

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.19192 of 2015

Date of Decision:-August 27th, 2018

Yuvraj Saini.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH.

Present:- Mr. N.S. Boparai, Advocate for the Petitioner.

Mrs. Ishneet Kaur, Assistant Advocate General, Punjab.

Ms. Amrita Nagpal, Advocate for
Mr. Shireesh Gupta, Advocate for respondent nos.7, 9,
10, 12 & 13.

JASWANT SINGH, J.

1. Yuvraj Saini-who is an unsuccessful candidate, competing for the post of Labour Enforcement Officer, Grade-2, has filed the present writ petition, seeking issuance of a writ in the nature of Certiorari, for quashing the impugned eligibility/merit list (Annexure **P-9**), on the ground that respondent No. 2-Subordinate Services Selection Board has arbitrarily not awarded any marks/considered the 2 years experience of the petitioner, while selecting candidates for the post in question.

2. Learned Counsel for the petitioner has *firstly* argued that no preference has been given to the candidates possessing 2 years experience in

labour laws while finalizing the selection list. To support the argument, reference has been made to rule 9 sub clause (d) of the Punjab Labor Department (State Service Class III) Rules, 1969 (for short “1969 Rules”), which provides under the column ‘other qualifications’ that preference to be given to the candidates having 2 years experience of working in labour laws. It is the assertion of the counsel for the petitioner that he possesses this experience.

The second argument raised by learned counsel for the petitioner is that no marks for experience has been provided to the candidates having experience in labour laws, while adopting the selection criteria for selecting the candidates for the post in question and thus, the entire selection is vitiated being contrary to the provisions of Rule 9 clause (d) of the 1969 statutory rules.

Thirdly, it has been argued that the preference clause as made operative by the respondents, while finalising the selection list, could be considered valid in case the selection was based on written examination and not on the merit based on evaluation of essential qualification. The present selection having being made on the basis of percentage of marks secured by the candidates in graduation, therefore, the logic applied by respondent-Board is contrary to settled position of law and thus, liable to be set aside. To support this argument, Ld. Counsel for the petitioner has relied upon the judgement passed by Hon’ble Supreme Court in “**State of UP and another versus Om Parkash and others**’ decided on 21/07/2006 and also the case of “**Pearl Sidhu versus State of Punjab and others**” decided by Punjab and Haryana High Court, Chandigarh on 29/04/2013.

3. On the other hand, learned Counsel for the respondents has

argued that the criteria as adopted by the Board has been applied uniformly for all the candidates and the present selection has been challenged by the petitioner after having remained unsuccessful in the recruitment process. Thus, it is argued that the petitioner is estopped by his own act and conduct to challenge the recruitment process, after he has remained unsuccessful. It is further argued that the condition as mentioned in the advertisement, which is based upon the statutory rule, indeed refers to the fact that preference would be given to a candidate who has 2 years experience in labour laws, however, the said condition is not a mandatory one. The board had uniformly applied the criteria to the effect that in case prospective candidates achieve the same ranking on the basis of marks obtained at graduation level then, preference would be given to the one, who has 2 years experience in labour laws. It is argued that the final eligibility/merit list was prepared by the respondent board by applying the said criteria uniformly. Thus, prayer has been made that the present writ petition is without any merit as the interpretation made by the petitioners of the statutory rule is incorrect.

4. Having scrutinized the arguments of both counsels and the paper book with their able assistance, I do not find any merit in the instant writ petition and the same deserves to be dismissed.

5. Before proceeding to decide the question involved on merits, it would be necessary to reproduce relevant portion of Rule 9 of 1969 Rules, that govern not only the post of Labour Enforcement Officer but also other posts in the department. The extracted relevant portion of said Rule 9 reads as under:

“ 9. *No person shall be recruited to the Service by*

direct recruitment unless he possesses the educational and other qualification, mentioned below:-

Post to which the person is designated to be appointed	Minimum Educational Qualification	Other Qualifications.
(a) Labour Inspector	Graduate preferably in one of the Social Sciences such as Economics, Commerce, Sociology or law preference to be given to a diploma holder in Social Welfare Course	2 Years experience of practical working of labour laws in Government or private undertaking
(b) Wage Inspector	Graduate (at least 2 nd Division) preferably in one of the Social sciences with preference to law graduates	5 years experience of working of labour laws in any industrial undertaking whether Government or private or any trade union organisation
(c) Field Investigator	M.A. In Economics, Social works or statistics with statistics as one of the papers in the first two cases.	3 years experience of labour statistics
(d) Inspector of Shops and Commercial Establishments	Graduate of a recognized University (at least 2 nd Division)	Preference will be given to person with at least 2 years experience of working of labour laws.

