

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.215

CWP-17716-2010 (O&M)
Date of decision :12 .07.2018

Akhil Sharma and others

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CWP-7894-2011 (O&M)

Dharambir Sharma

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Harsh Kinra, Advocate and Mr. N.C. Kinra, Advocate
for the petitioners.

Mr. Gaurav Jindal, Addl. Advocate General, Haryana.

Mr. R.K. Malik, Sr. Advocate, with
Mr. Bhupinder Malik, Advocate, for the private respondents.

Mr. Balwinder Singh, Advocate for
Mr. Kshitij Sharma, Advocate
for respondents No.113, 200, 236 and 257
(in CWP-17716-2010)

Mr. Mavpreet Singh, Advocate, for respondent No.151
(in CWP-17716-2010)

Mr. B.S. Bairagi, Advocate, for respondent No.126
(in CWP-17716-2010)

Mr. P.K. Ganga, Advocate, for respondent No.248.

Mr. C.S. Singhal, Advocate and Mr. S.P. Chahar, Advocate,
for respondent No.167 (in CWP-17716-2010).

SUDHIR MITTAL, J.

This judgment will dispose of above-cited writ petitions as
common questions of fact and law arise therein. The facts are being
extracted from CWP-17716-2010.

2. The Haryana Staff Selection Commission-respondent No.3 issued advertisement No.6/2004 dated 13.08.2004, inter alia for filling up 142 posts of Laboratory Technician (General). The pay scale for the said posts was Rs.4500-7000/- and the essential qualifications provided therefor were as given below:-

- ‘i). 10+2 or its equivalent with Physics and Chemistry.
- ii). Laboratory Technician diploma from recognized Institution.
- iii). Hindi upto Matric standard.’

3. The advertisement further mentioned as below:-

“An application form will be summarily rejected in the following events:-

- i). If a candidate makes more than one application for a particular post;
- ii). if the application is not in the prescribed format appended with this Advertisement;
- iii). if the application is unsigned/incomplete/not accompanied by attested copies of the detailed marks sheet and other relevant documents;
- iv). if full fee is not deposited in the manner prescribed in the attested copy of the treasury challan is not attached; and
- v). if the application is received in Commission’s office after the closing date.’

4. Some of the petitioners submitted their applications, but the process of selection was not completed for reasons best known to respondent No.3. Thus, vide advertisement No.5/2007 dated 05.05.2007, the above posts were re-advertised. The number of posts to be filled up were however, increased to 152. The petitioners, who had not applied earlier, now submitted their applications. The process of selection was however, kept pending for another one year and on 22.09.2008, a Corrigendum to advertisement No.5/2007 was issued, according to which, the essential qualifications for the post of Laboratory Technician (General) were amended to read as follows:-

- “i). 10+2 with Physics and Chemistry and one year Laboratory Technician Diploma from institution recognized by Haryana State. OR
- ii). Matric with Laboratory Technician Diploma from institution recognized by State Technical Education Board.
- iii). Hindi/Sanskrit upto Matric standard.”

5. Candidates were to apply positively upto 07.10.2008. The number of posts were also increased to 221. Yet another Corrigendum dated 07.10.2008, was issued, whereby the number of posts were increased to 287 to include 66 posts of Laboratory Technician (Malaria) to accommodate a requisition dated 24.09.2008, sent by the Health Department, Haryana. The Corrigendum stated that the qualifications for the post of Laboratory Technician (Malaria) are the same as those for the post of Laboratory Technician (General). The last date was accordingly extended to 22.10.2008. Thereafter, interviews were held from

11.05.2009 to 14.05.2009 at Karnal, Rewari, Hisar, Rohtak and Yamuna Nagar. The result was declared on 08.09.2010 and the petitioners did not find their names in the list of successful candidates. Thereafter, the present writ petition was filed on 28.09.2010.

6. Vide order dated 30.09.2010, the petition was adjourned sine die to await appointments being made pursuant to the aforementioned selection process as till that date, no appointments had been made and the learned Judge was not inclined to issue notice of motion. Subsequently, applications were filed for listing of the case as appointments had been made meanwhile. Vide order dated 21.04.2011, notice of motion was issued by placing reliance upon pendency of CWP-18698-2010.

7. As noticed hereinabove, the amended essential qualifications for the post of Laboratory Technician (General) were advertised vide Corrigendum dated 22.09.2008. This was on account of the Haryana Government Notification dated 18.08.2008, whereby the educational qualification required was reduced to Matric with Laboratory Technician Diploma recognized by the State Technical Education Board.

