

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

**CWP-8645-2012(O&M)
Date of decision-27.02.2019**

Harminder Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gurvinder Singh Sidhu, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab

JITENDRA CHAUHAN, J.

This writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the selection/appointment of respondent No.3 for the post of Service Providing Trainer (Electrical) against advertisement dated 26.01.2010 and further to direct respondent No.2 to appoint the petitioner against the post of Service Providing Trainer (Electrical) being fully eligible and qualified and higher in merit than the respondent No.3.

It is submitted that pursuant to advertisement dated 26.01.2010 (Annexure P-1) for appointment as Service Providing Trainers on contract basis, respondent No.2 displayed the list of ineligible applicants on the website of the Department on 09.12.2010 whereas, the objections were invited by 15.12.2010. In the said list, the name of petitioner Harminder

Singh (wrongly mentioned as Harvinder Singh) was reflected at Sr. No.10 with the remarks 'less experience' i.e. 2 years, 6 months and 26 days. However, he was awarded 81.57 marks for qualification. The name of respondent No.3 also figured in the said list at Sr. No.3 with similar remarks of less experience – 04 years, 02 months and 19 days. Respondent No.3 was awarded 78.14% marks for qualification. Upon enquiry by the petitioner, it transpired that the experience certificate issued by Epic Agro for 3 years and 03 months (Annexure P-9) was not considered while calculating the period of experience as the same had not been attested as per requirement of the advertisement. As such, after getting all the experience certificates including Annexure P-9 duly attested by the Labour Inspector, Ambala City-II on 14.12.2010, the same were deposited in the office of respondent No.2 on 15.12.2010. Despite the same, the final list of eligible candidates put up on the website of the Department on 12.10.2011 did not figure the name of the petitioner, rather, name of respondent No.3 was reflected at Sr. No.7 with 78.14% marks for qualification and with 06 years and 02 months and 19 days' experience.

The grouse of the petitioner is that he has been denied his right of appointment to the post of Service Providing Trainer (Electrical) *inasmuch* as the Experience Certificate (Annexure P-9) which was duly verified by the Labour Inspector and was submitted prior to the last for submission of application form, has not been considered and resultantly, even though, the petitioner being higher in merit than the private respondent, he has been denied the appointment. Cites, '***Dolly Chhanda Vs. Chairman, JEE, 2004(4) S.C.T. 546***'.

On the other hand, learned State counsel submits that the terms and conditions of the advertisement required that the documents complete in all respects be submitted on or before the cut-off date and any document, if received thereafter, shall not be considered. The experience certificate (Annexure P-9) which was to be mandatorily counter-signed by the competent authority, was not submitted prior to the cut-off date i.e. 15.10.2010, therefore, the same was rightly not considered.

Heard.

It is to be noticed that experience certificate (Annexure P-9), was counter signed by the concerned authority on 14.12.2010. A perusal of public notice dated 08.12.2010 would reveal that to provide a fair and equal opportunity to all applicants, representations were invited from the date of publication of the notice till 15.12.2010 to rectify the error, if any. However, it was specifically mentioned that any request from applicants who had earlier submitted incomplete forms and/or had insufficient qualification/experience on the cut off date i.e.15.10.2010, shall not be entertained. It is to be seen that the submission of experience certificate (Annexure P-9) which was not counter signed by the competent authority as per mandatory provision of advertisement on or before the cut off date cannot be said to an error, but would amount to submission of incomplete application form. The case law cited by learned counsel for the petitioner is not applicable in the facts and circumstances of the instant case as in the cited case, there was a mistake by the issuing authority which was rectified but even after rectifying such mistake, the candidature of the candidate was not considered for second counseling. To the contrary, respondent No.3, who was earlier declared ineligible on account of mistake of the department

was subsequently declared eligible on his representation. The experience certificate which was submitted by respondent No.3 of his apprenticeship period was subsequently considered in view of letter of Director General Employees and Training, Delhi, to the effect that such apprenticeship certificate is to be considered as experience certificate and therefore, the representation made by respondent No.3 was considered. Hon'ble the Supreme Court in Civil Appeal No.6750 of 1999 titled as '**Bhupinderpal Singh and others Vs. State of Punjab, 2000(2)SCT 826**' decided on 01.05.2000, has held as under:-

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar & Anr., JT 1997(4) SC 99 : 1997(2) SCT 208 (SC); A.P. Public Service Commission v. B. Sarat Chandra & Ors., 1990(4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi, 1990(4) SLR 237; Mrs. Rekha Chaturvedi v. University of Rajasthan & Ors., JT 1993(1) SC 220 : 1993(2) SCT 279 (SC); Dr. M.V. Nair v. Union of India & Ors., 1993(2) SCT 77 (SC); and U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana, JT 1994(1) SC 94 : 1994(1) SCT 701 (SC), the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court

so as to advance the cause of justice.

14. In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence,

The view taken by Hon'ble the Supreme Court in **Bhupinderpal Singh** (supra) has been reiterated by the apex Court in '**Civil Appeal No.6116 of 2013**' titled as '**Rakesh Kumar Sharma Vs. Govt. of NCT & Delhi and others, 2013(4) SCT 543**' decided on 29.07.2013, the relevant

part of which reads as under:-

14. This Court lately in State of Gujarat v. Arvindkumar T. Tiwari, 2013(1) S.C.T. 117 : AIR 2012 SC 3281 held:-

"A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See Prit Singh v. S.K. Mangal, 1992(3) S.C.T. 738 : 1993 Supp. (1) SCC 714 and Pramod Kumar v. U.P. Secondary Education Services Commission, 2008(2) S.C.T. 699 : (2008) 7 SCC 153.)"

In view of the above, the irresistible conclusion is that the petitioner submitted incomplete application form. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

27.02.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No