

Sr. No. 216

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

**CWP No.14680 of 2011 (O&M)
Date of Decision: 25.03.2019**

Sukhjinder Singh

... Petitioner

Versus

Baba Farid University of Health Science and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ankush Singla, Advocate,
for the petitioner.

Ms. Neha Jain, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

Present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of certiorari to quash the criteria dated 30.09.2010 (Annexure P-4), adopted by the respondents-University for appointment to the post of 'Driver'.

2. Briefly, the factual backdrop is that the respondent-University vide an advertisement No.3/10 dated 30.07.2010 (Annexure P-1) read with corrigendum dated 24.08.2010 (Annexure P-2), advertised 5 posts of 'Drivers' on contractual basis at a consolidated pay of Rs.6000/- per month. Subsequent to the Corrigendum, the eligible candidates were called for interview. The petitioner vide letter dated 29.09.2010 (Annexure P-3) was invited for interview to be conducted on 30.09.2010. Through the

interview letter, the candidates were asked to bring proof of their educational qualification, date of birth certificate, reserve category certificate, if any, and driving license. All interviews were slated to be conducted on 30.09.2010.

3. Learned counsel for the petitioner states that no criteria was ever disclosed either in the advertisement or in the interview letter. It is only on the day of interview that vide criteria dated 30.09.2010 (Annexure P-4), it was disclosed as below:-

“The matter of awarding marks for qualification, Driving Test and Interview for the candidates appearing for the post of Driver was discussed and unanimously it was decided to adopt the following criteria for this purpose, those who have applied in reference to Advt. No.3/2010. Interview to be held on 30.09.2010

Total Marks:25

1) Ten (10) Marks will be given for qualification on percentage basis to all candidates. In case the Matriculation is with 3rd Division then Higher Qualification (10+2) will be considered accordingly.

2) Five (05) marks for Experience (03 marks for more than 5 years Exp. One additional Mark for LTV and one more for HTV).

3) Five (05) marks will be given for Driving Test.

4) Five (05) Marks will be given for interview.

Diploma in Mechanical or Automobile will be preferred.”

4. Based on the above criteria, a merit list of the candidates (Annexure P-5) was prepared, wherein the petitioner is reflected at merit list No.10 having obtained 13.2 marks out of 25.

The petitioner has assailed the appointment of candidates at Sr. No.1 to 5, who secured higher marks than him alleging that the marks have not been granted as per the criteria dated 30.09.2010 (Annexure P-4), disclosed by the University. He further states that the respondents could not have adopted the criteria dated 30.09.2010 on the date of interview, as the same was decided to favour certain candidates, in view of the fact that the said criteria was neither advertised nor otherwise intimated at the time of sending interview letters.

5. In the written statement filed by the respondent-University, it has been stated that the qualifications and the criteria for selection to the post of 'Driver' was stipulated at the time of Corrigendum. The Corrigendum specifically mentioned “for other details contact our website www.bfuhs.ac.in”.

6. The stand taken is that the qualification and other details, regarding the posts advertised vide Corrigendum, were specifically mentioned on the website. The said qualification/criteria have been appended as Annexure R-1/1 with the written statement. As per the website details, the qualifications for the post of 'Driver' have been prescribed as Matric with minimum second class or candidate having higher qualification with a valid light/heavy driving licence and valid experience of more than 5 years. It has further been stated that Diploma in Mechanical or Automobile will be preferred.

7. As far as the plea of non-disclosure of the criteria at the time of advertising the Corrigendum, the argument of the learned

counsel for the respondent-University is that the website contains the requisite details and, therefore, the candidates ought to have seen the website for details. A person who is applying for the post of 'driver' is generally expected to be computer literate and access website for the details with regard to the qualification and the criteria.

