

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24142 of 2017

Date of Decision: 28.03.2018

Gaurav

...Petitioner

Vs.

Pandit B. D. Sharma University of Health Sciences, Rohtak, and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. C. P. Tiwana, Advocate
for the petitioner.

Mr. Nilesh Bhardwaj, Advocate,
for Mr. Surender Sharma, Advocate,
for respondents no.1 to 5.

Mr. Anurag Goyal, Advocate,
for respondent no.6.

Amol Rattan Singh, J.

By this petition, the petitioner has challenged the selection of respondent no.6, Neelam, as a Medical Records Clerk in the respondent University, pursuant to an advertisement (Annexure P-1) having been issued, inviting applications for numerous posts in the University, including the one in question.

The petitioner and respondent no.6 both applied in the BC-A category, with only one post advertised in that category and another post (of a Medical Records Clerk), advertised in the General Category.

The petitioner thus seeks the quashing of the selection of respondent no.6 and further seeks a writ of mandamus directing respondents

no.1 to 5, i.e. the University and its Screening Committee, to consider the petitioners' candidature for appointment to the said post in place of the said respondent.

2. The facts, as given in the petition, are that upon the aforesaid advertisement having been issued, with the last date for submission of applications being 07.11.2016, the petitioner and others, including respondent no.6, applied for the post, with the criteria for selection given in the advertisement itself, (as submitted by learned counsel for the respondents). The criteria for selection for all non-teaching posts, including the one in question, is shown to be as follows in the writ petition, as Annexure P-4, not denied by the respondents in their reply:-

“Criteria for various non-teaching posts of Pt. B.D. Sharma, PGIMS, Rohtak/University of Health Sciences, Rohtak.

	Criteria for the selection to the non-teaching posts	Total Marks-100
I.	<u>ACADEMIC QUALIFICATION:-</u>	<u>65 MARKS (65%)</u>
	Basic Qualification including Professional Qualification if any:-	<u>60 Marks (60%)</u>
	Weightage of 50% marks may be given for screening/written test if any in the Basic Qualification including Professional Qualification marks. The distribution of marks will be as follows:-	
	A. Basic Qualification including Professional Qualification (if any) - 30 Marks (30%)	05 MARKS (5%)
	B. * Screening/Written Test - 30 Marks (30%)	
	Higher Qualification (over & above the requisite qualification in the relevant subjects/specialists):-	

II	EXTRA CURRICULAR ACTIVITIES:- (Subject to maximum of 05 marks) Sports (Certificate issued by the Director, Sports of the State stating Grade and period of participation)-02 Marks (Subject to maximum of 02 marks) <u>Grade A-1 & A-2</u> -02 Marks <u>Grade B-1 & B-</u> -01 Mark <u>Grade C-1 & C-2</u> -1/2 Mark Blood Donation -02 Marks <u>(1/2 Mark for each donation subject to maximum of 2 Marks)</u> NSS/NCC -01 Mark (Letter/Certificate of merit for NSS weightage & (Certificate of C/G Part-II/B Certificate for NCC weightage)	05 MARKS (5%)
III	EXPERIENCE (Subject to maximum of 10 Marks) (1/2 mark for each completed year of work experience on the said post in Govt. Institution/Public Sector Institution or Hospital/University Hospital/Hospitals on Govt. panel. Note:- 1 mark for each completed year of work experience on the respective post for the candidates already working in this institution on contract basis, may be given as a onetime measure in view of the instructions issued by the Chief Secretary, Haryana bearing No.43/31/06-1GSI dated 29.05.2007.	10 MARKS (10%)
IV	INTERVIEW	20 MARKS (20%)

* Applicable in case Screening/Written test is held for short listing of candidates.

Note: In case of Ex-Serviceman candidate, the 50% pass marks/qualifying marks may be taken into consideration, while calculating the merit if the marks are not available/shown in the certificate/degree issued by the competent authority of Defence Services.”

3. The petitioner has further contended that after completion of the entire selection process, by evaluating the educational qualifications and experience of the candidates, a provisional list of eligible candidates was published on 06.09.2017 and 07.09.2017, for scrutiny of documents and to call the candidates for interviews.

A list of five candidates for the single post of Medical Records Clerk in the BC-A category is stated to have been prepared as follows:-

Sr.No.	Login ID	Name	Father's Name
1	510064825	Annu	Surender Singh
2	510028139	Gaurav	Rajbir Singh
3	510023362	Jyoti Rani	Suresh Kumar
4	510058289	Somvir	Mahavir
5	510037492	Neelam	Shiv Kumar

As per the petitioner, his name being reflected at serial no.2 and that of respondent no.6 at serial no.5, showed that he was more meritorious than her, which at the stage prior to the interview, is not seen to be incorrect even as per the record produced by the respondent University, with respondent no.6 shown to have 37.3 marks on the basis of her qualifications, experience and extra curricular activities and the petitioner, Gaurav, shown to have 40.12 marks. In the BC-A category, it is seen that one Annu had 43.32 marks at that stage, Jyoti Rani had 39.6 marks and Somvir had 38.28 marks, (with he not having appeared for the interview as per the record).

Thus, at the pre-interview stage, the petitioner was at no.2 in the merit list, the aforesaid Annu being at the top position.

It needs to be noticed here that admittedly the number of posts being only 2 (one in each category), as regards Medical Records Clerks, no screening test was held by the University, the number of candidates stated to have applied in the BC-A category also being only 15, of whom 5 were called for an interview, including the petitioner and respondent no.6 (even as per the short reply filed by the respondents).

4. Upon the interviews having been conducted, the petitioner “to his utter shock” (as stated in the petition) found that his name was missing from the final selection list, with respondent no.6 shown to be selected against the lone post.

He is stated to have approached the University, demanding to know the marks obtained by him and other candidates in the interview, which information it is alleged was refused to be divulged to him. The two candidates selected as Medical Records Clerks, one in the General and one in the BC-A category, are shown to be Pawan and respondent no.6 Neelam respectively, as per the result list annexed as Annexure P-6 with the petition.

5. Thus, the petitioners' allegation in the petition is that only to keep him from being selected, he was given lower marks than respondent no.6.

As per the allegation made, that is on account of the fact that her husband is presently posted in the University and only to favour him, the selection committee, including the Vice-Chancellor, selected respondent no.6 instead of the petitioner, awarding her much higher marks in the interview than the petitioner.

It is necessary to notice here that the entire selection committee,

including the Vice-Chancellor, are respondents no.2 to 5 in the petition, having been all impleaded as such by their names.

In other words, the petitioner is alleging malafides against the selection committee, in making the selection of respondent no.6, because of her husbands' proximity to the selection committee.

6. It had been further stated in the petition that as he had done very well in the interview, therefore, despite the above, the petitioner made 'requests' to the University for such appointment but with no action taken on such requests.

7. Consequently, this petition has come to be filed, in which upon notice being issued, a written statement has been filed on behalf of respondents no.1 to 5 by Dr. H.K. Aggarwal, Registrar of the University, who is also himself impleaded as respondent no.3, being also one of the members of the screening committee.

It is also to be noticed specifically that a common reply on behalf of the University itself as also the screening committee has been filed, despite as stated hereinabove, the members of the screening committee having been impleaded by name as respondents no.2 to 5.

8. In the written statement, the basic facts with regard to the advertisement and number of posts advertised etc. are not denied. However, it has been stated in the preliminary objections that the petitioner has levelled "all sorts of baseless, false and frivolous allegations against the selection committee", without any substance.

It is further stated that the selection committee was duly constituted in terms of the Act governing the University, with 7 senior officers as members and therefore, the allegation of giving higher marks to respondent

no.6 in the interview, is “to be ignored”.

As per the written statement, the marks for the interview were given on the basis of overall performance in the interview, on the unanimous recommendations made by the members of the committee, and that respondent no.6 was appointed on the basis of “pre-merit” and overall performance in the interview.

It is also stated that the recommendation of the selection committee cannot be subject matter of scrutiny by this Court in its jurisdiction under Articles 226/227, as the Court would not sit as an appellate authority over the marks awarded by an expert “statutory body”.

All in all, it is stated that the selection process was completely fair and therefore, the writ petition deserves to be dismissed.

9. After filing of the writ petition, the petitioner also filed Civil Miscellaneous Application no.15485 of 2017, seeking to place on record orders of this Court dated 24.08.2017 and 20.09.2017, passed in CWP no.19089 of 2017, by which petition also, selections made by the University to various posts, as also by different Medical Colleges, were challenged.

In the order dated 24.08.2017, this Court had, while issuing notice in that petition, referred to the arguments made by counsel for the petitioners in that case, to the effect that no screening/written test was held despite such test being stipulated in the criteria disclosed, and that despite “vertical reservation” in the Economically Backward Persons General Category (EBPGC) having been stayed by a Division Bench of this Court, the impugned selection process still made such reservation in respect of the posts advertised.

Vide the order dated 20.09.2017, again the contention of learned

counsel is seen to have been noticed by this Court that despite the interim order passed earlier in that petition, to the effect that the selection process would not proceed further, the University and the Medical Colleges were continuing with such process.

10. Vide an order passed in this petition on 09.11.2017, by which notice was issued, this petition had been ordered to be heard alongwith the aforesaid CWP no.19089 of 2017 and initially was heard with that case, but as regards the respondent University herein, the writ petition was disposed of qua the petitioners who had challenged the selection to the posts advertised by the University (Medical Records Clerk not being one of the post in issue in that petition), vide an order dated December 07, 2017, on a statement made by learned Senior counsel appearing for the University in that case, that as regards the posts of ECG Technicians, the petitioner who had challenged the selection qua that post, being from the EBPG category, he would not have any grievance left surviving presently, the reservation for that category having been held in abeyance by a Division Bench in a different petition.

As regards the petitioners in that petition who had challenged the selection to the posts of Laboratory Attendants, learned Senior counsel for the University in that case had further submitted that the University had decided to hold a screening test for that post, and consequently the challenge thereto was also rendered infructuous, because the selection process would virtually start fresh with those petitioners naturally having an equal chance to participate.

(It is to be noticed that 49 posts of Laboratory Technicians had been advertised by the University vide the same advertisement and therefore, a decision had been taken by the University upon a challenge having been laid

to no screening test held for a large number of posts, that a test would be so held).

11. Thus, as already stated, that petition had been rendered infructuous qua the petitioners who were challenging the advertisement made by the University, though the writ petition continued to be heard further qua the posts advertised by different Govt. Medical Colleges, such Medical Colleges being governed not by rules of recruitment of the University but by the Government, and therefore having different selection committees in each college.

For the record, however, that writ petition itself was eventually also rendered infructuous as recorded in the order of this Court dated 21.12.2017, as learned counsel for the State had made a statement that other than for the posts of Staff Nurses, for which the selection process was already complete, the Government had decided to start a fresh process by way of another advertisement, in which there would be a written examination held for the posts in question, in which 90 marks would be allotted for the examination itself and 10 for 'socio-economic criteria', as also for experience.

12. In the present petition, Mr. Tiwana, learned counsel for the petitioner, reiterated what is stated in the petition, that as is obvious from the marks awarded prior to the interview, the petitioner was more meritorious than respondent no.6, he having scored 40.12 marks, with the said respondent having scored 37.3 marks, but eventually he having been given only 5 marks with her having been given 12 marks as now disclosed by the University, upon records of the selection process having been summoned by this Court.

He further submitted that it was due to this reason only that the petitioner was not given the details of marks awarded in the interview to any

of the candidates, and the University only having disclosed the same, when it had no choice to do so, upon the record having been summoned.

He further reiterated that this was on account of the fact that the petitioners' husband who was earlier serving as a Clerk in the University, was now working as an Assistant and as such, had access to the members of the selection committee.

13. Mr. Tiwana further submitted that the malafides would further be obvious from the fact that even the person who had scored higher marks than the petitioner at the pre-interview stage, i.e. Annu, was also given only 5 marks, thereby her having scored a total of 48.32 marks and having been placed in the waiting list, with the petitioner having, because of the low marks awarded in the interview, scored 45.12 marks, and the third person who also had higher marks than respondent no.6 at the pre-interview stage (though lower than the petitioner), was given only 7 marks, so as to ensure that she too would eventually score lower than respondent no.6, who was awarded 12 marks in the interview, thereby, coming to a higher final score 49.3 marks, (she having scored 37.3 at the pre-interview stage).

14. In support of his arguments, learned counsel for the petitioner relied upon two judgments of co-ordinate Benches of this Court in **Azad Singh v. The State of Haryana** 1991 (2) SCT 520 and **Ram Chander v. Maharishi Dayanand University, Rohtak and others** 2011 (2) SCT 542, as also of a Division Bench of this Court in **Bhupinder Kaur and others v. Vanita and others** 2011 (3) SCT 130.

15. Mr. Nilesh Bhardwaj, learned counsel appearing for respondents no.1 to 5, reiterated what is stated in the written statement, with Mr. Anurag Goyal, learned counsel appearing for respondent no.6 submitting that the

petitioner having participated in the selection process right till its culmination, with the writ petition filed only after the final result was declared, the criteria already having been displayed in the advertisement itself, showing therein that there would be a maximum of 20 marks assigned for the interview, he is now estopped from challenging the selection.

Mr. Goyal relied upon two judgments of the Supreme Court in support of his contention, i.e. Chandra Prakash Tiwari and others v. Shakuntala Shukla and others (2002) 6 Supreme Court Cases 127 and Ashok Kumar and another v. State of Bihar and others 2017 (1) SCT 116.

16. Having considered the arguments of both learned counsel, in my opinion, the judgments cited by learned counsel for the respondents in *Tiwaris'* and *Ashok Kumars'* cases (supra), would not be applicable in a situation where the petitioner has not challenged the selection criteria but has actually attributed malafides against the members of the selection committee that conducted the interviews, on the ground that the person who had the least marks, was given the highest marks in the interview, with all three others who are above her till the pre-interview stage, awarded much lower marks.

It is specifically to be again noticed that despite the members of the selection committee having been impleaded by name, on account of the malafides alleged against them because the husband of respondent no.6 is an employee of the University, and therefore, arbitrariness having been alleged to have been exercised by them in the interview process, none of the selection committee members have filed individual replies; though as already noticed earlier, Dr. H. K. Aggarwal, respondent no.3, i.e. the Registrar of the University, has filed the written statement for the University itself, as also the same reply for himself and the other members of the selection committee as

have been impleaded.

17. Further, with the petitioner specifically alleging malafides on account of the alleged proximity of the husband of respondent no.6 to some/all members of the selection committee, the petitioner could not have challenged the selection process at any earlier stage, as regards the marks awarded in the interview. Therefore, the allegation being that the marks were awarded wholly arbitrary, in the opinion of this Court, all that he could do was challenge the proceedings/result of interview, immediately after the interview was held and result was announced.

18. Though of course possibly no screening test was needed for the post in question because of the very low number of posts advertised (2), one in each category, with only 15 candidates having applied in the petitioners' category, however, what this Court cannot ignore is that selection to some of the other posts that were advertised vide the same advertisement, also came to be challenged on the same ground, of arbitrariness and non-holding of a screening test, even where the number of posts advertised was higher, with the number of candidates that had applied for those, also naturally being much higher.

Eventually, when this Court had made an observation in that regard, learned Senior counsel appearing for the University in CWP no.19089 of 2017 had stated that a screening test would now be held, thereby rendering the challenge to the advertisement qua those posts, infructuous.

In the opinion of this Court, therefore the allegation of the petitioner, of arbitrariness by the selection committee is not unfounded, especially as it is seen that all those who scored higher marks than respondent no.6 at the pre-interview stage, were given much lower marks than her, i.e.

5,5 and 7, with her having been awarded 12 marks, obviously to ensure that she eventually came out with the highest marks, to enable her selection and appointment.

19. Undoubtedly, normally this Court would not interfere in a selection process on the ground of arbitrary marks awarded in an interview, the candidates having taken their chances as per the criteria framed, and as regards the interview process itself, the Court would not substitute itself in place of the selection committee because equally obviously, the Court cannot in the absence of any video recording of the interview process, comment on the performance of any candidate before the committee.

However, in the overall circumstances of the present case as enumerated in detail hereinabove, I find myself unable to agree with learned counsel for the respondents, and in fact agree with learned counsel for the petitioner, that the interview process would seem to be smacking of arbitrariness to favour respondent no.6.

20. It also needs to be stated here that simply because the person who had higher marks than the petitioner at the pre-interview stage, did not challenge the selection of respondent no.6, that does not debar the petitioner from challenging the selection process on the ground of *mala fides* and arbitrariness, that also having been taken as a ground by the University in its reply.

21. Consequently, the petition is allowed and the selection of respondent no.6 is hereby quashed, with the respondent University directed to either conduct a screening test for the post in question with sufficiently high maximum marks allotted for the test to ensure fair selection, leaving the marks for the interview restricted to about 15% of the total marks to be assigned on

the different criteria; or to hold the interview process afresh, video recording the interviews of all candidates who appear for such interviews.

23. The aforesaid directions be carried out within a period of 3 months from the date of receipt of a certified copy of this order.

The petitioner would also be entitled to costs of Rs.10,000/-, with respondents no.2 to 6 to pay Rs.2000/- each.

March 28, 2018

dinesh/vcgarg

(AMOL RATTAN SINGH)

JUDGE

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes