

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5011 of 2018 (O&M)

Date of Decision:1.3.2018

Santra and others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr.Sumit Sangwan, Advocate for the petitioners

Ms.Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. The selection process initiated prior to 11th August, 2017 would require candidates called for interview to be twice the number of eligible candidates. The Notification dated 11th August, 2017 issued by the Haryana Government altered the rule by an amendment made under Proviso to Article 309 of the Constitution of India mandating the Haryana Staff Selection Commission to call three times the number of eligible candidates for viva voce.

2. The present case involves selection of Multi Purpose Workers (Female) initiated before the amendment in which twice the number of candidates had to be called. The merit of the petitioner does not come within the twice the number, and therefore, there is no error committed by the Commission in not calling the petitioner for interview. The effect of Notification dated 11th August, 2017 has been

considered in *Sukhbir Singh and others vs. State of Haryana* (CWP No.18878 of 2017 decided on 29th August, 2017) in a similar situation, but involving the posts of Shift Attendants in the Haryana Power Utilities. Therefore, the petitioner does not possess a vested right to be called for scrutiny of documents followed by interview.

3. The second contention raised is regarding the criteria for recruitment which has been adopted by assigning the marks between serial nos.1 and 2 i.e. 80% marks for the written test (experience 8 percent marks) and the second stage for interview of 12% marks. But the experience must be earned during engagement in any RCH/NRHM/NHM project or under any Health Department of any State Government or the Central Government in the same capacity and post.

4. Argues that written test plus experience should be added in the first instance and then candidate should be called for interview. In support of his contention, he relies on the decision rendered by the learned Single Bench of this Court in *Subhash Chander and others vs. Haryana Staff Selection Commission* (CWP No.18921 of 2017) and other connected writ petitions decided on 14th September, 2017 in which, it is said, the view canvassed by the petitioners has been accepted. Learned Single Judge held as under:-

“As regards the first prayer, (which is the only prayer in the present petition, i.e. CWP no.18921 of 2017), it is found to be wholly rational and

logical, in view of what has already been stated hereinabove, that is, that the marks to be assigned for each year of experience are a definite set of marks which are to be assigned on the basis of experience certificates to be produced by the candidates before the Commission and consequently, they being a 'known invariable' after scrutiny of the documents, the marks to be awarded for such experience need to be added to the marks obtained by each candidate in the written examination, which are again a 'known invariable'.

Consequently, this petition is allowed and the respondent Commission is directed to add the marks obtained by candidates for experience, to the marks obtained by them in the written examination, and if any candidates are then found to have obtained marks higher than those who have already been interviewed on the basis of the marks obtained in the written examination (excluding the marks already assigned to them for the interview), those many number of candidates be now called for interviews, on a date to be published by way of public announcement by the respondent Commission.

It is also directed that in all future selections also, for all posts advertised by the respondent Commission, where the criteria adopted by the Commission includes assignment of fixed marks on the basis of various certificates such as

academic qualifications, experience etc., such marks be determined from the scrutiny of documents of a candidate, and they be added to the marks obtained by each candidate in the written examination, and thereafter a merit list be prepared, and the candidates making it to the said “select list” (prior to the interview stage), be called for interviews.”

5. Ms. Goyal, learned Law Officer informs that the aforesaid decision is pending in appeal in LPA No.2207 of 2017 wherein the operation of the judgment has been stayed by ad interim order dated 19th December, 2017.

6. As I understand, the notification dated 05.05.2016 of the Haryana Government, contains two fixed components. One is the written test and other is interview. Both these essential components must be at a level playing field. How best can this be maintained in counterpoise. The weightage toward experience is in a scale of 8 marks to account for 8% of the aggregate of marks. Candidates with more experience would carry distinct advantage over those with lesser experience or none whatsoever, that is, freshers. It is the contention of the learned counsel for the petitioner that candidates like his client who can secure up to 8 marks because of their experience should continue to have that advantage over the younger lot of contenders to give them a level playing field, because they are competing in a written examination after many years of service while the fresh recruits come from modern

education with high scores. They are in the stride of study marking careers.

7. It is not in dispute that there are no rules governing criteria.

In such a case, the Government is free to adopt a criterion which brings out the best talent. If the marks of experience were to be added to the written test and the result declared and then persons called for interview, then the younger lot would have pretty much of a handicap of less or no experience and accordingly the criteria formulated in the notification dated 05.05.2016 would become rule as far as advertisement No. 1/15 in concerned. Therefore, in my view the respondents have not done badly in balancing out the interests of the older and the younger generation by creating a level field or equalizer. The method promoted by the petitioner may not achieve the objects of bringing in talent based on equal employment opportunities. The young and the older lot both have a right to access equal opportunity under Article 16(1) of the Constitution. Therefore, I am inclined to think it not necessary for the Commission to first add marks for experience to the written test and then call the candidates for interview.

8. If premium is paid to work experience then it has been made part of the essential qualifications. Experience in this case is given as a preference, the greater the experience, the more marks a candidate will reap subject to ceiling of 8 marks. Merit takes precedence over experience in the first instance when range of experience is by way of

preference because experience earns maximum 8 marks in ascending preferential order and thus I do not find any palpable error, arbitrariness or unconstitutionality in the action of the Commission in keeping calculation of marks for experience secret while calling the candidates for interview. After the result of both the written test and interview is known, only then marks for experience will be added to finalize the result. This would also be in keeping with confidentiality of the selection process at the time of assigning marks for interview. This would be desirable sequence resulting in fairness-in-action and above all transparency in selection with none of the interviewing body knowing the total marks of the written + experience when candidates are called for viva voce one by one.

9. For these reasons, interference is declined as not warranted under the extraordinary writ jurisdiction there being no palpable or fundamental error or arbitrariness in the method adopted by the Commission.

10. As a result, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

01.03.2018

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Whether speaking/reasoned
Whether Reportable

Yes
Yes