

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

**CM-18103-CWP-2019 in/and
CWP No.19928 of 2017(O&M)
Decided on:07.12.2019**

Narinder Singh Gusain

.....Petitioner

versus

Panjab University and another

....Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present: Ms.Promila Nain, Advocate,
for the applicant/petitioner.

Mr.Subhash Ahuja, Advocate
for the respondents.

MR.ARUN MONGA, J. (Oral)

CM-18103-CWP-2019

Application is allowed as prayed for. Annexures P-9 to
Annexure P-10 are taken on record.

CWP No.19928 of 2017

Concededly the cut off date to apply for the post of Clerk-cum-
DEO was extended to 22.02.2009 vide corrigendum dated Nil published in
daily English newspapers The Tribune and Indian Express on 27.09.2008
(Annexure P-1). It was clearly stated therein that candidates who had
already applied in response to the advertisement need not apply again. The
original advertisement contained the following clauses which are relevant
for the purpose of controversy in hand:

“9 Candidates should attach nine photocopies of duly filled application form, one set of attested copies of certificates of Educational Qualifications and Work Experience along with original application form in support of their claim for the same.

10. Persons already in regular service must route their applications through proper channel. They may, however, send an advance copy of their application on the prescribed form direct to the University. They will, however, be allowed to present themselves for interview only on the production of “No Objection Certificate” from their employers.”

2. A perusal of the above would reveal that a person who is already in regular service “must route his application through proper channel.” That being the case the petitioner routed his application (Annexure P-3) through the Registrar General of the High Court of Punjab and Haryana where he was working at the relevant time. The Clause 10 further envisages that applicant would be allowed to present himself for interview only on production of no objection certificate (NOC) from his employer. The intent and import of the said clause essentially is to ascertain as to whether the applicant has the requisite work experience to be awarded the marks commensurate with his experience. For 4-9 months of work experience, 1 mark would be awarded and experience of 10-12 months would entitle an applicant to 2 marks as contained at Annexure P-7.

3. Relying on the above, learned counsel for the respondent-University submits that since the petitioner has failed to produce his no objection certificate (NOC) he was rightly not awarded 1 mark by the interview committee. It is further argued that the petitioner has not impleaded the private respondents likely to be affected in case his claim in

the petition is accepted. He further submits that the writ petition also suffers from the vice of delay and latches as the selection was made in the year 2013 and the petition has been filed before this Court in the year 2017. He also relies on a judgment rendered by this Court in “**Ashwani Kumar Mehta and others vs. State of Punjab and others**” 2014 (1) SCT 438, wherein it has been held that in the absence of any specific provision once the marks have been awarded the selection committee cannot re-evaluate the marks.

4. As regards the objection of delay it emerges from the pleadings before me that candidates were never conveyed their marks individually after the same were awarded. Merely a seniority list was published and pursuant thereto the non-petitioners were given appointment letters.

5. Learned counsel for the petitioner submits that the petitioner for the first time came to know of his marks when another unsuccessful candidate filed a writ petition before this Court bearing CWP No.1453 of 2013 wherein the petitioner being a successful candidate also impleaded as a respondent. In the said writ petition the marks of the successful candidates were disclosed from which the petitioner came to know that he had not been awarded 1 mark for the experience of the previous service rendered as Clerk in this Court.

6. The said averment is specifically contained in para No.7 of the writ petition and the corresponding paragraph of the written statement does not deny the same averments.

7. It may though be noted that the petitioner has not made any specific averment that for the first time he came to know on filing of the said writ petition that 1 mark has not been awarded for his work experience

but assuming the same to be against him for the sake of arguments, that he knew the non-awarding of the marks for experience at the time of appointment of others, even then on that ground his claim cannot be negated as he had also represented to the respondents about this on 01.02.2014, his representation was never adverted to by the respondents resulting in the follow up representation dated 10.07.2017 (Annexure P-8). When the representation of the petitioner did not yield the requisite result he sought the information under Right to Information Act, (RTI) on 27.06.2017 (Annexure P-7) wherein the break up of awards to be given commensurate with the work experience was disclosed.

8. Backed up with the aforesaid information under RTI the petitioner preferred the instant writ petition. I, therefore, do not find any substance in the argument that the writ petition suffers from vice of delay. However, there is substance in the argument that the private respondents who are likely to be affected are not impleaded as a necessary party herein.

9. In the given facts and circumstances, I am of the opinion that the petitioner is entitled to be given 1 mark for work experience regardless of the no objection certificate (NOC) as he had completed 7 months and 5 days as on the last date which was extended vide corrigendum contained at Annexure P-2 and particularly, in view of the fact that it is not disputed that he was in service. His application was routed through proper channel followed by the conferring of the other consequential benefits including the grant of increments based on the past service rendered by the petitioner which is contained at Annexure P-10. Since the award of 1 mark is likely to change the merit position vis.a.vis. the seniority, it is necessary that all the other stakeholders who are likely to be affected and are not party before this

Court be also given an opportunity of being heard including the petitioner before change of merit in the seniority list.

10. Accordingly, the writ petition is disposed of with a direction to the respondents to award 1 mark to the petitioner for work experience, afford opportunity of hearing to all the stakeholders including the petitioner likely to be affected by change of merit, re-determine their merit and pass consequential appropriate order.

Needful be done within 4 months of receipt of certified copy of this order.

December 07, 2019

dharamvir

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable :	Yes/No