

**CM No.5709-CWP of 2014,
CM No.7913-CWP of 2016 in/and
RA-CW No.273 of 2014 in
CWP No.5200 of 2009**

OM PARKASH
VS.
THE STATE OF HARYANA AND OTHERS

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

Mr. Ashish Yadav, Additional Advocate General, Haryana.

Mr. R.K. Malik, Senior Advocate
with Mr. Samrat Malik, Advocate
for respondent No.3.

CM No.5709-CWP of 2014

Prayer in this application is for condonation of delay of 44 days
in filing the review application.

For the reasons mentioned in the application which is duly
supported by the affidavit of the applicant-petitioner, the same is allowed.

Delay of 44 days in filing the review application stands
condoned.

CM No.7913-CWP of 2016

Prayer in this application is for permission to place on record
written statement on behalf of respondent No.3.

Application is allowed.

Written statement filed on behalf of respondent No.3 is taken on
record.

RA-CW No.273 of 2014

Present review application has been preferred primarily in the
light of the fact that the advertisement which had been taken into
consideration by this Court reproducing and relying upon the qualifications

i.e. advertisement dated 20.02.2007 (Annexure P-1) were in fact not the correct qualifications and as a matter of fact, the correct advertisement was filed along with the replication as Annexure P-16, where the qualifications prescribed for the post were as follows:-

“A degree in Civil Engineering or degree/diploma in Architecture recognised by the Institute of Engineers (India) and the Institute of Architects respectively followed by three years experience in Town Planning under a qualified Town Planner.

(ii) Adequate Knowledge of Hindi as prescribed by the Government.”

whereas in the order, the qualifications which have been taken into consideration, were as follows:-

“Qualification:

1. Diploma or Post Graduate Degree in Town Planning from recognized University/Institute which provides holders the membership of Town Planner (India);

OR

3 years experience under qualified Town Planner along with Diploma/Degree in Architecture or Civil Engineering from Institute of Engineers (India) and Institute of Architect.

2. Sufficient knowledge of Hindi as prescribed by the Government.”

On the basis of these qualifications, it has been asserted that non-applicant-respondent No.3 would not fulfil the benchmark for being assigned 5 marks for experience.

In reply to the review application, what has been asserted by non-applicant-respondent No.3 as regards his qualification and experience,

reads as follows:-

“The answering respondent has passed his three years Diploma Course in Architecture on Dec. 1988. The answering respondent had passed Associate Membership of Indian Institute of Architect which is equivalent to degree in Architecture on 31.7.2004. The answering respondent had rendered service under qualified Architect from 11.12.1992 to 1.1.2002 in the Department of Architecture, Haryana. The answering respondent further rendered services from 1.1.2002 to the last date of submission of the applications i.e. 5.1.2008 under a qualified Town Planner in Urban Local Bodies Department, Haryana. So on the last date of submission of the applications the answering respondent was having about 18 years of experience in his credit. Even after passing three years Diploma in Architecture, the answering respondent is having more than 17 years experience in his credit. Since maximum marks for experience were five marks, so the answering respondent has rightly awarded five marks for experience. Apart from that for an argument sake even if the answering respondent would have not been awarded five marks of experience, still the merit of the answering respondent and petitioner comes to 72 marks and if the tie has to be broken between two candidates obtained similar marks then the elder in age has to be preferred. The date of birth of the answering respondent is 5.4.1966 and the date of birth of the petitioner is 10.5.1966. So the answering respondent is elder in age, hence even if the marks of the petitioner and the answering respondent would have been equal still the answering respondent has to be preferred being elder in age. Apart from that as per the own showing of the petitioner the answering respondent was entitled the benefit of experience of five marks, so even by getting the weightage of five months of experience i.e. 0.8 marks, the merit of the answering respondent would have higher in comparison to the petitioner.

The answering respondent rightly awarded 77 marks and the petitioner has no case qua the answering respondent.”

No response or counter to the said assertion of non-applicant-respondent No.3 has been brought on record as conceded in Court. The assertions, therefore, made therein are presumed to be correct. Even if the qualifications, as has been reproduced above in the advertisement dated 20.12.2007 (Annexure P-16), are taken into consideration which requires experience after the minimum qualifications, non-applicant-respondent No.3 would fulfil the same in the light of the fact that he had passed the Associate Membership of Indian Institute of Architect which is equivalent to degree in Architecture on 31.07.2004 and thereafter had been rendering service under a qualified Town Planner in the Urban Local Bodies Department, Haryana, from 01.01.2002 to the last date of submission of the application i.e. 05.01.2008 which would be much more than what would have entitled him to the grant of 5 marks. Although the principle with regard to the period of experience to be taken into consideration stands already settled and decided by this Court in its order dated 21.02.2014 which is under review, still assuming that is the requirement, the said assertion cannot be accepted, the non-applicant-respondent No.3 having an experience of more than six years on the date of submission of application.

In view of the above, there being no merit in the review application, the same, therefore, stands dismissed.

May 12th, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE