IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.11652 of 2019
Date of decision:08.11.2019

Amit Bhardwaj ... Petitioner

Vs.

Guru Jambheshwar University of Science and Technology and another ... Respondents

CWP No.11688 of 2019

Gopal Singh ... Petitioner

Vs.

Guru Jambheshwar University of Science and Technology (Hisar) and another ... Respondents

CWP No.13722 of 2019

Rekha Rani ... Petitioner

Vs.

Guru Jambheshwar University of Science and Technology (Hisar) and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanchit Punia, Advocate
for the petitioner (in CWP Nos.11688 and 13722 of 2019).

Mr. Puneet Gupta, Advocate
for the respondent(s)/University.

Mr. Sansar Kundu, Advocate
for the applicant in C.M.Nos.12409 and 12413 of 2019.

AMIT RAWAL J.

This order of mine shall dispose of three writ petitions bearing

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Nos.11652 (for short 'first writ petition'), 11688 (for short 'second writ petition') and 13722 of 2019 (for short 'third writ petition') involving identical question of facts and law. The facts are being taken from CWP No.11652 of 2019.

Grievance of petitioners more or less is identical in all writ petitions being not awarded marks as per experience certificate and selection to the post of Peon lower in merit.

Respondents-Guru Jambheshwar University of Science and Technology (Hisar) caused an advertisement No.5/2016 (Annexure P-1) requisitioning 36 posts of Peon and also published the criteria fixing qualification i.e. maximum 60 marks : Middle -40 marks, Matric-50 marks and Matric Ist Division- 60 marks, experience 28 marks; 04 marks per completed year as Peon subject to maximum of 28. The experience should have been in a Govt./semi Govt./statutory autonomous body like bank/corporation etc. and fixed 12 marks for interview. All the petitioners applied under different categories. Petitioner in first writ petition under Economically Backward Person Category; in second writ petition under General Category and in third writ petition under SC Category. The petitioners relied upon experience certificates Annexures P-2 and P-3 by alleging that respondents have taken two years in declaring the list reflecting securing and following marks:-

	Qualification	Experience	Total
First writ petition (sr. no.2)	50	28	78
Second writ petition (sr.no.7)	50	28	78

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Third writ petition (sr.no.4)	50	28	78

Thereafter, respondents, in the month of February 2019, issued a combined merit list as per the terms and conditions of advertisement published placing petitioners in all writ petitions at serial nos. 152, 11 and 49, respectively with 78 marks each. All the petitioners were called for the interview on different dates which was subject to the verification of the experience certificates.

Mr. Sanchit Punia, learned counsel appearing on behalf of the petitioners submitted that petitioners were eligible in all respects and very sanguine in selection but vide notice dated 10.03.2019, respondents circulated the list of selected candidates. Realizing their names did not figure therein, enquired and found that candidates who never worked on the post of Peon were selected by exemplified their names as Poonam Rani, sister in law of Deputy Superintendent, Sandeep Kumar son of Raj Kumar, Rajesh son of Ram Singh. In fact, Poonam Rani mentioned in first writ petition as per experience certificate received under Right to Information Act reveals that she had been working as Bal Sevika and her work on the post of Peon being autonomous body under the head of experience could not have been considered for awarding marks. Reliance has been laid to Annexures P-7 and P-8. It was also pointed out that one Deepak Mishra son of D.N.Mishra (Professor) at serial no.8 was selected, though he secured 60 marks in the merit but did not possess any experience, thus, in the selection process, respondents have indulged into large scale manipulation while awarding marks in interview to favourite candidates, therefore, entire

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exercise of selection is an act of partiality and favoritism. Even the petitioners were praised at the time of interview.

Mr. Puneet Gupta, learned counsel appearing on behalf of the respondent-University controverted the case of petitioners by submitting that in response to the motion order, stand of petitioners has been rebutted by filing separate written statements. Pith and substance of the writ statement discloses that petitioners have attempted to mislead this Court in obtaining motion order.

> *"The petitioner has participated for the post of Peon pursuant to the advertisement (Annexure P-1). As per the merit list prepared (Annexure P-5), the petitioner had been given 28 marks for experience and 50 marks in the qualification. Total 78 marks and the selected candidate Poonam Rani has been given 20 marks for experience and 60 marks in the qualification. Total marks are 80. The petitioner got information under RTI (Annexure P-8) that Poonam Rani was appointed under I.C.C.W. as Bal Sewika through the Haryana State Child Welfare Committee, Chandigarh. She was drawing Rs. 800 under I.C.C.W. creche scheme from June 2005 onwards. Another candidate namely Deepak Mishra, who has participated under the EBP category, has secured total 60 marks and his name is at sr. no. 8 in the final list (Annexure P-7) whereas petitioner has secured 78 marks and applied under the EBP category. Learned counsel for the petitioner further*

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states that appointment letter has not been issued so far.

Notice of motion for 30.08.2019.

In the meantime, one post under the EBP category be reserved."

The advertisement disclosed following posts under different categories:-

"36 posts of Peons, (Gen.04, SC-05, BCA-03, BCB-03, EBP-09, PH-01, GEN(ESM)-05, BCA (ESM)-02, BCB (ESM)-02, SC(ESM)-01, SC(OSP)-01."

Experience certificates were uploaded on the University website 11.10.2018 (Annexure P-5) including the marks which were subject to the verification of the experience certificate from the concerned issuing agency or department. Even the objections were invited from the candidates but no such objections were filed by any of the petitioners. On various dates, petitioners were called for verification of the documents and it was clearly specified that interview process would not entail into guaranteed appointment. On verification of the experience certificate submitted before the Committee, it was found that petitioner (in first writ petition) had worked as Peon from 03.01.2012 to 30.09.2016 in the Result Branch of University but experience certificate submitted alongwith application was contrary to each other. Experience certificate dated 30.10.2018 submitted was w.e.f. 01.10.2016 to 30.10.2018 which was after the last date of receipt of application i.e. 04.11.2016. Accordingly, his marks under the head of experience were reduced from 28 marks to 16 marks.

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As regards case of petitioner in second writ petition, petitioner claimed experience being 10+2 qualified w.e.f. 15.03.2007 to 31.12.2014 and 01.04.2015 to 26.10.2016.

Mr. Gupta, Advocate further submitted that petitioners intentionally did not disclose the marks obtained in the interview, relied only on the list circulated which was subject to the verification of the documents. On verification of the documents as well as on the basis of qualification and experience of petitioners and selected candidates, it was pointed out that petitioners secured 82 marks whereas selected candidates secured 96, 88, 87 and 84.5 marks. As regards allegation selecting Ravi Kumar bearing roll no.1905028, who despite obtained 84.5 marks was selected under BCA category but in fact secured higher marks, thus, his candidature was considered under General Category.

As far as petitioner in third writ petition is concerned, it was also pointed out that petitioner in response to advertisement enclosed the experience certificate of Peon from 01.06.2008 to 31.10.2016 and 01.04.2016 to 31.10.2016 and enclosed certificates issued by one Rajesh Yadav, Labour Contractor from June 2008 to December 2012 in the University Library and January 2013 to December 2014 in the Proctor Officer as a Peon. Another experience certificate from 01.04.2015 to 21.10.2016 in the Proctor Office was also attached as Annexure R-2. On the basis of that, petitioner was awarded 50 marks for qualification and 28 marks for experience by putting her at serial no.4 of the list of marks of qualification and experience. Despite having been invited the objections,

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petitioner did not submit the same but however, on verification of the documents, petitioner submitted verified experience certificate from 08.01.2013 to 05.04.2016 as a Peon in Proctor Officer vide certificate dated 29.10.2018 which was considered by the committee and accordingly, her marks were reduced from 78 to 62 marks. Another experience certificate was submitted by the petitioner from August 2009 to 11.06.2012 as a Library Cleaner in the Library (Annexure R-4) but the same was not considered by the Committee as experience claimed in the certificate did not match with the certificate shown by the petitioner at the time of verification of the documents, for, criteria did not envisage for consideration of experience of Library Cleaner. Experience certificate from 09.10.2017 to 12.02.2019, shown at the time of verification of documents, was not considered being post submission of application.

He further contended that writ petitions are not maintainable in view of the settled law laid down by the Hon'ble Supreme Court in **State of Rajasthan Vs.Ucchab Lal Chhanwal 2014(1) SCC 144** on the premise that selected candidates have not been impleaded as parties in the writ petition. Reliance has also been laid to the judgment rendered by the Hon'ble Supreme Court in **Ranjan Kumar Vs. State of Bihar and others 2014(2) SCT 620**.

I have heard learned counsel for the parties, appraised paper book and of view that there is no force and merit in the submissions of Mr. Punia. It would be apt to reproduce criteria laid down by the respondent-University which reads as under:-

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"a) Qualification Maximum 60

i) Middle-40 marks (ii) Matric 50 Marks (iii) Matric Ist Division 60 Marks

(b) Experience- Maximum 28 (04 marks per completed year as Peon subject to maximum of 28). The experience should be an Govt./semi Govt./Statutory Autonomous Body like Bank/Corporation etc.

© Interview – Maximum 12

Note : In case of candidates bracketing in final score, the elder one in age will be senior in merit."

Petitioners have relied upon the certificates enclosed with writ petitions which were not actually shown as per the response of the respondents to the Interview Committee. By verifying the experience certificate as per the terms and conditions of advertisement, Selection Committee found that certain experience certificates were forged on the last date of submission of the application and accordingly, marks were reduced. Charts reflecting the details of marks awarded to the petitioners and other selected candidates extracted in the writ petitions relied upon by the respondents, are extracted hereinbelow which would show that selected candidates are more meritorious than that of petitioners, the same read thus:-

Chart in First Writ Petition

Sr. no.	Roll No.	Name	Marks of Qualification	Marks of experience	Marks of Interview	Total
1	1905153	Ashok Kumar	50	28	5	83

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2.	1905154	Mahender	50	24	8.5	82.5
3	1905155	Raj Kumar	60	16	6	82
4	1905151	Poonam Rani	60	20	02	82
5	1905156	Mohan Kumar	50	20	10	80
6	1905157	Amar Singh	60	8	9	77
7	1905161	Anil Kumari	50	12	9	71
8	1905176	Deepak Mishra	60	0	10	70
9	1905209	Sushil Kumar (last selected candidate)	60	0	9.5	69.5
10	1905152	Amit Bhardwaj (petitioner)	50	16	2	68

Chart in Second Writ Petition

Sr. no.	Roll No.	Name	Marks of Qualification	Marks of experience	Marks of Interview	Total
1	1905001	Ravinder Kumar	60	28	8	96
2.	1905017	Ravi Kumar	50	28	10	88
3.	1905121	Rajesh	60	24	03	87
4.	1905028	Ravi Kumar	50	24	10.5	84.5
5.	1905011	Gopal Singh petitioner	50	28	04	82

Chart in third writ petition

Sr. no.	Roll No.	Name	Marks of Qualification	Marks of experience	Marks of Interview	Total
1	1905061	Sandeep Kumar	50	24	8.5	82.5

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2.	1905050	Vazir Singh	50	28	05	83
3.	1905049	Rekha Rani	50	12	06	68

It is settled law that petitioners who were well aware of the criteria and participated in the interview cannot volte-face and dispute the decision of the Selection committee in not considering the experience certificate. The respondents have been candid and firm in the reply with regard to experience certificates uploaded alongwith application and shown to the committee at the time of interview which were not in tandem. Certain certificates were post to the cut off date, but qua specific averment vis-a-vis genuinity, there is no rejoinder, thus, contention of the respondents in the absence of rebuttal, deemed to have been admitted. In other words, writ petitioners have failed to rebut or challenge the veracity of stand of respondents qua awarding of marks after verification of the documents. All the petitioners have miserably failed to achieve more marks than the selected candidates.

Besides this, despite having taken a preliminary objection qua non-impleadment, selected candidates have not been impleaded as parties in writ petitions. From the factual matrix and arguments, this Court opines that petitioners are not entitled to said relief.

I would be relying upon paragraphs 4, 12 and 13 of the judgment rendered by the Hon'ble Supreme Court in Ranjan Kumar's case (supra) and paragraph 15 of State of Rajasthan's case (supra) which read thus:-

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Paras 4, 12 and 13 of Ranjan Kumar's case (supra)

"4. On a perusal of the orders impugned, we find that only 40 persons were made respondents before the High Court and hardly a few appointees filed applications for intervention. It is well settled in law that no adverse order can be passed against persons who were not made parties to the litigation. In this context, we may refer with profit to the authority in Prabodh Verma and others v. State of Uttar Pradesh and others[1], wherein a three-Judge Bench was dealing with the constitutional validity of two Uttar Pradesh Ordinances which had been struck down by the Division Bench of the Allahabad High Court on the ground that the provisions therein were violative of Articles 14 and 16(1) of the Constitution of India. In that context, a question arose whether the termination of the services of the appellants and the petitioners therein as secondary school teachers and intermediate college lecturers following upon the High Court judgment was valid without making the said appointees as parties. Learned Judges observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects; the core defect was that of non- joinder of necessary parties, for respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers and those who were vitally concerned, namely, the reserve pool teachers, were not made parties —

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not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. Thereafter the Court ruled thus: -

> *"The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."*

12. In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners.

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13. The next submission which has been presented before us is that when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or taken a somersault saying that the procedure as adopted by the department was vitiated. In this connection, it is apt to refer to the principle stated in Om Prakash Shukla v. Akhilesh Kumar Shukla and others[13], in the said case a three-Judge Bench, taking note of the fact that the petitioner in the writ petition had appeared for the examination without protest and filed the petition only after he realized that he would not succeed in the examination, held that the writ petitioner should not have been granted any relief by the High Court.

Para 15 of State of Rajasthan's case (supra)

15. In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponement, for once the respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an

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adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the conclusion of the High Court relating the circular is concerned, it is unexceptionable and we concur with the same.

As an upshot of my findings and settled law, writ petitions sans merit nor fall within the realm of judicial review of this Court while exercising the powers under Article 226 of Constitution of India, accordingly, are dismissed.

(AMIT RAWAL)
JUDGE

November 08, 2019
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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