8. The post of Laboratory Technician (Malaria) is governed by the Haryana Health Department Miscellaneous Staff (Malaria) Group C Service Rules, 1998 (hereinafter referred to as the 'Malaria Rules'), whereas the post of Laboratory Technician (General) is governed by the Haryana Health Department Laboratory Technician (Group C) Service Rules, 1998 (hereinafter referred to as the 'Laboratory Technician Rules'). The pay scale for the post of Laboratory Technician (Malaria) is

Rs.4000-6000/- and the essential qualifications as prescribed by the Malaria Rules for the said post is as follows:-

- “i). Matric with Physics and Chemistry.
- ii). Diploma of one year from State Bacteriology Laboratory Karnal or institution recognized by Haryana Government.
- iii). Hindi upto Matric standard.”

9. Thus, it is clear that the educational qualification for the post of Laboratory Technician (General) was reduced vide Notification dated 18.08.2008, so as to be at par with the educational qualification prescribed for the post Laboratory Technician (Malaria).

10. The selection has been challenged on the following grounds:

- a). From time to time, the number of posts were increased and the essential qualification was reduced, which resulted in reducing the chances of selection of the petitioners;
- b). The selection for the posts of Laboratory Technician (General) and Laboratory Technician (Malaria) could not have been held by way of same selection process as the posts are governed by different service rules and carry different pay scale;
- c). Candidates possessing the diploma from un-recognized institutions have been selected;
- d). Experience has not been taken into consideration while making selection; and
- e). Candidates, who had submitted incomplete application forms, have been selected although, the advertisement clearly

prescribed that incomplete application forms, were liable to be rejected out-rightly.

11. Detailed written statement has been filed on behalf of the respondents, wherein the process of selection has been defended. The change in eligibility criteria has been explained by relying upon Government Notification dated 18.08.2008. The selection for two separate posts governed by different service rules, has been explained by submitting that two separate lists of selected candidates have been prepared. The first list of 214 candidates, is for the post of Laboratory Technician (General) and the second list of 63 candidates, is for the post of Laboratory Technician (Malaria) and that candidates lower in order of merit, have been selected for the post of Laboratory Technician (Malaria), since the expertise required for the said job is less than that required for the job of Laboratory Technician (General).

12. Some of the selected candidates have also filed their written statements, wherein the principle of estoppel has been primarily pleaded.

13. At this stage, I deem it appropriate to make a reference to order dated 23.04.2015, whereby it was noticed that the counsel for the petitioners was relying upon certain factual issues such as
a) non-possession of essential qualifications by the selected candidates;
b) application forms not filled up in accordance with the instructions prescribed in the advertisement etc. and therefore, directed constitution of a Committee consisting of two lawyers of this Court, a lawyer from the office of Advocate General, Haryana and an official conversant with the record of the Haryana Staff Selection Commission-respondent No.3 to

examine the record of the selection. The following aspects were required to be gone into by the Committee:-

- a). Whether the selected candidates were having essential qualifications and other conditions as advertised;
- b). Whether the entire selection process has been done in a fair and a transparent manner; and
- c). Whether the applications submitted by the candidates were in proper form or not.

14. The said Committee submitted its report on 08.09.2015 and found that the selection process stood vitiated for the reasons mentioned below:-

- a). Some of the selected candidates had submitted incomplete forms;
- b). Photographs of some of the candidates on their application forms, were un-attested;
- c). Certain application forms were submitted after the appointed last date;
- d). Certain candidates were selected for the post of Laboratory Technician (General), but they possess the qualification for the post of Laboratory Technician (Malaria);
- e). The marks awarded for viva voce revealed a certain pattern. Candidates, who had secured higher marks in written test were given less marks in the viva voce and vice versa; and
- f). Some of the selected candidates did not possess the educational qualification of 10+2 with Science.

15. The petitioners approached this Court after they were declared unsuccessful in the selection. They never challenged the delay in the selection process while repeated advertisements and corrigenda were being issued. They did not even challenge the amendment in qualifications done vide Notification dated 18.08.2008 nor did they challenge the inclusion of posts governed by different service rules in the same selection process. Only after the result was not palatable to them, the petitioners approached this Court by way of the present writ petition.

