

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

CWP No.24284 of 2018 (O&M)

Date of Decision.20.09.2019

Neeraj and another ...Petitioners
Vs

State of Haryana and others ...Respondents

2. CWP No.7081 of 2019 (O&M)

Ritika ...Petitioner
Vs

State of Haryana and others ...Respondents

3. C WP No.25291 of 2018 (O&M)

Dr. Tejbir Chavri ...Petitioner
Vs

State of Haryana and others ...Respondents

4. CWP No.24403 of 2018 (O&M)

Esha Sood ...Petitioner
Vs

State of Haryana and another ...Respondents

5. CWP No.26617 of 2018 (O&M)

Reena Yadav ...Petitioner
Vs

State of Haryana and others ...Respondents

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner in CWP No.24284, 25291 of 2018.

Mr. Ram Darshan Yadav, Advocate
for the petitioner in CWP No.26617 of 2018.

None for the petitioner in CWP No.7081 of 2019 and
24403 of 2018.

Mr. Kanwal Goyal, Advocate
for HPSC.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Lalit Rishi, Advocate
for applicant-respondent No.4 in CWP No.24284 of 2018

Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for applicant-respondent No.5 in CWP No.24284 of 2018 and
for applicant respondent No.3 in CWP No.24403 of 2018.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of five writ petitions where identical challenge has been made. Petitioners after having participated in selection process, pursuance to advertisement for filling up 55 posts, later on increased to 74, of Dental Surgeon-II and Corrigendum dated 27.11.2017 and declaration of result on 18.09.2018 have approached this Hon'ble Court for setting aside the selection process primarily on the ground that Haryana Staff Selection Commission at the time of advertisement or in the interview did not disclose the criteria.

All the petitioners being aspirants by accepting eligibility criteria applied for the aforementioned posts and sat in written examination after having been issued admit card but have not been able to make in merit list, on account of having secured lesser marks than the selected candidates. Marks of written examination were 100, weightage of 50% was fixed plus 37.5 marks for personal achievement and 12.5 marks for interview, which was in accordance with settled law in order to rule out any element of bias or partiality, in any case candidates were required to achieve merit out of 87.5% marks.

Learned counsel for the petitioners submitted that non-disclosure of criteria to candidates is not in consonance with the doctrine of legitimate expectation and therefore, entire selection process is required to

be set aside.

Respondent-Haryana Public Service Commission through Mr. Kanwal Goyal, Advocate in CWP No.7081 of 2019 has taken the objection of delay and laches, as the result was declared on 18.09.2018 whereas the writ petition was filed in March, 2019 and also of estoppel. The selection criteria, as per contents of written statement, was disclosed on 12.10.2018, however, clarification of marks obtained in the written examination was not disclosed to the petitioner in order to have transparency in the interview process, much less, to take caution that marks obtained by respective candidates do not come to the notice of selection committee, thus, urges this Court for dismissal of writ petition.

I have heard learned counsel for respective parties and appraised the paper book. For appreciation of controversy, it would be in the fitness of things to extract the criteria (Annexure R-3/1), which reads thus:-

<i>“(a) Recruitment/Short listing Test</i>		<i>50 marks</i>
<i>50% of marks obtained by the candidate in Recruitment/short listing test.</i>		
<i>(b) Academic Qualifications/Personal Achievements</i>		<i>37.5 marks</i>
<i>Matric</i>	<i>50% to 59.99%</i>	<i>07 marks</i>
	<i>60% and above</i>	<i>08 marks</i>
<i>10+2</i>	<i>50% to 59.99%</i>	<i>07 marks</i>
	<i>60% and above</i>	<i>08 marks</i>
<i>Degree in Dental Surgery (BDS)</i>		<i>50% to 59.99% 07 marks</i>
<i>from recognized University/Institute</i>		<i>60% and above 08 marks</i>
<i>Consistency</i>		<i>06 marks</i>
<i>50% and above in any two out of (Matric, 10+2 & Degree)</i>		<i>05 marks</i>
<i>60% and above in any two out of (Matric, 10+2</i>		<i>06 marks</i>

& Degree)

MDS *01 mark*

Publication *02 marks*

(i) Credit for published article/case report etc. in an international journal indexed with Web of Science/SCOPUS/ Pubmed-Medline *1 Mark*

(ii) Credit of published article/case report etc. in an Indian Journal with ISSN (Abstract of paper presented in a Conference will not be counted as publication). However, an Indian Journal with ISSN which is being indexed with Abstracting and Indexing Journals of International repute will be considered at par with 1 above *0.5 marks*

(iii) Credit for writing a Chapter in a Foreign Book with ISBN *1 Mark*

(iv) Credit for writing a Chapter in an Indian Book with ISBN *0.5 marks*

(v) Text or Reference Book published by International/National publisher with ISBN *02 marks*

(Subject to maximum of 02 marks)

Sports: *4.5 marks*

i) Participation at International sports event *01 mark*
in a sports recognized by Indian Olympic Association

ii) Participation at Asiad sports event *02 marks*

iii) Participation at Olympic Sports event *4.5 marks*
in a sports recognized by Indian Olympic Association

(subject to maximum of 02 marks in case of participation in (i) & (ii)

(Subject to maximum of 4.5 marks in case of participation in (i) to (iii)

(subject to maximum of 4.5 marks)

(c) Viva Voce *12.5 marks”*

From perusal of criteria, it is clear that candidates have to achieve marks, to fall in merit out of 87.5 marks, which is in their hands and only a margin of 12.5 marks has been left to the discretion of Interview

Committee, consisting of experts. Court cannot assume the role of expert, particularly, regarding the publication i.e. credit for published article/case report etc. in an International Journal indexed with Web of Science/SCOPUS/Pubmed-Medline or in an Indian Journal with ISSN, text or reference book published by international/national publisher with ISBN and 4.5 marks have been reserved for persons belonging to Sports Category. It is settled law that Court cannot assume the role of expert to form a different opinion vis-a-vis selection process unless and until it is demonstrated and proved to the hilt that application of mind was wholly fallacious and irrational. Non awarding of marks on a particular point is the perception of the Committee, who are experts in the field cannot be pierced through judicial intervention, owing to exceptions as noticed above.

There is a categorical averment in the written statement of withholding of marks to the knowledge of the Selection Committee in order to maintain transparency and prevent biasness or partiality. Petitioners participated in the selection process knowing fully what they have to do well in the written test as well as in the interview and having failed to find place in merit cannot volte face and challenge, rather they are estopped in view of doctrine akin to estoppel. Parameter for challenging the selection has been pondered upon by various Courts. The Hon'ble Supreme Court in **Madan Lal and others Vs. State of Jammu & Kashmir 1995 (2) SCT 880** held that Court cannot sit as a court of appeal and try to re-assess the relative merits of the concerned candidates, assessed at oral interview nor the petitioners have successfully urged before this Court that they were given less marks, though their performance was better. It is only for the interview committee to judge the relative merits of the candidates. In case

the petitioners had any grievance qua non-disclosure of the criteria in the advertisement, they could have challenged the advertisement on the grounds if available but not after participation. This view of mine has been derived from ratio decidendi culled out by Division Bench of this Court in *Shashindra Singh (Km.) Vs. Union of India and others 2010 (3) RSJ 682.*

As an upshot of my finding, I do not find any illegality and perversity in the selection process. No ground for interference is made out.

Writ petitions are dismissed.

Misc. applications filed by selected candidates for impleadment in view of dismissal of writ petitions are rendered infructuous. No separate orders are required to be passed.

(AMIT RAWAL)
JUDGE

September 20, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No