It is conceded position that the aforesaid post of Inspector of Shops and Commercial Establishments at Clause-D was redesignated as Labour Enforcement Officer Grade-II i.e. the post in question in the instant writ petition. A bare reading of the said essential statutory qualification for the post of Labour Enforcement Officer would make it clear that preference will be given to a candidate with at least 2 years experience of working of labour laws. However, the said clause cannot be read in such a manner that the candidates who have such an experience would be given preference over the candidates who do not possess such an

experience, while preparing the merit list. The benefit of the said additional experience can only be given when two candidates are having equal merit. This interpretation becomes more evident when Rule 9 of 1969 Rules is read as a whole. It is seen that Rule 9 has been divided into 3 columns. Column No 2 pertains to essential qualifications and column no 3 pertains to other qualifications. It is further apparent that for posts of Labour Inspector, Wage Inspector and Field Investigator, under the column of 'other qualifications' experience has been prescribed, which is mandatory in nature. Whereas for the post of Inspector of Shops and Commercial Establishment (which is re-designated as Labour Enforcement officer), it is categorically mentioned that "preference" will be given to a person with experience of working of labour laws. Meaning thereby, the statutory rules itself have differentiated between the mandatory and preferential fields for the purpose of recruitment. Thus, the respondents were not obliged to give preference to a candidate having experience in Labour Laws *dehors* the merit secured based on the selection criteria.

As regards the 2nd Argument, this Court may be persuaded to add that it would have been preferred in case certain marks were earmarked in the selection criteria for having experience in labour laws for the post of Labour Enforcement Inspector. However, it is settled position of law that Writ court, while exercising powers under Article 226 of the Constitution does not sit as an appellate court, exercising jurisdiction over the decisions taken by the selection committee/selection board. The court can interfere in the selection process only if it is a result of malafide/fraud or so arbitrary that it strikes the conscience of the court. Thus, merely because no marks have been assigned for such an experience in the selection criteria in the

present case, would not vitiate the criteria to be illegal, so as to set aside the entire selection, as it is neither extra ordinarily arbitrary nor so unreasonable that the Court cannot reconcile with the selection process or the criteria evolved by the respondent-Board.

Thus, the action of the respondent-Board by not awarding any marks in the criteria to the candidates who possessed 2 years experience of working in labour laws, does not suffer from any illegality or arbitrariness. This fact gains more significance in view of the categorical stand taken by the respondent-Board that this criteria has been uniformly made applicable to all the candidates while preparing the selection list.

6. Furthermore, it is apparent from the record that in the advertisement (P-3) itself, under clause 12.2 it was categorically mentioned as follows:

“ 2. *The selection of labour enforcement officer-grade-2 shall be made on the basis of their marks in the graduation.*”

Meaning thereby, petitioner was very well aware of the said condition at the time when he applied for the advertisement in question. He had ample time to challenge the said clause in the year 2014 itself i.e after the issuance of the advertisement. However, he took a calculated chance by applying for the post in question and consequently, accepting the condition of preparation of merit list on the basis of marks secured in graduation only. Since, the result did not favour the petitioner, he has preferred the instant writ petition, challenging the entire selection procedure under which he had applied. By now it is settled position of law that once a candidate has applied for a particular post, it is presumed that he has accepted all the terms and conditions of the advertisement and after having participated in the

selection process, he cannot be permitted to turn around and challenge the terms of selection process under which he had applied. Thus, the petitioner is estopped by his own act and conduct to challenge the recruitment process at this stage.

Accordingly arguments number 1 and 2 raised by the petitioner are rejected due to aforesaid reasons.

