

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6454 of 2017 (O&M)

Date of decision:21.11.2017

Sarita Sharma

....Petitioner

Versus

State of Haryana & another

...Respondents

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

Present: Mr.Gopal Sharma, Advocate, for the petitioner
in CWP-6454-2017.

Mr.Vikas Bhardwaj, Advocate, for the petitioner
in CWP-13409-2017.

Ms.Shruti Jain Goyal, AAG, Haryana.

Mr.Hitesh Pandit, Advocate, for respondent-UH BVNL/DH BVNL.

Mr.Sanjiv Gupta, Advocate, for respondents No.3 to 15
Mr.Animesh Sharma, Advocate, for respondents No.4 to 11
Mr.D.P.Balda, Advocate, for respondents No.25 & 26
Mr.Jagbir Malik, Advocate, for respondents No.28 to 30
in CWP-6454-2017.

Mr.K.S.Malik, Advocate, for respondents No.1 & 2
in CWP-8346-2017.

Mr.Harish Rathee, Sr.DAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

CM-14881-CWP-2017 in CWP-6454-2017

Application has been filed under Order 1 Rule 10 read with
Section 151 CPC, for impleading applicants.

In view of the averments made in the application, duly
supported by an affidavit, same is allowed.

CM stands disposed of.

CM-15253-CWP-2017 in CWP-6454-2017

Application has been filed under Order 1 Rule 10 read with
Section 151 CPC, for impleading applicants.

In view of the averments made in the application, duly supported by an affidavit, same is allowed. Amended memo of parties is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

CM-15680-CWP-2017 in CWP-6454-2017

Application for placing on record written statement, on behalf of respondents No.3 to 15, is allowed, in view of the averments made in the application, duly supported by an affidavit. Same is taken on record, subject to just exceptions. Office to tag the same at appropriate place.

CM stands disposed of.

Main cases

This judgment shall dispose of CWP-6454, 6963, 8346, 9055, 13409, 18496, 19548 & 20741-2017, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-6454-2017 titled *Sarita Sharma Vs. State of Haryana & another*.

Petitioners seek quashing of the final result for the post of Upper Division Clerk (UDC) against advertisement No.3/2016, published by the respondent-Haryana Staff Selection Commission on 20.03.2017 (Annexure P-5). Challenge is raised on the ground that 2 merit-lists have been prepared under the heads of the 2 different Nigams, namely, the Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL) and Dakshin Haryana

Bijli Vitran Nigam Ltd. (DHBVNL) and the petitioner has been placed in the general waiting list, under the DHBVNL. Resultantly, a writ in the nature of mandamus, to prepare the result and publish the same by preparing one merit-list, is prayed for.

From the record, it transpires that vide requisition dated 29.01.2016 (Annexure R-1/3) and 30.01.2016 (Annexure R-1/4), DHBVNL sent requisition for appointment of UDC (Head Office and Field, for 28 and 202 posts, totalling 230 posts). The requisite qualifications for both the categories were mentioned as under:

“a) Bachelor Degree in Commerce with at least 60% marks in respect of General Category candidates and 55% marks of SC Category candidates of Haryana domicile from any University recognized by the Govt. of Haryana.

b) Must have passed Hindi/Sanskrit up to Matric standard.

c) “O” level course or above of computer, for a minimum period of 01 year.

Must have passed Hindi/Sanskrit up to Matric standard.”

Similarly, UHBVNL, on 28.01.2017 (Annexure R-1/2) made amendment in the Recruitment and Promotional Policy of the Ministerial Staff and prescribed the qualifications for the post of UDC, which reads as under:

“Upper Division Clerk:

a) Bachelor Degree in Commerce with atleast 60% marks for general category and 55% marks for SC category candidates of Haryana Domicile from any University recognized by the Government of Haryana. The percentage of marks required for BC, ESM, OSP & PHC would be same as for General Category candidates.

b) Must have passed Hindi/Sanskrit upto Matric standard.

c) 'O' level course or above of Computer for a minimum period of one year from NIELIT (DOEACC Society) or HARTRON.”

Resultantly, requisition was sent to the Commission on 29.01.2016 (Annexure R-1/1) for filling up 217 posts of UDC. It is to be noticed that for UHBVNL, the requirement is, thus, a little specific of the 'O' Level Course or above of Computer, which is to be done from NIELIT (DOEACC Society) or HARTRON. The qualifications, as reproduced above, were also mentioned specifically regarding the requirement of doing the 'O' Level Course from the NIELIT (DOEACC Society) or HARTRON of Computer. However, while issuing the advertisement No.3/2016, the vacancies of 230 and 217 posts were clubbed to make Category No.2 and 447 posts were re-advertised by incorporating the essential qualifications of 'O' Level Course which had been notified of UHBVNL by the Commission. Resultantly, candidates applied and it is to be noticed that on account of the 'O' Level Course which is to be passed from the specified institutions, large number of candidates might not have applied for consideration which is forcing this Court to interfere, at this point of time, on account of the illegality which has happened and the mistake while clubbing the 2 requisitions. Resultantly, the petitioner, who claims of having the certificate of 'O' Level Course, as specified by the UHBVNL, has approached this Court.

