

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.2525 of 2014 (O&M)
Date of Decision: 23.10.2018**

Sucheta Arya

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Sodhi, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Anurag Goyal, Advocate,
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the appointment of respondent No.4 as Junior Mistress (Cutting and Tailoring) in the Industrial Training Department, Haryana through advertisement dated March 12, 2013. The petitioner is an unsuccessful candidate. The appointments were on contract basis. The selection was made by a Committee constituted by order dated February 12, 2013 to select the eligible and meritorious

candidates. The multi member Committee was headed by the Divisional Commissioner Ambala Division as its Chairman. The essential academic qualification and experience prescribed for the post in the advertisement is as under:-

“(i) Full time, regular mode Bachelor degree in relevant trade as mentioned in appendix B2 from any institute/University recognized by National Institute of Fashion Technology(NIFT) All India Council of Technical Education/Haryana State Board of Technical Education with one year practical/teaching experience;

or

Full time, regular mode Diploma in relevant trade as mentioned in appendix B2 from Haryana State Board of Technical Education or National Institute of Fashion Technology with two year practical/teaching experience;

or

National Trade Certificate/National Apprenticeship Certificate with Craft Instructor Training Course (CITC) or Teacher Training Course (TTC) in relevant trade as mentioned in appendix B2 with five year Practical teaching experience Including training period;

(ii) Hindi/Sanskrit upto Matric Standard or higher education;

Note:- *Preference shall be given to the degree/diploma holder candidate possessing Craft Instructor Training Course in relevant trade/P.O.T. from NCVT recognized institution.”*

2. The Committee prepared merit list as per the criteria prescribed.

The name of the petitioner figured at Sr. No.10 in the general category.

Initially three posts were advertised of which one was for general category; one was for Scheduled Caste and one for Backward Class category. Later on, the posts were increased from 3 to 4 with one extra given to the general category. Short-listing method was adopted by calling four times the number of vacant posts category-wise to be called for interview. Eight candidates were called against the two posts of general category. The interviews were conducted as scheduled on May 08, 2013. On the day of interview only three candidates out of eight appeared before the Selection Committee. The candidates were Meena Rani-respondent No.4, Priyanka Kumari Joon and Lajwanti. At the time of interview, the Committee noticed that inadvertently 20 extra marks were granted for higher qualification to Ms. Priyanka Kumar Joon as she did not possess the higher qualification. Due to this mistake, the merit list was amended and the merit position of Ms. Joon got changed and her name was placed at Sr. No.70. Candidates up to Sr. No.10 were allowed to appear for interview before the Interview Committee. Ms. Joon was not interviewed. Interestingly, Smt. Meena Rani-respondent No.4 (selected candidate) appeared for the interview on May 08, 2013 and informed members of the Committee that she had brought all original certificates except one original experience certificate and her son was on his way bringing the original certificate to the venue.

3. The original record of Meena Rani was called by order and has been produced. The application is dated March 26, 2013. It has been recorded by hand on the reverse of the first page of the application form by the members that “Exp Certificate in original not available at time of

interview. 11.20 AM 8.5.2013”.

4. In the written statement in para.6 it has been stated that after 20 minutes she again informed the interview Committee that she had by then her original experience certificate and requested to allow her to appear in the interview. The Committee considered her request and allowed her to appear in the interview. She was interviewed. As per merit list respondent No.4 secured 63.02 marks including for interview whereas the petitioner secured 50.68 marks in the final merit list (Annexure R-IV). As respondent No.4 secured more marks she was rightly selected by the Committee. It may be noticed that the petitioner's name was in the waiting list in the final result declared.

5. There is no subsequent note in the original record recording after “20 minutes” and how she was permitted to be interviewed even when her vital experience certificate in original to make her eligible was not available at the time of interview when she was called in. There is no record in writing that the original certificate of experience was produced before the interview Committee on the same day. This is a matter of conjecture and oral statement which cannot be cross checked by written record which is not supported by any note or entry on the file especially when the Committee had recorded that experience certificate in original was not available at the time of interview. On February 11, 2014 this Court passed the following order while issuing notice of motion to the respondents”-

“It is the contention of the counsel for the petitioner that the candidature of the respondent No. 4 could not have been considered for appointment to the

post of Junior Mistress (Cutting and Tailoring) as conditions No. 13 and 15 (at page 30), as specified in the Instructions dated 08.03.2013 (Annexure P-2), have been violated. He contends that the said respondent did not produce the original experience certificate at the time of interview and in support of this assertion, he has placed reliance upon the information supplied to him by respondents No. 1 to 3 under the Right to Information Act, where a note has been appended (page 45 of the paper-book) that the experience certificate in original is not available at the time of interview. Counsel for the petitioner contends that as per condition No. 15 of the Instructions, referred to above, candidates must possess requisite experience after acquiring requisite academic qualification. Respondent No. 4 has passed her Central Training for Instructor Course in Cutting and Sewing/Embroidery and Needle Work from the Government Central Institute of Women, Union Territory, Chandigarh in July, 2010. The experience thereafter, has to be counted and the cut off date of submission of the application was 28.03.2013 and, therefore, the requisite experience, as provided for in the advertisement, of five years including the period spent on training is not fulfilled.

Notice of motion for 18.08.2014.”

6. The advertisement was issued after coming into force of the statutory rules, namely, the Industrial Training Department Haryana Field Offices (Group-C) Service Rules, 2013 wherein for the post of Craft Instructor (Women) Cutting & Sewing the required qualification for direct recruitment is as under:-

C(b)	Craft Instructor (Women)	Qualification for direct recruitment to be read with Appendix B2, for trades mentioned at serial No.1 to 6.
1	2	3
1. 2. 3. 4. 5. 6.	Cutting & Sewing Dress Making Embroidery & Needle Work Fashion Technology Hair & Skin Care Computer Aided Embroidery	(1) Full time regular mode Bachelor degree in relevant trade as mentioned in appendix B2 from any institute/University recognized by National Institute of Fashion Technology (NIFT)/ All India Council of Technical Education/ Haryana State Board of Technical Education with one year practical/teaching experience; Or Full time, regular mode Diploma in relevant trade as mentioned in appendix B2 from Haryana State Board of Technical Education or National Institute of Fashion Technology/ teaching experience; Or National Trade Certificate/ National Apprenticeship Certificate with Craft Instructor Training Course (CITC) or Teacher Training Course (TTC) in relevant trade as mentioned in appendix B2 with five year Practical/teaching experience including training period; (ii) Hindi/Sanskrit upto Matric Standard or higher education; Note:- Preference shall be given to the degree/diploma holder candidate possessing Craft Instructor Training Course in relevant trade/P.O.T. from NCVT recognized institution.

7. Mr. Anurag Goyal, learned counsel for respondent No.4 submits that the perusal of the rules make it clear that it is nowhere provided therein that the experience certificate after fulfilling the requisite qualification shall only be considered. Therefore, any instructions issued by the Government supplanting the rules cannot be read against any of the candidate, who is an aspirant for the post in question albeit to be filled on

contract basis. Respondent No.4 completed five years requisite experience as per the instructions issued by the department, wherein she had completed ITI course i.e. NTC Cutting & Sewing in 2004-05 i.e. one year course and thereafter she qualified her Craft Instructor Training Course in the year 2010 from Government Central Craft Institute for Women, UT Chandigarh. He submits that for admission to the CTI course (Cutting & Sewing) one year practical experience in the relevant field is one of the essential qualifications. The petitioner after doing National Trade Certificate could not even apply for admission in the training course i.e. CTI without having any experience. Copy of the prospectus of the Institute at Chandigarh has been placed on file as Annexure R-4/2. After finishing the course of CTI, the petitioner obtained diploma in Embroidery & Needle Work from ITI, Kalka at Bitna in 2011 and not only this, the petitioner earned a Diploma in Fashion Designing Course from NIFT which was prescribed. She is a graduate from Kurukshetra University, Kurukshetra. The condition of obtaining experience as per the advertisement condition No.15 is that the candidates must possess requisite experience from any recognized/reputed institution and his/her experience shall be considered only after acquiring requisite academic qualification is contrary to rule where no such condition has been imposed. Condition 3 of Appendix B to the rules Annex P-3 mentioned by the petitioner in para.5 of the writ petition prescribes experience of five year practical/teaching experience including the period of aforesaid (i & ii) from any reputed industrial organization or institution. It is, therefore, argued by Mr. Goyal that the terms and conditions of the

advertisement are contradictory to the qualification prescribed in the rules. Therefore, it cannot come from the mouth of the petitioner that the experience gained during the course (i) and (ii) cannot be counted for the purpose of selection and appointment, because the experience gained by a candidate after first course cannot be washed away, as the rule is silent about the experience and falls between the period of the two courses and the same cannot be used against the respondent No.4 simply because the some conditions mentioned in the instructions/advertisement which in itself is contrary to the basic language of the rule. He draws support from instructions dated April 29, 2002.

8. Learned counsel for the petitioner has placed on record of information supplied by the PIO ITI Ambala City being a letter of respondent No.4 dated March 26, 2013 (found at pages 42 to 45 of the paper-book) where on her own showing the respondent No.4 has given her total experience tabulated as follows:-

	<i>Description of experience.</i>			
	<i>Name of Industry / Institution/organization</i>	<i>Period of experience</i>	<i>Description of period</i>	<i>Salary</i>
	<i>Bhawan Beauty Parlour and Institute of Cutting, sewing, fashion designing & Beauty Parlour</i>	<i>16 Months</i>	<i>Dated 01.09.2013 to 31.12.2006</i>	<i>4000/-</i>
	<i>Bhawan Beauty Parlour and Institute of Cutting, sewing, fashion designing & Beauty Parlour</i>	<i>18 months</i>	<i>Dated 01.01.2007 to 30.06.2008</i>	<i>5000/-</i>
	<i>Neelam Boutique</i>	<i>12 months</i>	<i>Dated 15.07.2008 to 14.07.2009</i>	<i>1600/-</i>

