

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

CWP No. 9167 of 2010
Reserved on: 13.12.2017
Date of decision: 24.01.2018

Anil Arya

....Petitioner(s)

Versus

The State of Haryana and others

...Respondent(s)

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

Present: Mr. Ram Niwas Sharma, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Ms. Parminder Kaur, Advocate,
for Mr. Vishal Gupta, Advocate,
for respondents no. 30 and 41.

G.S.SANDHAWALIA, J.

The petitioner seeks a writ in the nature of certiorari under Articles 226 and 227 of the Constitution of India quashing the selection made to the post of Sanskrit Teachers under Advertisement No. 6 of 2006 dated 20.07.2006. Resultantly, the appointment of private respondents no. 5 to 119 is challenged having been made on extraneous considerations and direction is sought for appointment of the petitioner to the above said post.

The stand taken by the petitioner is that M.A. in Sanskrit with B.Ed. in Sanskrit being higher qualification, therefore, he has right over and above the persons selected if the selection is made on the basis of qualification and interview. The selection has also been challenged on the ground that it was on the basis of nepotism, favouritism and regionalism on

command of the political boss, the then Chief Minister since respondent no. 4 was the brother-in-law of the said Chief Minister and had been given extension in service thrice despite being over age.

The pleaded case of the petitioner is that 498 posts were advertised vide advertisement dated 20.07.2006 (Annexure P-1) wherein, the break up of the posts of various categories was as under:-

“(General-237, SC-A 49, SC-B 49, BC-A 79, BC-B 53, ESM (Gen)= 18, ESM (SC-A)= 1, ESM (SC-B)= 1, ESM (BC-A) = 2, ESM (BC-B)= 3, Outstanding Sportsperson (Gen)=2, Outstanding Sportsperson (SC-A)=1, Outstanding Sportsperson (SC-B)=1, Outstanding Sportsperson (BC-A)=1, Outstanding Sportsperson (BC-B)=1”

The essential qualifications prescribed under the advertisement read as under:-

“E.Q. i) Shastri/B.A. (Honours in Sanskrit) from a recognized University.

ii) L.T.C. /O.T. in Sanskrit conducted by the Haryana Education Department or an equivalent recognized by the Haryana Education Department.

OR

B.T. /B.Ed. With Sanskrit as teaching subject from a recognized University.

iii) Hindi up to Matric standard.

Note: In case the candidates of above mentioned qualifications are not available then B.A. with Sanskrit as an elective subject with B.T./B.Ed. from a recognized University with Sanskrit as one of the teaching subject shall be considered.”

The petitioner applied for the said post being duly qualified on the ground that he had passed the matriculation examination with Hindi,

B.A. with Sanskrit as an elective subject, B.Ed. with Sanskrit as one of the teaching subjects, M.A. in Sanskrit and also Doctorate in Philosophy (Annexure P-2 colly). It is, this, his grouse that he was not called for interview whereas he had M.A. in Sanskrit and was fully eligible.

He had filed CWP No. 11671 of 2007 titled, Dr. Anil Arya vs. State of Haryana, which was decided alongwith a bunch of cases and the lead case was ***CWP No. 10926 of 2007, Ashok Kumar and others vs. State of Haryana***, decided on 21.12.2007 (Annexure P-12). Resultantly, the Division Bench had treated the petitioner and other similarly situated candidates eligible for the post of Sanskrit Teacher and directed that he be called for interview and in case already interviewed alongwith other candidates, result be declared as per their merit. It is the case of the petitioner that he was called for interview on 31.08.2007 before the Selection Committee and was fully confident of his selection and had answered all questions. The result had been declared and the petitioner did not make it in the selection list though he had possessed higher qualifications. It is, thus, his grouse accordingly that though he has M.A. in Sanskrit and being Doctor of Philosophy in the faculty of Sanskrit and Masters in Education but he was not put in the list of selected candidates on account of the conduct of respondent no. 4 and that higher marks had been given in interview to candidates of their choice.

Candidates who had got higher marks in academic and professional qualifications were given lower marks in interview and they were not put in the selection zone as per the directions of the then Chief Minister. Resultantly, the petitioner had asked the Secretary of the Staff Selection Commission to supply him various material and details and sought

information regarding the private respondents and the selection was, thus, challenged that 50% of the posts which have been selected fall from Rohtak and Jhajjar i.e. The Parliamentary Constituency and Vidhan Sabha Constituency of the Chief Minister and his son. Candidates from some of the districts did not have any representation and, therefore, challenge was made on the basis of nepotism and regionalism and extraneous considerations.

