

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA no.186 of 2017 (O&M)
Date of Decision : 21.08.2018

Lalit Kumar

....Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU

Present : Mr.Sanjay Kaushal, Sr. Advocate with
Mr. Aman Dhir, Advocate for appellant

Mr. Suveer Sheokand, Addl. AG, Punjab

Mr. Ajaivir Singh, Advocate for respondent no.4

MAHESH GROVER, J.(ORAL)

The present appeal is directed against the judgment of the learned Single Judge dated 20.12.2016.

The Department of Social Security and Women and Child Development, Punjab invited applications for various posts. The one around which the dispute revolves is Legal-cum-Probation Officer for which eligibility is as below:-

Name of the post	Essential qualification	No. of post required per Distt.	Gross emoluments per months	Total post required
Legal-cum-Probation Officer	Graduate in Law from any recognized University with minimum 55% marks. Working knowledge of computer fluency in English & knowledge of	01	Rs.12000/-	20

	Punjabi. Preference will be given experience in handling legal matters			
--	--	--	--	--

Both the appellant and the selected candidate-respondent no.4 indeed fulfill the eligibility conditions but the grievance of the appellant stems from the fact that he claims to have 7 years experience at the Bar with the respondent no.4 having less than 3 years which in the matter of exercising preference as indicated in the eligibility conditions would place the appellant above the respondent no.4 There is only one mark that sets the selected candidate (respondent no.4) and the appellant; apart.

It has been contended before us that the learned Single Judge failed to notice the fact that the appellant would stand to gain more marks on account of his longer standing at the Bar in view of the fact that the eligibility conditions prescribe only experience in handling “legal matters”; the appellant's longer standing at the Bar would assume significance.

Learned Single Judge declined intervention in the writ proceedings on the ground that the appellant had fought and lost in the selection process and besides it noticed that the affidavits had been filed by the official respondents revealing that neither the appellant nor the respondent no.4 were given any marks on account of experience which would mean a level playing field at the time of interview between two candidates.

Learned counsel for the appellant contends that the respondents have tried to introduce an element alien to the eligibility clause when the Deputy Commissioner states in his affidavit that no marks were awarded to the candidates appearing for the post of Legal-cum-Probation Officer for

higher qualification, extra curricular activities, experience in relevant field

dealing with child protection issues. It would be appropriate to extract the relevant from the affidavit of the Deputy Commissioner dated 13.12.2016:-

“No marks were awarded to all the candidates appearing for the post of legal-cum-probation officer for higher qualification, curriculum activities, experience in relevant field dealing with Child Protection issues.”

2. That further clarification regarding this issue has been given in para no.6, page no.8 (line no.10) of the reply to the present petition, filed by the then Deputy Commissioner, Sri Muktsar Sahib, which is reproduced as under:-

“None of the candidates was awarded marks for experience because neither petitioner nor respondent produced the experience certificate dealing with child protection issues.”

All that the learned counsel for the appellant has construed from the affidavit is that the respondents committed an error in stating that experience in relevant field dealing with child protection issues have prevailed at the time of selection even though not prescribed in the eligibility conditions. He has specifically referred to other posts which carried a specific condition of experience in child protection issues and this has formed the basis of his argument.

Learned counsel representing the State has raised an objection to the Society not being impleaded as a party respondent which has deprived the Court of its stand.

Learned counsel for respondent no.4 on the other hand justifies

his selection on the ground that since no marks were allocated either to him

or the appellant for the experience at the Bar, the clause of preference was not put in operation and since he performed better in the interview he gained access to the assignment with edge of one mark over the appellant.

We have heard learned counsel for the parties. What is an inescapable as a conclusion from the facts of the case is the nature of assignment offered by a Society whose aims and objectives have been described as below:-

“4. Aims & Objectives

The aims & objectives the society is to coordinate and supervise implementation of the Integrated Child Protection Scheme and all other Child Protection activities at District Level including monitoring and supervision of all institutions/Agencies Projects/ Programmes/NGOs and shall report to the Punjab State Child Protection Society.”

It is not surprising, therefore, the affidavit of Deputy Commissioner as Vice Chairman of the Society has injected an element of experience in relevant field of child protection issues. We are of the opinion that such an experience is eminently desirable considering the nature of assignment and the work that Society is involved in. We are also further of the opinion that if the Deputy Commissioner has stated so then evidently it ought have prevailed in the selection process which if applied would translate into the ineligibility of both the appellant and the respondent no.4 as neither of them possesses such an experience.

We also notice that the eligibility condition for the said post is

Security and Women and Child Development, Punjab to emphasis this aspect in the eligibility conditions which is not only desirable but also essential considering the nature of assignment.

It has been stated by learned counsel for the State that these assignments were pursuant to a scheme and the present one would expire in November, 2018, with a possibility of extension but in the absence of any instructions in this regard he is unable to bind himself to a statement qua this aspect of further extension.

Be that as it may, we are of the opinion that neither the appellant nor respondent no.4 deserves the assignment considering the fact that experience in dealing with child protection issues would be germane to the nature of assignment. Since the scheme is likely to exhaust itself in November, 2018, we would not disturb the arrangement till that time but make it clear that in the event of the scheme being extended, the Deputy Commissioner as Vice Chairman of the Society or Department of Social Security and Women and Child Development, Punjab would undertake a fresh exercise to recruit human resource which is equipped with adequate experience of child related issues. A specific clause would therefore be inserted against the post of Legal-cum-Probation Officer in this regard.

Disposed of in above terms.

(Mahesh Grover)
Judge

21.08.2018
rekha

(Mahabir Singh Sindhu)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No