16. It is now beyond the pale of any doubt that the principle of estoppel bars candidates from challenging the selection process once they have gone through the same without any demur. In **'Amlan Jyoti Borooah Vs. State of Assam and others, 2009(3) SCC 227'**, an advertisement had been issued for filling up certain posts of Sub Inspectors in the Police Department. The selection was to be made through a written test followed by a physical test and interview. However, only those candidates, who had secured 40% marks in the written test were called for interview and a merit list was prepared. The life of the merit list was two years and the first 169 candidates, who cleared the physical test/medical test were appointed. Thereafter, another 88 vacancies were sought to be filled up from out of the select list and this was challenged on the ground of violation of the procedure of selection prescribed in the advertisement as well as violation of Article 14 and 16 of the Constitution of India. The Hon'ble Supreme Court of India held as follows:-

‘21. Appellant, in our opinion, having accepted the change in the selection procedure sub silentio, by not questioning the appointment of 169 candidates, in our considered opinion, cannot now be permitted to turn round and contend that the procedure adopted was illegal. He is estopped and precluded from doing so.’

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In Union of India and Others vs. S. Vinodh Kumar and Others 2007(4) SCT 479: 2007 (5) RAJ 610: [(2007) 8 SCC 100], this

Court held :

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

The matter again came up for consideration before this Bench in **Sadananda Halo and Others v. Momtaz Ali Sheikh and Others** 2008(2) SCT 76: 2008(2) RAJ 228 : [(2008) 4 SCC 619], wherein this Bench held:

"59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule."

[See also **H.V. Nirmala v. Karnataka State Financial Corporation & Ors.** 2008(4) SCT 459: [2008 (8) SCALE 315]’

17. The petitioners are thus, barred by their act and conduct from challenging the selection process.

18. I, however, deem it appropriate to deal with the arguments of the petitioners on merits as well, since a Committee was set up by this Court to go into the allegations of the petitioners and the findings of the said Committee are in favour of the petitioners.

19. The first argument raised on behalf of the petitioners is that from time to time the number of posts were increased and the essential qualification prescribed was reduced resulting in reduction in the chances of selection of the petitioners. If, there was any illegality in increasing the number of posts, the petitioners should have challenged the same earlier. As already held hereinabove, the petitioners are barred from challenging the same after having participated in the selection process. Mere increase in number of posts over a period of time cannot be said to be illegal nor can it be said to reduce the probability of selection of the petitioners. If the number of posts were less in the first advertisement, correspondingly less number of candidates would have applied as per the logic of the petitioners. On increase of the number of posts, the number of candidates applying would also increase and thus, the proportion of posts to the number of applicants would not vary much as is contended by the petitioners. There is no data on record to suggest that the ratio of number of posts to the number of candidates had been greatly disturbed at the final stage in comparison to that at initial stage. Further, no candidate can claim a right to selection. He can only claim a right to fair consideration and in case the number of candidates are more reducing the chances of selection, a candidate has to live with that fact. The reduction in educational qualification was done through a notification of the State Government and power of the State Government to issue such a notification is not in question. Thus, the first argument raised on behalf of the petitioners, is rejected.

20. The next argument raised is that the posts of Laboratory Technician (General) and Laboratory Technician (Malaria) are governed by different service rules and form separate cadres and therefore, a common selection process could not have been adopted for the said posts. This argument is countered by the learned counsel for the selected candidates by stating that even in examinations conducted for the Indian Administrative Service, one common written test is prescribed and depending upon the marks obtained therein, the candidates are allotted different services, which are governed by different service rules and form separate cadres.

21. A perusal of the essential qualifications prescribed for the two different posts (reproduced hereinabove) show that they are identical. The only difference is that in the case of Laboratory Technician (General), qualification of Class 10/Matric is not qualified by the requirement of 'Science'. To my mind that would not make any difference as the word 'Science' is to be read as qualifying the word 'Matric' considering the nature of the post. I am aware that Courts cannot add words where none are mentioned by the executive, however, the golden rule of interpretation enables me to interpret the qualification as such because prior to Notification dated 18.08.2008, the requirement was of 10+2 with Physics and Chemistry and reduction of the educational qualification would not mean that the knowledge of Science had been done away with. The Laboratory Technician Rules govern the service comprising Senior Laboratory Technician, Bio Chemist, Laboratory

Technician and Laboratory Attendant. All these posts require knowledge of 'Science' and thus, it would be rational to read the requirement of 'Science' into the qualification prescribed.