In the reply filed on behalf of Secretary, Haryana Staff Selection Commission for respondents no. 3 and 4, the plea taken was that selection criteria had been evolved on 21.08.2006 (Annexure R-3/1). The petitioner had obtained 43.99 marks as against 54.20 marks in general category and due to lesser marks, he could not find place in the selection list. Having once appeared in the interview, he could not challenge the result of the interview if it was not palatable to him. Reliance was placed upon judgment of the Apex Court in ***Chander Parkash Tiwari vs. Shakuntla Shukla, 2002 (3) RSJ 507***. It was accordingly pleaded that the interviewer had awarded marks to the petitioner as per the performance adjudged at the time of interview and on account of getting lesser marks, he had not found a place in the selection list. It was submitted that vide notification dated 28.01.1970 issued under Article 309 of the Constitution of India, the qualification and mode of appointment of Members and Chairman of the Commission had been prescribed and the present Commission had been duly constituted which was valid and justified. The respondent-Commission is an independent body and acts without any political pressure and if the petitioner had secured lesser marks, he could not have any grouse as such. The petitioner had been considered eligible

for the post in view of the judgment of the Division Bench in *Ashok Kumar's case (supra)*. The candidates belonging to ESM general category for which 18 posts were reserved in view of the judgment in ***CWP No. 12092 of 2007, Nawab Khan vs. State of Haryana*** and ***CWP No. 4240 of 2004, Kartar Singh vs. State of Haryana*** having qualification of B.A. with Sanskrit as an elective subject and B.Ed. with Sanskrit as one of the teaching subjects had been called for interview as they had preferential right in the matter of selection over dependants of Ex-servicemen and, therefore, the averments made in para no. 18 that some selected candidates having B.A. B.Ed. was without any basis.

On behalf of private respondents no. 30 and 41, in the written statement filed, plea taken was that the petitioner having duly participated in the selection process and having failed to secure the number in merit cannot turn around and say that the procedure adopted for selection was bad. Reliance was placed upon judgment of the Apex Court in ***K.H. Siraj vs. High Court of Kerala and others, AIR 2006 SC 2339***. Merely because the petitioner possessed higher qualification would not given him a right for appointment as Sanskrit Teacher and, therefore, he had no cause of action. It was denied that any technique has been adopted that candidates of choice would come in the zone of selection and others may be ousted from the zone of selection. It was clarified that the answering respondents were residents of district Gurgaon and possessed the necessary qualifications and that persons excellent in academic qualifications may not give good response to the Interview Committee. Resultantly, the method of allocation of marks and viva voce test could not be challenged and the allegations of mala fide as such were only an after thought.

In the replication filed, the petitioner relied upon the charts to show that candidates who had got high academic marks had been given low marks in interview and similarly, ones who had got low marks in the academic session had been given high marks in the interview to bring them within the zone of consideration. Resultantly, stress was laid down upon the higher qualification in M.A. and on account of the note given in the essential qualifications.

At the outset, it is to be noticed that though allegations of mala fide have been levelled against the Chief Minister but he has not been made a party in the present writ petition so that notice could be issued to him and response could be received from him whether there is any political interference as such in the selection process. As noticed, the same has been denied by the Chairman of the Commission in the reply filed through Secretary. It is settled principle that where allegations of mala fide are made, the person has to be necessarily impleaded as a party and in the absence of the same having not been done, the same is not liable to be taken into consideration.