The written test was, accordingly, held on 31.07.2016 and 23.06.2016 and candidates were called for scrutiny of documents and the result was declared on 04.02.2017. After the interview, which had taken

place, the final result was declared vide notice dated 20.03.2017 (Annexure P-5) for both the Nigams separately, as per their requisitions. The petitioner figured in the wait-list of the DHBVNL wherein the cut-off is shown as 118 marks for the 66 General posts whereas the cut-off was 110 for the wait-list. Similarly, for UHBVNL, the cut-off for the General posts was 110 and for the wait-list, it was 70. It is, thus, her case that on account of preparing 2 separate merit-lists, she has been adversely affected and if a common merit-list was prepared, she would have fallen within the zone of consideration.

The defence of the State/Nigam is that since the requisitions were separate, therefore, the 2 separate lists were prepared and even the qualifications prescribed are separate, which has been noticed above and which is further clarified by Mr.Pandit, who is representing the Nigams. It would, thus, be apparent that the petitioner, as such, if she has a valid certificate from the NIELIT (DOEACC Society) or HARTRON and having the cut-off, she would also be entitled for consideration against the 217 posts advertised of UHBVNL, since the marks obtained by her are obviously 110 or more, as she has been placed in the wait-list for DHBVNL.

On 31.08.2017, the following contention was noticed, since applications for vacation of stay were filed and the whole recruitment process had been held up:

“It is contended by Mr. Pandit that as per the notification dated 28.01.2016 (Annexure R-1/2), the UHBVN's requirement was as per the essential qualification

mentioned in advertisement for 447 posts of Upper Division Clerk. However, for DHBVN the requirement was 'O Level Course', but not from NIELIT (DOEACC Society) of HARTRON.

It is submitted that in such circumstances, there has been bifurcation of the merit list which has been prepared on the basis of the test held whereas 217 persons have been allotted to UHBVN and 230 to DHBVN.

Thus, an issue arises that a large number of persons would not have applied, on account of the fact that they did not have the essential qualification as notified and the persons now who are being appointed by DHBVN as per the merit list prepared also do not have the requisite qualification as advertised. Though, it is the case of the applicant that separate recommendations were received from the recruiting agencies from the Nigams, but the same does not find categorically mentioned in the advertisement itself or in the application filed.

Counsel for the applicants/respondent, thus, suggests since application for vacation of stay has been filed there should be no hurdle, if the recruitment for UHBVN is permitted to be continued, since the petitioner is only eligible for consideration with DHBVN.”

As noticed, it would be clear that a large number of persons would not have applied on account of the fact that they did not have the qualifications of NIELIT (DOEACC Society) or HARTRON and therefore, have been left out for applying. In such circumstances, their right of consideration for appointment has been breached by the recruitment agency and therefore, this Court is of the opinion that there is a major irregularity in the recruitment process, as such, at least for the 230 posts of DHBVNL, which will necessarily have to be re-advertised.

The suggestion of having a joint merit-list and adjusting the persons having the requisite qualifications against 217 vacancies of UHBVNL and adjusting the balance against the DHBVNL, though attractive and appealing, as suggested by the State Counsel, thus, cannot be held to be acceptable. The constitutional right of the aspirants who had the necessary qualifications of 'O' Level Course but not from NIELIT (DOEACC Society) or HARTRON, has been infringed, as such, candidates would not have applied as a normal prudent person knowing that he did not have the qualifications. If the Commission had been more careful in this context and had not clubbed the posts together and specified the required essential qualifications as per the requirements of the Nigams, this situation would not have arisen.

Resultantly, this Court is left with no option but to strike down the selection process which had been initiated by the Commission for 230 posts of UDC. As noticed, the proposal, as such, made of the joint merit-list by the State Counsel and by the Nigams' counsel, and the fact that a large number of candidates would be affected, who are not party, also does not cut much ice with this Court, at this stage, since, admittedly, the stay was granted by this Court on 28.03.2017. The candidates whose names are figuring in the result which has been declared now on 20.03.2017 (Annexure P-5) for the DHBVNL, merely have a right of consideration against the advertisement since appointment letters have not been issued and are having no vested right of appointment as even the recommendation was not made by the

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Commission. Once appointment letters have not been issued, no vested right, as such, also flows to such aspirants whose names figures in the list. Therefore, the objection that without issuing notice to them, the process cannot be quashed, is also not acceptable.

Resultantly, the present writ petitions are allowed, to the extent that all the petitioners' case shall be re-considered and keeping in view their requisite qualifications, they will be adjusted, accordingly, in case they are found qualified, as per the advertisement, for the requisition of UHBVNL. Resultantly, the result dated 20.03.2017 (Annexure P-5), which pertains to the 230 posts of DHBVNL is, accordingly, quashed. It is open to the respondent-Commission to re-advertise the 230 posts of DHBVNL, or issue a corrigendum, keeping in view the requisition, as such, which it had received from the said Nigam and take further steps in the recruitment process. However, the persons who had applied in pursuance to the advertisement and have not made the cut, will be allowed to participate for the 2nd time in the recruitment process, without asking them to apply afresh, so that they do not become over-age. Similarly, no additional fees will be charged from them.

21.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes