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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA No. 169 of 2018 in
CWP No. 21132 of 2016
Decided on: 02.02.2018**

Naveen Dahiya**.....Petitioner**

versus

State of Haryana and others**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Bhupinder Malik, Advocate
for the appellant.

Mr. Girish Agnihotri, Senior Advocate with
Mr. Bhuvan Vats & Mr. Manoj Kakkar, Advocates
for the respondents.

RAJBIR SEHRAWAT, J(ORAL)

1. The present appeal has been filed against the judgment dated 17.01.2018 passed by the learned Single Bench; whereby the writ petition filed by the appellant; challenging the advertisement dated 25.04.2016 as being in violation of the Rules governing the posts advertised, challenging criteria adopted for selection and further praying that for selecting the Instructors in question, the criteria as laid down by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India, be applied; was dismissed.

2. The facts stated in brief are that the respondent No. 3, the Director General, Industrial Training, Haryana issued the advertisement dated 25.04.2016; impugned in the writ petition; for selection of 1019 posts

of Instructors in the Industrial Training Department on contract basis. In this advertisement, the details of the posts alongwith the reservation relevant to the posts were described. The appellant had applied for the post of Instructor in Electrician trade under General category. The respondent had also issued the criteria to be applied for selection in question, which was adopted vide the letter dated 30.03.2016. When the appellant came to know of the criteria; he made a representation dated 15.09.2016 to the respondents against the criteria. However, the respondent-Department issued tentative merit list on 26.09.2016. This led the appellant to file the writ petition from which the present appeal has arisen, wherein the appellant/petitioner had challenged the criteria adopted for the selection as well as the advertisement.

In the writ petition, the petitioner had questioned the advertisement on the ground of violation of Rule 9(3) of the Industrial Training Department, Haryana, Field Offices (Group 'C'), Services Rules, 2013; alleging that as per the Rule, 50% of the posts have to be filled up by the persons holding the National Trade Certificate or National Apprenticeship Certificate with/without Craft Instructor Training course whereas the respondents are filling up the posts only from Degree holders. Another ground alleging violation of the rules was that the reservation as contemplated under Rule 19 of the above said Rules have not been provided for in the advertisement. Another challenge to the advertisement was on the basis that the Director General of Employment and Training, Ministry of Labour, Government of India; has laid down the qualifications for Instructors in ITI; wherein specified requirement of experience has been prescribed and the impugned advertisement has prescribed different

The petitioner further challenged the criteria adopted for selection on the ground that the Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India has issued a criteria dated 07.01.2016 which provided for 60% weightage for the technical qualification i.e. Degree/Diploma or CTS and 30% weightage for marks in CITS qualification to ensure that CITS passed candidates are engaged as Instructors. It was claimed that the criteria adopted by the respondents is in violation of the criteria laid down by the Director General of Training, Government of India. The grievance of the petitioner against the criteria was that excessive weightage has been given to the marks of the candidates obtained in matriculation and 10+2 qualification; which has resulted in lesser significance for the relevant technical qualification. Regarding reservation, the grievance of the petitioner was that the respondents have given reservation only keeping in view the strength of individual trade and not on the total number of advertised posts of Instructors.

Further, it was claimed that reservation should not exceed more than fifty percent at any time. Further, it was averred that the petitioner is an international player of *Kabaddi*; having been duly issued certificate of participation at an international event. It was further claimed that the impugned advertisement provides Horizontal reservation for the category of sports person only in the posts advertised in SC and BC category. The reservation for sports person has not been provided in the General category. Hence, the claim of the petitioner is adversely affected. It was averred by the petitioner that bringing all these deficiencies of the knowledge of the respondents; he had made representation to the Director General, Industrial

would be rectified. However, nothing has been done by the respondents, therefore, the petitioner approached this Court by way of writ petition.

3. On being put to notice, the respondents No. 1 to 3 had filed written statement stating, inter alia, that the Department has been making repeated efforts to make the regular appointment to the large number of posts lying vacant, however, due to some reasons or the other and involving some litigation; the regular recruitment could not be completed in time. Therefore, the Department had resorted to filling up the posts on contractual basis. It was further averred that the letters issued by the Directorate General Employment and Training, Ministry of Labour and Employment, Government of India are only advisory in nature and are not mandatory. The Government of India itself has intimated that the norms suggested by Government of India can be modified by the State Government concerned as per the prevailing situation of the respective State Governments. It was claimed that the posts have been advertised strictly in accordance with the service rules provided for these posts. The criteria adopted for selection has been made totally transparent by making it only based on the educational qualifications of the candidates and by doing away with the marks for interview altogether. Still further, it was pleaded that the similar writ petition ***CWP No. 20191 of 2016*** titled as ***Benam Singh Parashar and others Versus Union of India and others***, challenging the same advertisement and the same criteria stand dismissed by the Court vide order dated 28.11.2016. A copy of the order was also attached with the written statement. On the point of reservation, it was pleaded by the respondents that the reservation has been provided strictly in accordance with the Policy dated 16.02.2013 issued by the Government of Haryana for providing

averred that pursuant to the policy, the roster register and roster points are being maintained by the Department. The reservation provided in the advertisement is strictly as per the roster points carved out in roster register of the Department. Wherever the post meant for a particular reserved category is available as per roster; that has been shown to be a reserved for the relevant category even for the contractual appointment. It was averred that as per the roster register; in Electrician Trade; there was one post reserved for sports person in SC category. Similarly, there was one post meant for sports person in BC category. The same has been duly provided for in the advertisement. As per the roster, there was no reserved post available in Electrician Trade for General category for sports person. Hence, no post has been provided in General category for sports person in the present advertisement. It was pleaded that as per the roster register, the post reserved for sports person in Electrician Trade in General category lies at Sr. No. 91 whereas in the present advertisement, only posts upto Sr. No. 84 are being filled up. Hence, it was claimed that there was no violation of any rule or any instructions of the State Government. One more fact which deserves to be noticed is that subsequently, the Secretary of the Department of Industrial Training had filed a specific affidavit dated 21.04.2017 to the effect that the advertisement for the post, in question, was strictly in accordance with the department Recruitment Service Rules and further that the persons are being hired as the Instructors on contractual post only to meet out the teachers students ratio; so that the studies of the students do not suffer.

4. Though, during the hearing, at the initial stage, the learned Single Bench had ordered that the selection made would be subject to the

the impugned advertisement was stayed by the Bench. On an application for vacation of stay being moved by the respondents, the Bench clarified that the respondents could proceed further with the recruitment of the post on regular basis without any embargo but the recruitment pursuant to the impugned advertisement on contract basis would be subject to the outcome of the writ petition. Having completed the process of selection, the respondents again approached the Bench for vacation of interim order and for permission to appoint the persons selected on contractual basis; in view of the fact that there was shortage of teachers for the students. Accordingly, the learned Single Bench pre-poned the date of hearing and thereafter, passed the order impugned in the present appeal, whereby the writ petition itself was ordered to be dismissed.

5. While dismissing the writ petition the learned Single Bench observed that the similar writ petition, ***CWP No. 20191 of 2016*** titled as ***Benam Singh Parashar and others Versus Union of India and others***, challenging the same criteria has already been dismissed by the same Court. Therefore, the present writ petition was also held liable to be dismissed. Additionally, the learned Single Bench also observed that since there was huge shortage of teachers, therefore, the studies of students cannot be permitted to suffer by keeping the case pending. Dealing with the particular facts of the present case the learned Single Bench observed that since the petitioner had participated in the process of selection, therefore, he was estopped from challenging the selection after having remained unsuccessful. Further, it was held that if the submission of the learned counsel that the writ petition was filed before finalisation of the selection is accepted then the writ petition would be premature and liable to be

Parashar's case(supra). Dealing with the plea of violation of instructions regarding reservation for sports person category, the learned Single Bench held that there was no prayer in the prayer clause of the writ petition with regard to seeking reservation for sports person. Further, it was held that, in any case, mandamus could not be issued to create reservation where there is none provided in the advertisement. It was also held that the reservation policy of the State was also not under challenge; and further that Horizontal reservation need not be applied in an advertisement for contractual employment; pending regular recruitment round the corner. It was further held that no infraction of the Industrial Training Department, Haryana, Field Offices (Group 'C'), Services Rules, 2013 has been shown; as far as criteria and Horizontal reservation are concerned. Accordingly, the writ petition was dismissed.

6. Questioning the judgment passed by learned Single Bench, the learned counsel for the appellant has submitted that learned Single Bench has gone wrong in law in not having regard to the observations made by the earlier Benches while passing the interim orders in the petition. It was further argued that the impugned judgment is wrongly passed by relying upon the dismissal of the earlier writ petition in the case of ***Benam Singh Parashar's case(supra)*** because in that case only criteria were under challenge, whereas, in the present writ petition even the advertisement is under challenge; being violative of the rules, besides the challenge to the reservation of the posts. Learned counsel further submitted that the observations in the impugned judgment that the petitioner had no *locus standi* to question the recruitment made on contractual basis, particularly after having participated in the same are not sustainable because the writ

raising the point of reservation, has submitted that the impugned judgment wrongly records that there is no prayer regarding reservation in the prayer clause of the petition because it is specifically prayed in the prayer clause that the advertisement was violative of Rule 19 of the Service Rules mentioned above which provides for reservation as per the policy of the State Government and further that it is specifically prayed in the writ petition that the posts be re-advertised by providing reservation as per the reservation policy. It is his further argument that the findings recorded by the Bench that no mandamus could be issued to provide reservation where none is provided in the advertisement and further that the horizontal reservation need not be applied in an advertisement for contractual employment are not sustainable in law. In the end, learned counsel has submitted that the judgment has gone wrong in law in so far as it is recorded that no infraction of Rules has been shown as far as criteria and reservation are concerned. It is submitted by him that there are specific pleadings in the writ petition; averring that the requirement of experience as required under the rules has not been followed by the respondents and further that the reservation has not been provided as per Rule 19 of the Service Rules mentioned above.

7. For appropriate appreciation of the matter, it is pertinent to have reference to the relevant service rules relied upon by the learned counsel for the appellant. The same are reproduced here in below:-

“Rule 9(3) :- In case of direct recruitment for the post of Instructors, Craft Instructors, Craft Instructors (COE), Craft Instructor (women), these shall be made in such a way so as to maintain the availability up to 50% of appointed persons possessing Diploma/Degree qualifications for the posts for which the essential qualification has been prescribed as Diploma or Degree or

National Trade Certificate/National Apprenticeship Certificate with/without Craft Instructor Training Course in respective trade.”

Reservation: Rule 19. *Nothing contained in these rules shall affect reservations, and other concessions required to be provided for Scheduled Castes/Scheduled Tribes, Backward classes; Ex-servicemen, Physically handicapped persons or any other class or category of persons in accordance with the order issued by the State Government in this regard, from time to time:*

Provided that the total percentage of reservation so made shall not exceed fifty percent; at any time.”

8. Having heard the learned counsel for the appellant and perusing the record with his able assistance, we find that the arguments of the learned counsel for the appellant do not deserve to be sustained. While the reasoning adopted by the learned Single Bench for arriving at conclusion on some points may not be strictly sustainable, however, the ultimate conclusion arrived at by the learned Single Bench for dismissing the writ petition deserve to be sustained. While learned counsel of the appellant may be right in arguing that the judgment rendered in the previous case is not strictly binding upon him because he is not a party to that writ petition, however, the same being an adjudication on the validity of the advertisement and the criteria adopted for the same selection; would be binding regarding the same process of the selection; unless the petitioner was able to show some drastically different facts and legal arguments; diluting the judgment rendered in the earlier writ petition decided by the same Bench. However, nothing substantial has been pointed out by the learned counsel for the appellant in this regard. The argument of the learned counsel for the appellant that the posts were being filled up on contract basis in violation of and by not following the applicable service rules is

negated by the fact that the Secretary of the Department had filed a specific affidavit that the process in question was being carried out strictly as per the applicable Service Rules. The petitioner had failed to bring on record anything to show that the affidavit filed by the Secretary of the Department was false or deficient. Hence, the argument of learned counsel for the appellant regarding the advertisement being in violation of the Service Rules is rightly discarded by the learned Single Judge.

9. So far as the challenge to the criteria is concerned, the reliance of the learned counsel for the appellant upon the letters issued by the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India; regarding the requirement of particular number of years of experience and another letter of the Directorate General of Training, Ministry of Skill Development and Entrepreneurship, Government of India, out-lining the criteria for selection, is totally misplaced. The criteria suggested by the Director General, Government of India itself says that it is in the nature of request to be followed as a guideline. It is not any statutory direction having force of law; required to be mandatorily followed by the respondents No. 1 to 3 in making the selection for the post of the Instructor. It is well settled law that unless prescribed by the appointing authority itself; the selecting agency has every right to adopt a criteria for selection of the candidates as deemed fit by it, provided the criteria is rational, non-arbitrary and meant to be applied to all uniformly. In the present case, the criteria adopted by the respondents has excluded any marks for viva voce. The weightage of educational qualifications is spread over the entire academic career of the candidates.

There is nothing wrong with the criteria as such, nor has the learned counsel

of the criteria by the respondents. Hence, the same has rightly been upheld by the learned Single Judge. Regarding the number of years of experience, required for recruitment, this point has also been taken care of by the statutory rules governing the post. The rules prescribed particular number of years of experience for recruitment as essential qualification. The respondents had duly filed an affidavit in the writ petition; categorically saying that the advertisement has been issued strictly in accordance with the service rules and the recruitment was being made accordingly. Any suggestion or guidelines issued by the Directorate General Employment and Training, Ministry of Labour and Employment, Government of India can be in the nature of guidance or persuasion. However, the statutory rules cannot be deviated by the respondents only on the basis of some non-statutory guidelines issued by the Directorate General, Government of India. Hence, this point raised by the learned counsel for the appellant is also not sustainable.

10. So far as, the reservation of the posts is concerned, the bare perusal of the rule relied upon by the learned counsel for the appellant makes it clear that it is only an enabling provision; giving liberty to the appointing authority to implement reservation policy of the government irrespective of any other provision of these rules. This is not a positive mandate for providing reservation. The respondents have shown on record that the reservation is being provided as per the roster points fixed under the policy of the State Government. As per the written statement filed by the respondents, the roster point for sports person in General category comes at roster point No. 91 whereas the number of appointments sought to be made for the post for Instructor in Electrician Trade was only upto 84. Hence, the

assertion has not been rebutted by the appellant by any cogent material. Hence, the policy of reservation has rightly been implemented by the respondents in the impugned advertisement. Therefore, the conclusion arrived at by learned Single Bench that no mandamus could be issued for providing reservation when the same is not provided for the advertisement is fully justified.

11. However, the observation of the learned Single Judge that no horizontal reservation need be provided in advertisement for contractual employment; is not sustainable. Since even the contractual employment is a public employment and the same is, admittedly, being made as per the applicable service rules, therefore, the reservation would be required to be applied even in case of contractual employment. Otherwise also the advertisement itself shows implementation of reservation policy in the present contractual recruitment. Hence, this observation of the learned Single Judge is not sustainable.

12. The contention of the learned counsel for the appellant regarding the specific violation of Rule 9(3) of the Service Rules in the advertisement in question; is also not sustainable. This Rule does not mandate that the posts have to be distributed in ratio of 50:50 amongst the Degree/Diploma holders on the one hand and the National Trade Certificate/National Apprenticeship Certificate holders on the other hand. Rather, this Rule prescribes that wherever both these qualifications are prescribed as the essential qualifications; then upto 50% of the appointment has to be made from the persons holding Degree or Diploma. The emphasis of the Rule is to maintain the percentage of Degree/Diploma holders at the level of, at least, 50%. It does not prescribe that beyond 50% the persons

Rules provide for maintaining 50% strength for Degree/Diploma holders and not that of National Trade Certificate/National Apprenticeship Certificate holders. Hence, in this situation, no fault could be found if the persons more than 50% are appointed from amongst the Degree/Diploma holders.

13. The argument of the learned counsel for the appellant that the impugned judgment is non-sustainable due to overlooking of the earlier observations made by the Bench while passing interim orders; is of no legal significance. At the stage of final decision of the case, the observations or even directions issued at the time of passing of the interim orders are totally irrelevant. Hence, no fault can be found with the impugned judgment on this ground.

14. The remaining observations of the learned Single Bench, regarding absence of pleadings and prayers in the writ petition or regarding estoppel against the petitioner, though may not be supported by the record, however, these observations are not material for decision of the real points in issue. Hence, the arguments of the learned counsel for the appellant in regard to these observations are not strictly relevant for the decision of the present appeal.

15. In view of the above, finding no merit in the appeal, the same is dismissed and the judgment passed by the learned Single Judge is upheld.

(MAHESH GROVER)
JUDGE

(RAJBIR SEHRAWAT)
JUDGE

2nd February, 2018
shabha

Whether speaking/reasoned - *Yes*
Whether reportable - *Yes*