8. Learned counsel for the respondents submits that, in today's age, modern vehicles are partly computerized and it is expected that a student/candidate who has done his matriculation, have working knowledge of computer and it is with this intention that the qualification and criteria were put on the website. She further contends that in all Education Boards like Punjab School Education Board, Central Board of Secondary Education etc. subject of Computer Science has been made compulsory after Class-V and, therefore, matriculate candidate cannot contend that he does not know how to access the website, as was duly advertised vide corrigendum (Annexure P-2).

9. As regards the argument that the petitioner was found less meritorious, it has been stated that the candidates were given their marks as per the criteria, evaluation, performance, experience and the driving test was conducted and based thereon merit list was prepared.

10. I have gone through the rival pleadings and heard the learned counsels appearing for the respective parties.

11. As regards the merit list, having perused the same, I find that as far as allocation of marks for the qualification is

concerned, the same have been uniformly given as per the criteria. With respect to the marks awarded for interview and experience as well as driving test, the same are based on the opinion of the experts who conducted interviews and driving tests and it is not expected of this Court to substitute its discretion over theirs.

12. Learned counsel for the petitioner argues that experience and interview marks could not have been clubbed as reflected in the merit list (Annexure P-5) and the same is in violation of the criteria (Annexure P-4) prescribed by the respondents-University.

13. I am in agreement with the said argument of learned counsel for the petitioner as the criteria specifically states that 10 marks will be given for qualification on percentage basis to all candidate, 5 marks will be given for the experience i.e. 3 marks for more than 5 years of experience, one additional mark for LTV and one more for HTV. It has further been specified that 5 marks will be given for interview.

14. In the manner, the marks have been awarded by the respondent-University as reflected from the mark sheet/merit list (Annexure P-5), it is clear that the marks for experience and interview have been clubbed together without any breakup as to which candidate secured how many marks for experience and how many for interview. Though this is a technical irregularity, but the same per se cannot be held fatal to the selection.

15. Another aspect of the matter is that equity as on today,

is heavily loaded in favour of the private respondents, who were appointed in the year, 2010 and that too on a consolidated salary of Rs.6,000/- for a limited contract period. Being a contractual appointment, their period would have, in normal course finished, as per the appointment letters. If their contracts were renewed and they were allowed to continue, that would be a separate cause of action for the petitioner to challenge fresh renewal of contracts.

16. Be that as it may, in view of my discussion above and coupled with the fact that corrigendum/advertisement was for contractual period on a consolidated pay of Rs. 6000/- per month, the initial contract period would have got over long ago.

17. Learned counsel for the respondents has relied on the Division Bench Judgment rendered by this Court in **CWP No.8276 of 2017, titled as Dr. Rajasri Bhattacharyya Vs. Central Administrative Tribunal and others, 2018 (3) S.L.R. 388**, the relevant whereof is extracted hereinbelow:-

*“The primary question that now arises for consideration in view of the aforementioned factual matrix is as to whether a person, who has participated in the selection process, can challenge the eligibility of the successful candidates and the selection process. The answer in the aforementioned matter has been negatived by the judgment rendered by the Apex Court in **Madras Institute of Development Studies and another Versus K.Sivasubramaniyan & others, (2016) 1 Supreme Court Cases 454**, wherein, it has been held that where a candidate takes part in the selection process, cannot turn around and question the same very selection process.”*

In the present case, there was no written test. The rule did not prescribe that the candidates numbering more than thrice cannot be called. The Selection Committee considered the appointment of only 6 candidates, who secured more than 75% marks, which was the condition. The marks awarded by the Selection Committee in the interview were to its satisfaction, which consisted of experts and various other intellectual persons and the Courts shall not re-appreciate the selection process until and unless any glaring illegality or malafides have been attributed, which are conspicuously absent herein.”

18. Perusal of the petition would reflect that petitioner has not alleged any malafide or any other illegality in the selection process. Therefore, the petition is liable to be dismissed on that short ground alone.

19. In view of the discussion and the reasons contained therein, the present writ petition is dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

25.03.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No