

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.21111 of 2017 (O&M)
Date of Decision.01.08.2019

Pratibha ...Petitioner
Vs

Ch. Bansi Lal University Bhiwani and others ...Respondents

2. CWP No.15842 of 2019

Pankaj ...Petitioner
Vs

Chaudhary Bansi Lal University Bhiwani and others
...Respondents

Present: Mr. Jai Vir Yadav, Advocate and
Mr. Deepak Vashishth, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Advocate
for respondents No.1 to 3.

Mr. Sumit Sangwan, Advocate
for respondent No.4.

Mr. Deepak Sonak, Advocate
for respondent No.5.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

C.M. No.16454 of 2018

Replication to the written statement filed on behalf of
respondent No.1 to 3 along with Annexures P-15 to P-17 is taken on
record.

Application is allowed.

Main case

This order of mine shall dispose of two writ petitions
bearings No.21111 of 2017 and 15842 of 2019. Facts are being

enumerated from CWP No.21111 of 2017.

Doors of this Court have been knocked by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for quashing the selection and appointment of respondents No.4 and 5 to the post of Assistant Register, vide Annexure P-9, to be wholly illegal, arbitrary and unjust.

As per facts culled out from writ petition, Ch. Bansi Lal University, Bhiwani caused an advertisement No.3 of 2016 for filling up vacancies of Assistant Registrar along with various other administrative, secretarial and ministerial posts by fixing closing date as 30.06.2016 for submissions of applications and for deposit of fee as 4.7.2016. Essential qualification for post of Assistant Registrar was as under:-

- i) Good Academic record plus Master's degree with at least 55% of marks or its equivalent grade of B in the UGC seven point scale.
- ii) Hindi/Sanskrit upto Matric Standard.

Petitioner having an excellent academic record submitted application and accordingly issued admit card for written/screening test scheduled on 13.04.2017 (Annexure P-3). Result of written test was declared on same date at 9PM but merit list of qualified candidates was not uploaded on website. As per result downloaded on University website (Annexure P-4), petitioner obtained 37.25 marks out of 100 marks whereas cut off marks for qualifying test was shown to be 24.24 out of 100 . All eligible candidates were called for verification of documents/interview on 1.6.017 by issuing letters

(Annexure P-5).

Mr. Jai Vir Yadav and Mr. Deepak Vashishth, learned counsel appearing for petitioners submitted that officials of the University adopted a very novice method by giving “Proformas” to all candidates to fill up their names, marks of screening test, academic background etc. as well as experience. In this regard, attention of this court was drawn to Annexure P-6. Since petitioner had no other choice disclosed her academic performance and similarly respondents No.4 and 5. However, on declaration of result of interview, petitioner has been awarded 6 marks i.e. 3 marks in Domain and 3 marks in Interview whereas respondents No.4 and 5 were awarded 16 (6+10) and 18 (7+11) respectively out of 20 marks. Though respondent No.5 in the written screening test and academics was at Sr. No.12 but his rank was raised to No.2 whereas in the written screening test, petitioner was at Sr. No.1. Petitioner scored 33.37 marks out of 75% marks whereas respondents No.4 and 5, 29.53 and 21.45 respectively.

The procedure adopted by the officials was basically an attempt to give benefit to favourites and therefore, vitiated in law. In support of contentions, relied upon judgment of coordinate bench of this Court in *Poonam Vs. Chaudhary Charan Singh Haryana Agricultural University and others 2017(3) RSJ 55* wherein this Court, while relying upon ratio culled out by Hon’ble Supreme Court in *Madan Lal Vs. State of Jammu & Kashmir (1995) 3 SCC 486* and *Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation (2007) 8 SCC 644* held that disclosure of academic

background and experience to committee members conducting interview possibly cannot rule out the element of biasness and favouritism.

Respondent No.4 was student of M.Sc under one of experts namely O.P. Arora, therefore, was given undue benefit. The aforesaid specific contention raised in paragraph 17(a) has emphatically not been denied, thus, urges this Court for setting aside entire selection process.

Respondents No.4 and 5 filed separate written statements and raised objections qua maintainability, estoppel and denied that there was any illegality or irregularity in the process of appointment. Obtaining of marks in merits as well as interview has not been denied.

Mr. Sumit Sangwan, learned counsel appearing for respondent No.4 and Mr. Deepak Sonak, learned counsel appearing for respondent No.5 submitted that there is no procedural violation in entire selection process, as respondents secured more marks than other candidates in Domain, Knowledge and Experience as well as interview besides personality. Obtaining of higher marks in screening test would not provide any indefeasible and vested right. In selection process petitioner had right of consideration, which petitioner has already availed off. Entire focus of the petitioner is on screening test but other components i.e. academic qualification, work experience, domain knowledge, much less, interview is also one of the criteria for the purpose of selection. Writ petition is bereft of any allegation of fraud and misrepresentation, thus, urges this Court for

dismissal of the writ petition.

Mr. Kuldeep Tiwari, learned counsel appearing for respondent No.1 to 3 University submitted that committee members were Vice Chancellor, two Professors and one expert from CDLU, Sirsa. Criteria of selection was already uploaded on website, therefore, petitioner cannot turn around and challenge the same. It is settled law that a person, who has already participated in the selection process, cannot be permitted to raise such objection. As many as 539 candidates were found eligible. Scrutiny was conducted on 13.04.017 and 289 candidates appeared in written test. There was no cut for qualifying selection test in accordance with selection criteria approved by Executive Council. Total 20 candidates in order of merit, according to selection criteria, were called for interview. Awarding of marks by selection committee was on the basis of domain knowledge and performance during interview. There was no deviation from approved selection criteria and therefore, contentions of alleged biasness and discrimination are totally figment of imagination. Reliance was laid to experience certificates Annexures R-1/4 and R-1/5 of selected candidates.

Averments made by University had been refuted by filing replication.

I have heard learned counsel for parties and appraised paper book. Obtaining of marks in written screening test is not in dispute. Advertisement did not envisage any criteria calling upon candidates before interview to fill up proforma. It would be in the fitness of things to extract proforma (Annexure P-6) given to all

candidates who appeared in interview as well as relevant result, same reads as under:-

Sr. No	Particular	Screening test (50 marks)	Academic Background						Experience (5 marks)	Total Score (3+4+5)
			10 th (02% of 60% and above)	12 th (04% of 60% and above)	Graduation (06% of 60% and above)	Post Graduation (08% of 60% and above)	Additional qualification (5% of 50% and above)	Total (25 marks)		
1	2	3	4(a)	4(b)	4(c)	4(d)	4(e)	4 (a+b+c+d+e)	5	6

Roll No.	Test 100	Test WT 50%	Academic 25%	75.00 %	Exp 5%	80.00 %	Domain interview 8%	Interview 12%	Total Interview 20%	Total 100%	Rank
5464 (R.No.4)	30	15	14.53%	29.53	4	33.53	6	10	16	49.53	1
4194 petitioner	37.25	18.63	14.74%	33.37		33.37	3	3	6	39.37	6
5203 (R.No.5)	25	12.5	8.95%	21.45	1	22.45	7	11	18	40.45	2

From details of interview marks given to respondent No.4 and 5 *vis-a-vis* petitioner, it is axiomatic that respondents No.4 and 5 obtained 29.53 and 21.45 marks respectively against 33.37 marks of petitioner. Both respondents No.4 and 5 have been awarded 4 and 1 mark respectively for experience, which petitioner did not possess. Awarding of 6 (3+3) marks to petitioner in Domain and Interview whereas 16 (6+10) and 18 (7+11) to respondent No.4 and 5 respectively out of 20 marks is not in dispute. It is not understandable as to how and under what circumstances, all candidates were given proforma to fill up details of academic marks they obtained. The above-mentioned process, in my view, should have been prevented from scrutiny and notice of interview committee.

The averments made with regard to respondent No.4 being student of

M.Sc under one of experts of committee has not emphatically been denied.

In such circumstances, I am of considered view that element of biasness and arbitrariness cannot be ruled out. Procedure of seeking information of academic qualification in proforma remained a mystery in written statement of respondents No.1 to 3. It would be apt to reproduce paras 12 and 13 of judgment rendered in **Poonam**'s case (supra) and same reads as under:-

“12. Learned counsel for the petitioner submitted that petitioner is entitled for additional marks for the academic awards. Perusal of the record, it is evident that petitioner possesses academic award at the degree/graduate level only one and she relying on under graduate level award and also contended that she stood first in the post graduation etc. The same cannot be accepted for the reasons that academic award is with reference to graduate level, therefore, rightly the selecting authority has awarded 4 marks to the petitioner. Therefore, the above contention of the petitioner is hereby rejected. It was further contended that petitioner is more qualified than the 2nd and 3rd respondents as she has secured qualifications academic and additional marks to the extent of 43.88, whereas the 2nd respondent 35.75 and the 3rd respondent 39.50, therefore, awarding of 6 marks in the interview to the petitioner and so also awarding 14 and 12 marks respectively to the 2nd and 3rd respondents for 15 marks are highly arbitrary and illegal. It was further contended that for the following qualifications, fixed marks have been assigned while introducing criteria for award of marks, namely, qualifications academic +

additional, experience, academic awards, publications in relevant field and quality of publications. For these heads, straightway candidates would get particular marks, whereas performance and expression in interview, it is the discretion of the interviewer committee. Before the interviewer committee, selecting authority should not have made available marks awarded to the aforesaid heads. In providing marks awarded for the aforesaid heads the interviewer committee has led to arbitrary in awarding marks as is evident from the interview marks awarded to 11 candidates 9 of 12 except 2nd and 3rd respondents, rest of them have been awarded below 8 marks, whereas the 2nd and 3rd respondents have been awarded 14 and 12 marks respectively for 15 marks which has led to arbitrariness in awarding marks. Therefore, on this count also, the 2nd respondent's selection and appointment to the post of Assistant Professor (HDFS) is liable to be set aside.

13. Learned counsel for selecting authority submitted that selection and appointment of the 2nd respondent is in accordance with the procedure and she is more merited than petitioner, therefore, petitioner has not made out a case to interfere. It was further submitted that expert committee was constituted for the purpose of awarding marks, therefore, there is no infirmity whatsoever. Said contention is not tenable in view of fact that the 2nd respondent has been awarded marks for experience certificate, such experience certificate is subsequent to the last date for submission of applications and further 2nd respondent has not produced character certificate as per the instructions given to the candidates. Therefore, there is serious

lacuna in the selection and appointment of the 2nd respondent.”

Facts of present case are identical to judgment referred to above. In view of such circumstances, selection and appointment of respondent No.4 and 5 to the post of Assistant Registrar is not sustainable, accordingly set aside. The selecting authority is directed to redo interview process with further direction that interview committee shall not have benefit to take into consideration marks awarded to each candidate in respect of qualifications. Let aforementioned exercise be done within a period of two months from the date of receipt of certified copy of this order. Accordingly, writ petitions stand allowed.

(AMIT RAWAL)
JUDGE

August 01, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No