in CWP No.5287 of 2016 argued that the post of Senior Assistant is governed by the Rules called the Punjab Civil Secretariat (State Service Class III) Rules, 1976 and Rule 7(I) contains the mode of appointment, minimum educational qualification and experience required for different classes of posts, which is as under:-

Sr. No.	Name of Post	Method of Appointment	Minimum Education and other qualification	Minimum Experience	Remarks
3	Senior Assistant	(i) Seventy five percent by promotion from Amongst Clerk	i) Matriculate of a Recognized University of Board as the case may be. ii) Qualified in a departmental test to be held by the Chief Authority or the recruiting authority	Five years' service as Clerk	
		(ii) Twenty five percent by direct appointment	i) A degree of a recognized University or its equivalent. ii) Qualifies in the competitive test to be held by the recruiting authority.		
		(iii) By transfer of officials serving in other Departments of the Punjab Government, if a suitable candidate is not available for promotion or by direct recruitment	i) A degree of a recognized University or its equivalent. ii) Qualifies in the competitive test to be held by the recruiting authority.	Three years' service as Assistant	

It is argued that as per above-stated Sub-rule 25% of the post are to be filled in by direct recruitment and the minimum educational qualification as provided in the said rule is that a candidate must possess; i) a degree of a recognized university or its equivalent, ii) **qualifies in the competitive test to be held by the recruiting agency**. It is argued that the advertisement issued is in direct controversy to the Rules of 1976, as the minimum qualification prescribed in the advertisement was:-

“a) Applicant should be Graduate in any discipline from a recognized university.

b) Possesses at least 120 hrs course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognized institution or a reputed institution, which is ISO 9001,

certified, OR

Possesses a Computer Information technology course equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Course (DOEACC) of Government of India.

c) He must have passed Punjab upto Matric or its equivalent level.”

Further, all the candidates would have to appear in the two written paper with a further stipulation, which read as under:-

“On the basis of merit of Paper-I, candidates equal to five times the number of posts advertised in each category, in order of merit will be shortlisted and only their Paper-II will be evaluated. On the basis of combined merit list of Paper-I and Paper-II, in each category, candidates equivalent to three times the number of posts in each category will be called for computer test. The computer test will be qualifying in nature. Those candidates who will not qualify in computer test shall not be considered of their merit based in Paper-I and Paper-II.

The qualifying conditions for computer test are:-

1. English Typing at a speed of 30 wpm(minimum).
2. Punjabi Typing at a speed of 30 wpm (minimum).....”

Counsel for the petitioners rely upon a judgment rendered by the Division Bench of this court in ***Dharamvir vs. State of Haryana and another, 96(1) RSJ 296***, to contend that no advertisement or public notice can be issued contrary to the statutory rules and no additional qualification can be inserted in the advertisement if such qualification is not prescribed in the rules. It is argued that once an advertisement is contrary to the rules, any appointment made thereunder is not sustainable. Reliance also placed

on in the judgment rendered in '***State of Punjab and others vs. Priya Mahajan and others***', 2013(2) SCT 88, which has also held that no new condition can be imposed in the advertisement in the presence of statutory rules framed under proviso to Article 309 of the Constitution of India.

Per contra, Mr. Pankaj Malwani, DAG Punjab, appearing on behalf of respondents-State submits that the public notice issued is in consonance with the Rules as framed under Article 309 of the Constitution of India. Moreover, once the petitioners had participated in the selection process and were aware of the qualification and the requirement of passing a computer test, it is not open for them to challenge the said public notice or merit list. Reliance in this regard has been placed upon judgments rendered by the Apex Court in ***Madan Lal and others vs. State of Jammu & Kashmir***, 1995(2) SCT 880, ***Ramesh Chandra Shah and others vs. Anil Joshi and others***, 2013 AIR (SC) (Civil) 2632, ***Manish Kumar Shahi vs. State of Bihar and others***, 2010(12) SCC 576.

I have learned counsel for the parties and with their assistance perused the record of the case.

Admittedly, Punjab Civil Secretariat (State Service Class III) Rules, 1976, laid down the qualification i.e. the minimum educational qualification and other qualification for recruitment to the post of Senior Assistant that a candidate must have a degree from a recognized University or its equivalent and qualifies the competitive test to be held by the recruiting agency. The rules *per se* is silent as to what the term 'competitive test' implies.