22. Thus, the essential qualification being similar, all candidates could have been interviewed together and there is nothing unreasonable or arbitrary in appointment of the last 63 candidates in the merit list as Laboratory Technician (Malaria).

23. The next argument raised on behalf of the petitioners is that candidates, possessing diploma from unrecognized institutions have been selected. Certain instances have been mentioned in this writ petition and these have been responded to by the private respondents. In respect of two candidates, the diploma has been annexed with the written statement, which shows that the same is from a recognized institution. In respect of other three instances, it has been mentioned that the said candidates have not been appointed and there is no counter thereto by the petitioners. This argument is also thus, rejected.

24. It is next contended by the learned counsel for the petitioners that the experience of candidates has not been taken into consideration. It was for the petitioners to establish this fact, but they have failed to do so. A perusal of the report of the Committee shows that the criteria adopted for selection of the candidates was 50 marks for qualification and 25 marks for viva voce. No marks have been allotted for experience and thus, the argument of the petitioners falls flat. It is accordingly, rejected.

25. The final argument raised on behalf of the petitioners is that incomplete application forms have been accepted although, the same should have been out-rightly rejected. I am considering this argument in the light of observations made by the Committee set-up by this Court. The Committee has found that in a number of instances incomplete forms have been accepted because the same is apparent from the fact that in certain cases photographs are not attested and in certain other cases, certain columns meant to be filled in by the candidates had been left blank. This has been explained by respondent No.3 by stating that candidates, who had applied initially were not required to apply afresh and in the public notice, by which candidates were asked to appear for interview, those candidates, who do not receive intimation by prescribed date could contact respondent No.3 alongwith requisite documents. Some of the application forms were lost due to passage of time and therefore candidates, who approached respondent No.3 were made to fill up fresh application forms provided they were able to produce proof of submission of earlier application. Since, this exercise was done in a hurry, some candidates left the columns blank although, the requisite documents were annexed with the application forms and the un-attested photographs were pasted. This explanation has been referred to in the report of the Committee as well and there is no observation of the Committee, which may lead to the interpretation that the same had not been accepted by it. This is also the reason why the certain forms bore a date after the last date fixed for submission of applications.

26. The Committee has also observed that certain candidates, who were qualified for the post of Laboratory Technician (Malaria) were selected for the post of Laboratory Technician (General). I am unable to understand this observation as the qualification prescribed for both the posts was identical. Thus, this observation does not compel me to change my decision in any manner. Against the names of certain candidates, the Committee has mentioned that the said candidate did not possess the qualification of 10+2 with Science, but the amended Laboratory Technician Rules only prescribe Matric with Science and it is not mentioned even a single case that the candidate did not possess the said qualification.

27. The Committee has also observed that marks adopted for viva voce reveal a pattern such that candidates, who have secured higher marks for qualifications were granted less marks in viva voce and vice versa. I cannot accept this observation because it does not convey any meaning to me. Moreover, this observation is beyond the terms of reference of the Committee. It was only entitled to carry out a fact finding job and to make a report thereupon and the Court is not bound to take into consideration observations made by it.

28. For the aforementioned reasons, the writ petitions are without any merit and are accordingly dismissed. I, however, deem it appropriate to make a few observations hereunder taking into consideration the facts and circumstances of this case.

a). The practice of delaying selections needs to be deprecated. This case shows that because selections are delayed for years together, application forms of the candidates get mis-placed resulting in heart-burning. Issues such as submission of incomplete application forms could have been easily avoided, had the selection process been completed within a reasonable time. If a selection process is completed expeditiously, it would instill great confidence in the public regarding the functioning of the selection agencies and the Government would be well advised to complete selections within a reasonable time frame. It would also reduce litigation and consequently, the burden on the Courts.

b). The criteria for selection should be made part of the advertisement so that all prospective candidates are fully aware of requirement expected from them. The record of this case indicates that criteria for selection was formulated by respondent No.3 on 05.06.2007, whereas the advertisement was first issued on 30.08.2004. If this wholesome practice is adopted, the allegations that criteria have been tailor-made to select preferred candidates, would be obviated. Again, the confidence of the public in the selection process would increase resulting in greater public satisfaction.

29. A photocopy of this judgment be placed in the files of other connected cases.

(SUDHIR MITTAL)
JUDGE

12.07.2018

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No