

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

CWP No.24569 of 2018 (O&M)

Date of Decision.08.11.2019

Reena and others

...Petitioners

Vs

State of Haryana and others

...Respondents

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate
for petitioner No.2.

Mr. K.K. Chaudhary, Advocate for
Mr. Sanjiv Gupta, Advocate
for petitioners No.1 and 3.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Anurag Goyal, Advocate
for respondent No.4.

Mr. Kanwal Goyal, Advocate
for the respondent-HPSC.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

Petitioners No.1 and 3 confined their claim to the selection process whereas claim of petitioner No.2 is qua awarding of one mark in respect of publication in Journal of Indian Society of Pedodontics and Preventive Dentistry (Annexure P-16), which has not been awarded. In case, it had been granted to petitioner No.2, she would have fallen in the selection list and respondent No.4 would have to give way to petitioner No.2.

In order to appreciate the controversy, facts in narrow compass are as under:-

Selection of candidates for Dental Surgeon-II in pursuance to

advertisement No.1/2017 dated 02.05.2017 coupled with the corrigendum dated 27.11.2017 (Annexure P-2) and declaration of result dated 18.09.2018 (Annexure P-11) has been challenged on the premise that Haryana Public Service Commission invited applications for filling up 55 posts increased to 74 vide corrigendum, out of which 7 posts were reserved for BCA Category.

As far as case of petitioner No.2 is concerned, she is matriculate with 68.4% marks and passed 10+2 with 70.2% marks. After having completed BDS secured 61.4% marks and did her Masters in Pedodontics and Preventive Dentistry from DAV Dental College, Yamuna Nagar by securing 68% marks and possessed experience by working as Lecturer in Dental College, Bahadurgarh since 01.09.2015 and two national publications to her credit. Not only this, she was also awarded best paper presentation award in National Conference of Indian Society of Pedodontics and Preventive Dentsitry in 2014.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. Saurav Kanojia, Advocate representing petitioner No.2 submitted that challenge is only with regard to non-awarding of one mark to petitioner No.2 for her publication. In this regard, drawn attention of this Court to criteria (Annexure P-18). Reliance has been laid to Annexure A-1, result, wherein petitioner No.2 Jyoti Sharma belonging to BCA category with roll No.14224 has been awarded 28.42 marks in screening/written test, 32 marks for personal achievement, 7 in oral interview/viva voce, in total 67.42 marks whereas respondent No.4, the last selected candidate in BCA category secured 29.47 marks in screening/written test, 30 for personal achievement and 8 in oral interview/viva voce, in total 67.47. It is on this account, respondent No.4 was not earlier impleaded but on request of counsel for

petitioner No.2 impleaded and represented by Mr. Anurag Goyal.

In fact, petitioner No.2 is having an international publication in Index as SCOPUS/PUBMED Medline for which one mark was required to be given. Attention of the Court was drawn to Annexure P-16 with full text online at website www.jisppd.com and the format abstract with PMID i.e. identification code 24739922.

According to averment of Mr. Chadha, the aforementioned journal is a National Journal Index with International Repute Indexing System like SCOPUS/PUBMED Medline for which, even as per criteria, one mark should have been awarded. Not only this even petitioner No.2 is having publication in Indian Journal ISSN Coding as per information of petitioner No.2, 0.5 mark has been awarded and this Court after noticing the contention vide order dated 16.08.2019 directed counsel Mr. Kanwal Goyal representing HPSC to bring record of Selection Committee in respect of BCA category in a sealed cover. The record was also ordered to be seen by counsel for petitioners. Since there was no negative marking, non-awarding of one mark on account of publication, according to submission of Mr. Chadha is wholly irrational.

In support of aforementioned contentions, Mr. Chadha relied upon following case laws:-

Kanpur University and others Vs. Samir Gupta and others

(1983) 4 SCC 309 to the effect that when there is an error in key to the question paper and the students have answered correctly, they cannot be failed and entitled to admission after re-evaluation of answer sheets.

Kiran Malhotra Vs. H.P. University and another 2003(1)

SimLC 123 wherein answer key disclosed answers to certain questions, which were not correct as per literature and text books and having obtained opinion of expert, Division Bench of Himachal Pradesh High Court set aside award of marks by granting relief to affected parties.

Division Bench judgment of Patna High Court in *Md. Nafis Nawaz Khan and others Vs. State of Bihar 2015(29) SCT 504* whereby points of questions being defective as per answer key circulated were debated upon by exercising the power of judicial review and it has been held that Court can always exercise power of judicial review to assess whether action of respondents in not awarding marks passes test of reasonableness and fairness, though did not raise the point of discrimination which is also one of pre-requisites for interference under Article 226.

Mr. K.K. Chaudhary for Mr. Sanjiv Gupta, learned counsel appearing for petitioners No.1 and 2 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.

Per contra, Mr. Kanwal Goyal, learned counsel appearing on behalf of Haryana Public Service Commission submitted that petitioner No.2 and other candidates have been awarded marks by the subject expert as per their educational qualification and submission of publications. Petitioner No.2 Jyoti Sharma has been awarded 32 marks under the heading of Personal Achievement out of total marks of 37.5 marks and the subject

expert awarded '1' mark to petitioner on account of publication, thus, total 32 marks. Criteria could not have been published before as there is quite possibility of levelling allegation of favouritism against Commission and its Interview Committee. Although the Commission is confident about the subject experts and persons involved in the selection process, however, in order to avoid slightest of allegations against the interview committee, Commission took a conscious decision not to disclose marks obtained by candidates in written examination or criteria to the selection committee in order to rule out the fallacy/irregularity. The interview committee and officials of Haryana Public Service Commission did not even have slightest of knowledge regarding marks obtained by the candidates. There is no rules which provide adherence to mode of selection, thus, in the absence of any rules, there is no impediment in law for the competent authority in laying down the selection criteria i.e. minimum benchmark for written test and viva voce.

In support of aforementioned contention, Mr. Kanwal Goyal relied upon judgment of Hon'ble Supreme Court in **University Grants Commission and another Vs. Neha Anil Bobde (Gadekar) (2013) 10 SCC 519; The University of Mysore Vs. C.D. Govinda Rao and another AIR 1965 (SC) 491** and to similar effect judgment of coordinate bench of this Court in **Tarun Rathee Vs. State of Haryana and others** passed in CWP No.23557 of 2012 decided on 30.11.2012.

He further contended that Haryana Public Service Commission has been established under Article 315 of the Constitution of India. Selection Board consisted of persons having varied experience in their respective fields and constitution of expert committee has already been

upheld in **Kiran Gupta Vs. State of U.P. (2000) 7 SCC 719.** In the advertisement, it has been clearly mentioned that information other than the one prescribed for interview would be available on two websites i.e. <http://hpsc.goin.in> or www.hpsconline.in wherein a detailed information/clarification for submission of online application etc. could be ascertained by the candidates finding any hindrance or impediment for submission of the application. Awarding of 50% marks for academic excellence and 50% for viva voce has already been upheld by Hon'ble Supreme Court in **Anzar Ahmad Vs. State of Bihar and others (1994) 1 SCC 150,** however, in the instant case only 12.5% marks were reserved for viva voce.

He further submitted that the Court cannot assume role of an expert to examine whether publication of petitioner could be awarded marks or not. In this regard, he drew attention of the Court to original record. It is not the case where expert did not notice the publication (Annexure P-16) emphatically relied upon by Mr. Chadha. In this regard, relied upon judgment of Hon'ble Supreme Court in **Dr. Basavaiah Vs. Dr. H.L. Ramesh and others (2010) 8 SCC 372,** thus, urges this Court for dismissal of writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chadha and Mr. K.K. Chaudhary for Mr. Sanjiv Gupta, learned counsel appearing for petitioners. The role of assessment with regard to awarding of marks, qualification, experience and publication of work is not of the Court but of selection committee constituted of experts. Courts should not make an endeavour to sit in appeal over decision of experts unless and until

it does not pass test of reasonableness, rationality and discrimination. No such averment or argument has been addressed except of not examining the publication of international repute or other one of Indian standard by expert committee. Petitioner No.2 earned 32 marks under the heading of personal achievement out of 37.5 marks, earmarked, and as the criteria for giving marks is as under:-

“Publication

(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*

The tenor and mode of argument of Mr. Chadha is that petitioner No.2 should have been awarded one mark under column No.(i) in view of publication, which is of an international repute. A perusal of record reveals that experts noticed all publications. Paras 25, 45 and 47 of judgment in **Dr. Basavaiah's case** (supra) regarding the fact that Court should not make an endeavour to sit in appeal over the decisions of experts requires to be extracted herein below:-

“25. The Division Bench in the impugned judgment allowed the appeal filed by Dr. H.L. Ramesh, respondent no. 1 herein,

on the short ground that the appellants herein did not have Doctorate degree in Sericulture. Therefore, they were not qualified for appointment as Readers in Sericulture. In the impugned judgment, the court did not properly comprehend the advertisement in which it was clearly mentioned that the prescribed qualification was Doctorate degree or equivalent published work. According to the affidavit which has been filed by the University, the Expert Committee consisting of highly qualified five distinguished experts evaluated the qualification, experience and the published work of the appellants. They found them eligible and suitable. The relevant portion of the affidavit reads as under:-

"All the abovesaid members of the committee are experts in the field of Sericulture. The said selection committee thoroughly scrutinized the relative merits and demerits of each candidates and made its recommendations. It is needless to mention that the selection and appointment of teachers is to be made in terms of Section 49 of the Act. This respondent University has strictly followed the Government orders issued from time to time regarding reservations. After taking into consideration the orders issued by the Government and the guidelines issued by the University, the recommendation of the expert selection committee has been accepted by the University and accordingly impugned orders have been issued."

45. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the

decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.

47. The University of Mysore, respondent herein, is directed to give regular pay-scale to the appellants from 1st August, 2010. To avoid any further litigation, we may make it clear that the appellants would not be entitled to claim any arrears or benefits for the past period.

As regards arguments of learned counsel appearing for petitioners No.1 and 3 qua challenge to criteria after taking participation in the selection process, 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.

Petitioners participated in the selection process knowing fully well that they have to sit and 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 the same, 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, who had been assessed at oral interview nor can the petitioners successfully urge 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, who were orally interview. 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 available to them. Since the petitioners participated in the entire selection process, therefore, they are estopped from challenging the same. 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 am of the view that in the absence of any plea of mala fide, biasness or partiality, Court cannot interfere into process of selection committee except in case of exceptions as culled out in the judgment supra. No ground for interference is made out.

Writ petition is dismissed.

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

(AMIT RAWAL)
JUDGE

November 08, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No