

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 20.11.2018****CWP No.26890 of 2014**

Ram Niwas

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Chirag Kundu, Advocate, for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Kanwal Goyal, Advocate, for respondent No.2.

Mr. Sunil K. Nehra, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

1. Two of the essential qualifications which are relevant for a decision in this case were; a candidate should possess degree of a recognized University in Arts or Science; and, preference will be given to candidates holding degree or diploma in Criminology. Recruitment was to the post of Deputy Superintendent of Jail (Male) (Group-B) with one post reserved for Scheduled Caste of Haryana. There is no dispute that neither the petitioner nor the private respondent, whose selection and appointment has been challenged, hold the Degree or Diploma in Criminology. What the petitioner tries to take the benefit of is that in his Bachelor of Laws (LLB) course, he studied Criminology as one of the subjects. Criminology as a subject in LLB will not be the same as a Degree or Diploma in Criminology. Neither of them can avail of preference and, therefore, the contention is rendered academic.

2. Mr. Kundu submits that as per advertisement, preferential qualification becomes part of the essential qualification. Even if this argument has any bearing, still the case of the petitioner does not fall in the purview of preference because he does not possess the Degree or Diploma in Criminology, which is an independent course and not the same as what he has earned in his academic pursuits. It matters little whether it is part of essential qualification or not and the fate of this petition would not depend on it.

3. The other issue raised by the petitioner is that excessive marks were assigned to interview i.e. 60 marks as against the total marks for Personal Achievements [Academic Qualifications, Sports Activities & Co-curricular Activities, which all added up to 40 marks]. Says award of excessive marks for interview runs foul of the law stated in Ashok Kumar Yadav Vs. State of Haryana & others, AIR 1987 SC 454.

4. To counter the argument, Mr. Kanwal Goyal appearing for the HPSC refers to the judgment of the Supreme Court in Anzar Ahmad Vs. State of Bihar & others, 1994 (1) SCT 484, where the criteria adopted by the recruiting agency was 50:50 [Academic and Interview]. Mr. Goyal further cites the decision in CWP No.19305 of 2013 titled 'Poonam Rani Vs. State of Haryana & others' and other connected cases decided on 18.01.2016; CWP No.26220 of 2014 titled 'Lalit Sahu Vs. State of Haryana & others' decided on 28.03.2016, which are cases involving the State of Haryana and appointments to the post of Lecturer in English (School Cadre) (General Category) and Assistant Engineer (Civil) in Irrigation Department respectively. In those cases, the HPSC had adopted a similar criteria of 60:40, which was upheld by this Court as not disproportionate to the cause

of merit. Learned Single Judge, while relying on numerous decisions of the Supreme Court and this Court, held that in the absence of any written test, the allocation of 60 marks for interview and 40 marks for personal academic achievements is not on the higher side. Mr. Goyal also relies on Single Bench judgment in CWP No.11736 of 2013 titled 'Jagbir Singh Vs. State of Haryana & another' and other connected cases decided on 15.02.2016 on the same lines.

5. On the other hand, *Ashok Kumar Yadav* was a case of recruitment to the Haryana Civil Services (Executive Branch). There was a written examination followed by viva voce. In the present case, the selection has been based largely on interview for which 20 marks each were broken in three areas i.e. (i) Knowledge, awareness, intelligence, speaking ability etc.; (ii) Poise bearing, expression, articulation, alertness and other related qualities; and (iii) Ability to take decision and promptness, outlook towards social & national issues etc.

6. Much would depend on the nature of the post and there are cases where 100% interview based selections have been upheld. A distinction has also to be kept in mind while dealing with the subject matter, when it relates to admission to educational institutions and recruitments to all kinds of public posts from Group A to Group D.

7. Mr. Sunil K. Nehra, learned counsel representing the private respondent, argues that petitioner has himself claimed weightage of 10 marks for Degree or Diploma by way of preference, as he has done Criminology as one of the subjects in LLB. Once the petitioner has relied on the criteria, claiming marks under it he cannot turn around and question it.

Besides, the petitioner has participated in the selection process and would be estopped from challenging it.

8. Petitioner, however, submits that the selection criteria was not to his knowledge and, therefore, the principle of estoppel would not apply.

9. Whether the petitioner had or had not the knowledge of criteria, or it was not published, this would not persuade me to invalidate the selection process and the appointment of the private respondent. The petitioner took his chances, but failed to achieve the cut on merit. No mala fides or bias has been alleged in the selection process.

10. For these reasons, I would not interfere in this matter in exercise of writ jurisdiction under Article 226 of the Constitution at the asking of the petitioning candidate and would dismiss the petition.

20.11.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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