Rule 15 of the Punjab Civil Service (General and Common

Conditions of Service) Rules 1994 (amended upto 30th September 2012, provides for minimum qualification for direct recruitment to the post of Clerk, which read as under:-

“(i) No person shall be given direct appointment to the post of Clerk under Punjab Government unless he possesses the Bachelor's Degree from a recognized University or Institution; and

(ii) Possesses at least one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognized institution or a reputed institution, which is ISO 9001 certified.

OR

Possesses a Computer Information Technology course equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Course (DOEACC) of Government of India.

d(2) The person so appointed as Clerk in terms of the provisions of sub-rule(1) shall have before his appointment qualified a test in Punjabi typewriting either on computer or on manual or electronic typewriter, to be conducted by the Board or the appointing authority or the Department of Information Technology as the case may be, at a speed of thirty words per minutes.”

Since the post of Clerk required a person to be proficient in the test of Punjabi typewriting, the need so felt for introduction of a type test for the post of Senior Assistant as well and therefore, it was on this count, the requirement of passing the type test was also introduced for the competitive

test to be held for the post of Senior Assistant. The argument raised that Rule 15 of the Punjab Civil Service (General and Common Conditions of Service) Rules 1994 (amended upto 30th September 2012, provides for minimum qualification for direct recruitment to the post of Clerk, does have merit.

Once the rule is silent itself what is the term 'competitive test' is, there can be no bar of laying down a mode of selection, which would detail what would consist in the competitive examination. As per the advertisement issued the mode of selection clearly delineated that there would be two papers and the first paper would consist of General Awareness, Punjab History and Culture, Constitution of India, general knowledge, current affairs comprising of 40 marks, mental ability/reasoning and arithmetic comprising of 20 marks, computer basics comprising of 20 marks, language proficiency both in Punjab and English comprising of 40 marks, with second paper of 45 minutes which would compromise of Precis writing in English and Punjabi as well as translation of English to Punjabi and Punjabi to English comprising of 40 marks. It was further specified in the advertisement that on the basis of merit of Paper-I, candidates equal to five times to the number of posts in each category in order of merit will be shortlisted and then Paper-II would be evaluated. On the basis of combined merit list in each category, candidates equivalent to three times to the number of posts will be called in each category with clear specification that the 'computer test' would be qualifying in nature.

The arguments as raised by counsel for the petitioner that an advertisement cannot go beyond the rules is acceptable. In the case of

Dharamvir vs. State of Haryana and another (supra) 269 posts of Social Studies Masters were advertised, out of which 55 posts were reserved for Scheduled Castes/Scheduled Tribes. Qualification for the post of Social Studies Masters was prescribed as B.A. Education from Government College of Education, Kurukshetra with any two of the following subjects in addition to English, i) History, ii) Political Science, iii) Economics, iv) Geography, v) Sociology **OR** B.A. with English and any two of the above mentioned subjects with B.T./B.Ed. from recognized University **OR** M.A. in one of the subjects mentioned above with B.T./B.Ed. from recognized University. It was further mentioned that eligibility conditions were to be determined as on 10.08.1991, the last date of receipt of the applications and it was also that no additional qualification acquired after 10.08.1991 would be considered for the purpose of recruitment for this purpose. The petitioner therein contended that the qualification as prescribed in the advertisement was not as per the Punjab Education Service Class-III School Cadre Rules, 1955, as the rule did not provide that any candidate must be a Graduate with any of the two subjects namely History, Political Science, Geography and Sanskrit and the rule only mentioned that the education qualification required for the post of Social Studies Masters as B.A., M.A./M.Sc., S.S.T.C. or B.T., Senior Basic Trained and therefore, appointment could not be rejected to him. The Division Bench held that rejection of candidature of the petitioner on the ground that he did not possess the qualifications as prescribed in the advertisement i.e. B.A. with any two subjects in addition to English, were contrary to the educational qualifications as prescribed under the Rules and therefore, the writ petition was allowed with the

direction that the petitioner therein should be considered for appointment, if otherwise found eligible.