	<i>Description of experience.</i>			
	<i>Women Fashion Designing Boutique & Beauty Care Training Centre</i>	<i>12 months</i>	<i>Dated 01.08.2011 to 31.07.2012</i>	<i>3000/-</i>
	<i>Total Experience</i>	<i>4 years 10 Months</i>		
12	<i>Any other particular information/ achievement</i>	<i>Won Miss congeniality award at NIFD</i>		
13	<i>The name of institution where you seek appointment. The name of institution as per preference.</i>	<i>1. Govt. I.T.I. Ambala 2. Govt. I.T.I. Shahbad.</i>		

9. The experience on the showing of the 4th respondent is short of five years experience required for the post. Counsel for the petitioner refers to the recruitment rule to show where five years practical/teaching experience has to be earned. It is from any reputed industrial organization or institution. Experience only from reputed industrial organization or institutions could alone be considered and it cannot be said that experience earned by respondent No.4 from Beauty Parlours etc. can be considered as one earned from reputed industrial organizations and institutions and if that period is excluded she cannot be said to have required requisite experience under the Rules and was therefore ineligible.

10. Still further, there was a categorical stipulation in the terms and conditions of the advertisement posited in Clause 13 thereof that candidate must bring all his/her original certificates at the time of interview otherwise his or her interview shall not be conducted. The word used is “time” and not “day” of interview. In case of conflict between rule and advertisement then the game was played according to rules in the advertisement and what was demanded for the contract job was experience only after acquiring requisite

academic qualifications and experience. Many eligible candidates may not have applied reading Clause 15 of the terms and conditions and, therefore, the pre-requisites in Article 16 (1) of the Constitution of India, that is, of equal opportunity have not been met in this case. For these reasons, the appointment cannot be sustained as it is contrary to the prescriptions on which the selection process was based.

11. On February 23, 2018 an interim order was passed pursuant to which the additional affidavit of P.S. Narwal, Joint Director (Technical) Skill Development and Industrial Training Department, Haryana has been filed. The court order dated February 23, 2018 reads as under:-

“Learned counsel for the State is directed to produce the original record of selection relating to Smt. Meena Rani where at the time of interview on 08.05.2013 at 11.20 AM it was recorded that her son was on the way bringing the original experience certificates to the venue, which would take 20 minutes. Affidavit to be filed would also explain the basis of introducing time on the record and whether time was recorded in the case of any other candidate, successful or not. The affidavit should address para 6 of the preliminary submissions of the written statement and where was the entry at 11.40 am when the son of Smt. Meena Rani brought the original experience certificate.

It may be recorded that if the affidavit is found fudged, serious action would be taken against those officers, who were responsible. The affidavit should also reflect an eyewitness account.

Adjourned to 06.04.2018.”

12. Matters personal to the knowledge of the Chairman and

Members of the Committee are difficult to decipher in exercise of certiorari jurisdiction which goes to record. They are not found recorded in writing and thus bald statements made on affidavit cannot be seen as substitute of record and cannot be relied upon by imagination. When time was recorded on the application i.e. 11.20 AM then there is no link record of presentation of the experience certificate by respondent No.4. What happened meanwhile till 11.40 AM or thereafter is an undependable surmise. These are bald statements made on affidavit not supported by record and that too by the deponent who has no personal knowledge and could only speak from record. There is, therefore, absolutely nothing on record to show that the respondent No.4 produced the experience certificate she wanted to on the day or time of interview.

13. A serious doubt has crept into the selection process and cast dark shadows and accordingly, no judicial finding can be recorded in favour of respondent No 4 in absence of record nor can the defect be cured by way of an additional affidavit and statements made therein to uphold the selection process. It is well settled that it is not the decision but the decision-making process which is amenable to judicial review. If the process is gravely suspect and an incurable lacuna remains and persists which has not been properly explained by the State, then I have no option left but to set aside the selection and appointment of respondent No.4 on the contractual post. The Chairman and other members of the Committee are not on affidavit dispelling doubts as to what transpired at the interview after recording in writing *“Exp Certificate in original not available at time of*

interview. 11.20 AM 8.5.2013". Merit of the Respondent No 4 has little role to play and plug the loophole covered by a grey area on which no light is thrown. The doubt created by procedure adopted by the Committee on the spur of the moment is too wide to ignore. Consequently, arbitrariness rules the roost of interview process in the case of the Respondent No 4. Time and timing became the essence of the interview. The additional affidavit states that in case the 4th respondent was not interviewed and she had come to court complaining, then what would the state have said in defence. This appears to me a perverted and unpredictable view built on a hypothesis of what would be the fair thing to do.

14. The petition is allowed. It is held that the selection of respondent No.4 suffers from arbitrariness, discrimination and patent illegality and the same is quashed. The official respondents are free to make a fresh selection in accordance with law. Original record is returned to Mr. Rathee. No order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

23.10.2018
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*