7. The third argument of the learned counsel for the petitioner that the method of selection adopted by the respondents, by not giving preference to the petitioner who has 2 years of experience in working of labour laws is against the settled principles of law as laid down in the cited case law, therefore, liable to be set aside, because the present selection has been made solely on the basis of percentage of marks secured by the candidates, is also devoid of any merit. It is always the prerogative of the recruiting agency to formulate a criteria and apply the same uniformly upon all the candidates. Apparently, the criteria has been uniformly applied. The judgement of *Om Parkash (supra)* which has been relied upon by learned Counsel for the petitioner would also show that the Hon'ble Supreme Court has also held that in the absence of any statutory criteria prescribed for the selection to a particular post, the recruiting agency is well within its discretion to evolve its own method of recruitment for the purpose of evaluating and selecting the candidates. In fact, in the said case the Hon'ble Supreme Court had set aside the judgement of Punjab and Haryana High Court whereby, the High court had held that a person with a preferential qualification was entitled to be selected and appointed to a post, as he had a preferential qualification. It was further observed by the Hon'ble Supreme Court that by no stretch of imagination, a clause of preferential

qualification, can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed for the post *dehors* the *inter se* merit/marks secured in the selection process. Thus, this judgement relied upon by learned counsel for the petitioner does not support his case and in fact goes against him. There is no discussion in the said judgement as to what is to be done when the merit list is prepared, not on the basis of a competitive examination but on the basis of the marks secured by the candidates in their essential qualification.

8. As far as the 2nd judgement of **Pearl Sidhu's case (supra)** is concerned, the said judgement does not help the petitioner at all and infact, it is seen that a similar argument to the one raised by petitioner was raised by a candidate before the bench and while rejecting the said argument the court had held as under:

“ *Amolak Singh (petitioner in CWP No. 10780 of 2009) as also Ms. Pearl Sidhu (petitioner in CWP No. 11047 of 2010) applied under the Ex-servicemen Punjab category. After the selection, recommendations were made by the Commission, according to which, Ms. Pearl Sidhu was placed at Serial No. 3 in the combined merit list and Amolak Singh at Serial No. 5. This merit list was forwarded by the Commission to the Government in the Department of Housing and Urban Development, vide letter dated 15.7.2009. In the category wise merit list, Ms. Pearl Sidhu was placed at Serial No. 1 and Amolak Singh at Serial No. 2. Amolak Singh is asserting his appointment prior to Ms. Pear Sidhu on the ground that he was possessing qualification as provided in Clause (a), which is a preferential qualification, whereas Ms. Pearl Sidhu possesses qualification as provided in Clause (c).*

Reference at this stage needs to be made to the judgment of the Hon'ble Supreme Court in the case of State of U.P. and

another Versus Om Prakash and another (supra) wherein dealing with the similar Rule providing for preference out of the two qualifications prescribed under the Statutory Rules, the Hon'ble Supreme Court after referring to the earlier precedent, i.e. in the cases of Secretary (Health), Department of Health and Family Welfare Versus Dr. Anita Puri, 1996 (6) SCC 282 and Secretary, A.P. Public Service Commission (supra) has held that when selection is made on the basis of merit assessed through competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.

To this, an argument has been raised by the respondents that this ratio will be applicable only in cases where there is a competitive examination held, followed by interview. Perusal of the judgment passed by the Hon'ble Supreme Court in Secretary (Health), Department of Health and Family Welfare Versus Dr. Anita Puri's case (supra) would show that there was no competitive examination held in the selection which was in question for appointing candidates to the post of dental officers. It thus cannot be said that the applicability of this principle as laid down by the Hon'ble Supreme Court would be restricted to a situation in giving preference to one qualification over the other where the basis of merit was assessed through a competitive examination, followed by the interview.

(Emphasis supplied)

Consequently, the argument raised by the learned Counsel for the petitioner stands answered against him in *Pearl Sidhu's* case itself and is therefore rejected by this court as well.

No other point was raised by either of the parties.

In view of the above finding no merit in the present writ petition, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

August 27th, 2018
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>