The facts of the present case would not be covered by the judgment rendered in ***Dharamvir vs. State of Haryana and another (supra)*** and ***'State of Punjab and others vs. Priya Mahajan and others'***, being distinguishable on facts. In the instant case as per rule itself, the term 'competitive test' is silent as has been noted above. Therefore the details of the examination / Competitive test to be held can not be held to be beyond the Rule of 1976 or in excess of the Rules. The petitioners herein are only aggrieved with the fact that the passing of the computer test was mandatory. There is no grievance as far as the written test is concerned, which is part of the competitive test, which has been held. Moreover, the competitive test as put out in the advertisement, had been duly approved by the Cabinet as mentioned in the reply, to which there is no challenge by the petitioners. The petitioners were fully aware of the mode of selection prescribed and with that knowledge, they participated in the selection process. The petitioners undertook the written examination, appeared in Paper-I and on qualifying the same, they were called to appear in Paper-II and on failing to clear the type test with the minimum speed, the instant petitions have been filed.

In the judgment rendered by the Apex Court in **Manish Kumar Shahi vs. State of Bihar and others (supra)** candidates appeared for selection, pursuant to an advertisement by the Bihar Public Service Commission for appointment of Civil Judges, challenged the selection after having appeared in the written examination and the interview. The

petitioners therein questioned the validity of the Rules on the ground that the marks for viva voce test are contrary to the law laid down in '**Ashok Kumar Yadav vs. State of Haryana**', (1985) 4 SCC 417 and '**Vijay Syal vs. State of Punjab and others**', (2003) 9 SCC 401. The Apex Court while referring to several judicial pronouncements came to held as under:-

“We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection maybe made to the judgments in Madan Lal vs. State of J&K (1995) 3 SCC 486, Marripati Nagaraja vs. Government of Andhra Pradesh and others (2007) 11 SCC 522, Dhananjay Malik and others vs. State of Uttaranchal and others (2008) 4 SCC 171, Amlan Jyoti Borooah vs. State of Assam (2009) 3 SCC 227 and K.A. Nagamani vs. Indian Airlines and others (supra).”

Similarly in '**Ramesh Chandra Shah and others vs. Anil Joshi and others**' (supra) the advertisement issued for direct recruitment for Group-C posts, which were outside the purview of Uttarakhand Public Service Commission, was challenged on the count that the advertisement

ultra vires the provisions of 1998 Rules. The Apex Court held that once the respondents have taken part in the process of selection with full knowledge that the recruitment were being made under general rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making the selection.

In '***Vijender Kumar Verma vs. Public Service Commission, Uttarakhand and others'***, 2010(4) SCT 556 it has been held as under:-

“When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reinstated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

The basic judgment is of '**Madan Lal and others vs. State of Jammu & Kashmir**' (*supra*) in which it has been held that once a candidate takes a calculated chance and appeared in an interview and does not qualify the same, such candidate cannot turn around and subsequently challenge the process of interview as being unfair. The Apex Court while deciding the aforesaid case held as under:-

“Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merits of the concerned candidates who had been assessed at the oral interview nor can the petitioner successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst other consisted of a sitting High Court Judge to Judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are uncertainly not acting as a court of appeal over the assessment made by such an expert committee.”

Therefore, this court is of the opinion that the petitioners who were aware and had knowledge of mode of selection, participated in the selection process and are now estopped by their own participation in the selection process from raising a challenge to it by way of these writ

petitions. It is only on account of the fact that they did not pass the computer test, a challenge has been laid to the advertisement by contending that the same is not in consonance with Rule 7 of the Punjab Civil Secretariat (State Service Class III) Rules, 1976. As has been noticed above, the rule is silent and does not specify what the 'competitive test' would entail. The 'competitive test' has been laid down after approval of the Cabinet as two written papers with compulsory condition to pass the type test, which has been incorporated as mandatory, keeping in view the Rule 15 of the Punjab Civil Service (General and Common Conditions of Service) Rules 1994, that any person seeking appointment to the post of Clerk, would require to pass the type test. Moreover, it is for the Government to see what they want to include in the competitive examination as basic requirement for appointment to the post of Senior Assistant to ensure the smooth functioning of the Government in this digitalized world.

In view of the above, no ground is made out to interfere with the impugned public notice dated 29.09.2014 and the merit list dated 05.03.2015. Accordingly, the writ petitions stand dismissed being devoid of any merit .

January 27, 2017

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No