

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 12489 of 2015
Date of Decision: 22.1.2019**

Mamta Devi

.....Petitioner

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. D.S.Patwalia, Senior Advocate with
Ms. Gurjot Grewal, Advocate
for the petitioner.

Mr. I.P.S.Doabia, Addl. A.G., Punjab.

HARNARESH SINGH GILL, J

By the present writ petition, the petitioner has put to challenge the validity of clause 7(xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class-III) Technical Service Rules, 2001, which relates to the educational qualification for the appointment to the post of Instructor Art and Craft trade and sought the relief for consideration of her claim.

FACTS

The Department of Technical Education and Industrial Training, Punjab-respondent No. 2 issued an advertisement dated 1.3.2013 for inviting applications for filling up 216 posts of Craft Instructors in various trades. As per the advertisement, it was essential to have acquired five years diploma in Painting/Commercial Arts qualification from

government recognized institution with practical experience of one year or one year teaching experience. The petitioner is possessed with three years diploma in Commercial Arts, Masters in Political Science and B.Ed. Being eligible, petitioner applied for the trade of Instructor-Arts and Crafts for which 13 posts were advertised out of which two posts were reserved for Backward Class category. After scrutiny of the documents, petitioner was issued the roll number for written examination. The petitioner appeared and was placed at Sr. No. 3 in the merit list with 48 marks. The candidates three times of the advertised posts in each trade, were called for verification of the documents on 4.10.2013 whereas the petitioner was declared ineligible as having not fulfilled the education qualification.

To the surprise of the petitioner, vide public notice issued by respondent No. 2, the candidates below in merit were called for verification of the documents for the unfilled trades whereas the petitioner, who was eligible and qualified, was declared ineligible because the requirement was five years diploma in Commercial Arts. The petitioner sought information under the Right to Information Act, 2005 from the various universities and also from Technical Board, Punjab regarding the courses being conducted for five year diploma in Commercial Arts. As per the information received by the petitioner through RTI, five years diploma in Commercial Arts was never started and is not being conducted by any university of the Technical Board. Hence, the present writ petition.

Notice of motion was issued on 18.6.2015 and it was directed that one seat in the Backward Class category shall not be filled till the next date of hearing.

In response to the notice, reply by way of counter affidavit was

filed by Deputy Director, Department of Technical Education and Industrial Training, Punjab. As per the the preliminary submissions, it is not disputed that the petitioner possesses three years diploma in Commercial Arts but the answering respondent was sticking to the departmental rules and advertisement dated 1.3.2013 against which the candidate should possess five years diploma in Drawing and Painting/Commercial Arts with one year experience or M.A. (Fine Arts), two years diploma in Art and Crafts Teacher Training with one year experience. It is admitted in the reply that the posts of Arts and Craft Instructors are lying vacant but no specific reply has been filed as to imparting of five years diploma in Commercial Arts was by any of the recognized university in the State of Punjab.

ARGUMENTS

It has been argued by the learned Senior Counsel for the petitioner that there is no such university/college in the State of Punjab in which five years diploma in the trade of Commercial Arts Instructor is being conducted. Thus clause 7(xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class-III) Technical Service Rules, 2001 is ultra vires and violative of Article 14 and 16 of Constitution of India. It is the specific stand of the learned Senior Counsel for the petitioner that the petitioner possesses three years diploma in Commercial Arts, Masters in Political Science and B.Ed. qualifications and is eligible for the post of Art and Craft Instructor. It has also been pointed out here that vide various writ petitions, selection process in pursuance to the advertisement in question was directed to be continued but the final result was stayed by this Court and the selection process was halted.

Per contra, the counsel appearing for the respondents has

argued that the department had issued an advertisement dated 1.3.2013 and the petitioner had applied for the post of Arts and Craft Instructor in Backward Class category but the petitioner possesses three years diploma in Commercial Arts whereas as per the notified departmental rules, the applicant applying for the post of Arts and Craft Instructor should have following qualifications:-

- (i) Should possess Five Years Diploma in Drawing and Painting/Commercial Arts from a Government recognized institution: and
- (ii) *Should possess atleast one year Practical experience in an organization registered under Factories Act, 1948 or one year teaching experience from a Government Institution or an institute recognized by the Govt.*

OR

- (i) *Should possess M. A. (Fine Arts) ;*
- (ii) *Should possess two years Diploma in Arts and Crafts Teacher Training from a recognized university or Institution: and*
- (iii) *Should possess atleast one year Practical/Teaching experience in an organization registered under Factories Act, 1948 or teaching experience in the line in a Government Institution or an institution recognized by the Govt.*

It is the specific stand of the counsel for the State that the petitioner does not fulfil the minimum educational qualification as per the notified departmental rules and as per the advertisement dated 1.3.2013. Thus, according to the learned counsel for the State, the writ petition is liable to be dismissed with costs.

CONSIDERATION

We have heard the contentions raised by the counsel for the rival parties and we have also gone through the record. As per the departmental rules 2001 and advertisement dated 1.3.2013, the requirement is five years diploma in Drawing and Painting/Commercial Arts with one year experience. But the specific averment that there is no five years diploma in Arts conducted by the recognized Technical University or Technical Colleges in the State of Punjab, has not been denied. On the contrary, the information received by the petitioner under the Right to Information Act, 2005 reads as under:-

<i>University/Board</i>	<i>Reply of RTI</i>
<i>The Punjab State Board of Technical Education and Industrial Training</i>	<i><u>5 year diploma in commercial art.</u> <u>has not been started</u></i>
<i>Punjabi University, Patiala</i>	<i>Three/five year diploma in commercial arts has not been started in the university.</i>
<i>Guru Nank Dev University, Amritsar</i>	<i>Five years and three years diploma course was neither in operation nor is running presently.</i>
<i>Panjab University, Chandigarh</i>	<i>Never conducted 3/5 years diploma in commercial arts.</i>

Even in the affidavit filed by the Deputy Director, Department of Technical Education and Industrial Training, Punjab on behalf of the respondents, there is no specific reply. On the contrary, the proceedings of meeting dated 4.9.2018, placed on record as Annexure R-1, shows that there is no institution in Punjab imparting five year diploma in Commercial Arts at present. The contents of the report of the meeting dated 4.9.2018 are

reproduced hereunder:-

- “(i) There is no institution in Punjab imparting Five Years Diploma in Commercial Art at present.*
- (ii) Committee is not competent to comment on the issue regarding revisiting the rules and carrying out suitable amendments/modifications.”*

Thus, there is no recognized university or college or institution in the State of Punjab imparting five years diploma in Commercial Arts. Therefore, in our opinion, clause 7(xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class-III) Technical Service Rules, 2001 pertaining to the educational qualification for the appointment to the post of Craft Instructor in the trade of Instructor-Arts and Crafts, deserves to be quashed being in violation of Article 14 being a impossibility and arbitrary with the directions to respondents to delete/remove the qualifications of 5 years diploma for the trade of Industrial and Arts and Craft as set out in the advertisement dated 1.3.2013 and clause 7(xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class-III) Technical Service Rules, 2001 forthwith and to consider the candidature of the petitioner for the post of Arts and Crafts Instructor. In the result, we make the following order:-

ORDER

- (i) CWP No. 12489 of 2015 is allowed.
- (ii) Clause 7(xix) of Appendix B to Rule 5 of the Punjab Industrial Training (Class-III) Technical Service Rules, 2001 pertaining to the educational qualification for the appointment to the post of Craft Instructor in the trade of Instructor-Arts and Crafts, is quashed.

(iii) We further direct the respondents to consider the candidature of the petitioner for the post of Arts and Crafts Instructor.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

January 22, 2019
Gurpreet

Whether speaking/ reasoned: Yes
Whether Reportable: Yes