The argument which has, thus, been raised that on account of higher qualification as such of M.A., the petitioner was liable to be granted benefit over and above others also does not cut much ice with this Court that the essential qualifications prescribed in the advertisement rather did not show that the petitioner being M.A. in Sanskrit would get any preference as such or there is any preference clause as such. Rather, it is a matter of record that it is only on account of the judgment of the Division Bench in *Ashok Kumar's case (supra)* the petitioner was held entitled to be considered for interview on account of having higher qualifications and,

therefore, the said argument raised as such that preference should have been given to the higher qualification over and above the others is not liable to be accepted. It is to be noticed that the selection criteria had already been fixed by the respondent-Commission for making selection to the post of Sanskrit Teacher. A total of 90 marks was divided between the academic qualifications which included higher qualifications whereas, interview was to carry 30 marks. The criteria prescribed by 6 Members and duly approved by the Chairman on 21.08.2006 read thus:-

“HARYANA STAFF SELECTION COMMISSION, PANCHKULA

***CRITERIA FOR MAKING SELECTION ON THE POST OF SANSKRIT
TEACHER, EDUCATION DEPARTMENT AGAINST ADVT. NO. 6/200,
CATEGORY NO. 20.***

LAST DATE : 21.8.2006

Total Marks : 90

1. Essential Qualifications :

*i) Shastri/BA (Hons) in Sanskrit 30-Marks
0.30 of the percentage of marks obtained.*

ii) L.T.C./O.T. In Sanskrit 25-Marks

OR

*B.T/B.Ed with Sanskrit as teaching subject.
0.25 of the percentage of marks obtained.*

Higher Qualifications :

05-Marks

- | | |
|--|----------------|
| <i>1) P.hd in the concerned subject</i> | <i>3-Marks</i> |
| <i>2) M.Phil./M.Ed. in the concerned subject</i> | <i>1-Mark</i> |
| <i>3) Post Graduation in the concerned subject</i> | <i>1-Mark</i> |

Viva Voce :

To assess the knowledge of subject, communication skill, general knowledge, general awareness and intelligence. 30-Marks”

The petitioner, thus, was assessed at the same level as other candidates in pursuance to criteria which has already been prescribed well before the interviews took place in July to November, 2007 and August, 2008 and, therefore, now cannot turn around and say that the criteria as such was a tailor-made to suit certain candidates.

In order to test the averments made in the replication, directions were issued that higher marks had been awarded selectively in the interview process to candidates having lower marks. An affidavit was directed to be filed on 29.08.2017 depicting marks of selected candidates who got high marks in the academic criteria and corresponding interview marks granted to them. Similarly, the detail of the selected candidates who were granted more than 25 marks in the interview was also directed to be furnished alongwith their academic marks. The needful was thereafter done by the Secretary of the Commission by filing affidavit dated 04.10.2017. The said contention was accordingly controverted on the basis that the interview is based upon the performance of a candidate and assessment of his marks as assigned by the Selection Committee and they cannot be termed to be arbitrary.

Accordingly, a perusal of the information attached alongwith the affidavit would go on to show that there were more than 210 candidates who secured more than 35 marks in the academic performance alongwith interview marks and they were granted marks varying between 8 to 23. 28 candidates had been awarded more than 20 marks and 20 have been awarded 10 or less marks in the interview. Similarly, for candidates who were granted more than 25 marks in the interview, the number was 38 against the 498 candidates recommended for appointment. The range of

marks between the said candidates varied from 25 to 27 and the minimum academic marks varied between 25.63 to 32.95.

The above discussion would go on to show that against the 237 general category seats with which the petitioner is concerned, the number of marks as such awarded to candidates who had secured lower academic marks is only 38 and similarly out of the 210 candidates who had got more than 35 marks alongwith the academic performance, 28 of them had been awarded more than 20 marks and only 20 had been awarded 10 or less marks. The above ratio, on the face of the record, as such does not show that much of discrepancy or outright examples of showing award of high marks which would warrant interference by the writ Court.

It is settled principle that the petitioner having taken a chance in the selection process and at the end of the day having not made the cut, he is not entitled to challenge the interview process or the grant of marks in view of the law laid down by the Apex Court in ***Madan Lal and others vs. State of Jammu and Kashmir, 1995 (3) SCC 486; Chander Parkash Tiwari vs. Shakuntla Shukla, 2002 (3) RSJ 507*** and ***D. Sarojkumari vs. R. Helen Thilakom and others, 2017 (9) SCC 478***. The relevant portion of the said judgment reads thus:-

“8. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :-

“24. In view of the propositions laid down in the above noted judgments, it must be held

that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

9. Same view has been taken in Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others.

10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the

objection is not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised.”

Resultantly, keeping in view the above discussion, this Court is of the opinion that no scope is made out for quashing the selection made against the above said advertisement. Accordingly, finding no merit in the present writ petition, the same is dismissed.

24.01.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

