

(291)

CWP No.27864 of 2017 (O&M)

Date of decision: 06.11.2019

Narender Singh

Versus

State of Haryana and Ors.

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Yogesh Sheoran, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. H.N. Mehtani, Advocate for respondent No.4 in CWP No.27864 of 2017.

Mr. Kanwal Goyal, Advocate for respondent No.3 in CWP No.17255 of 2018.

Mr. Surinder Gandhi, Advocate for respondent No.4 in CWP No.17255 of 2018.

B.S. Walia, J. (Oral)

CM No.13121 of 2018

Notice of the application to the non-applicants/petitioners.

Mr. Yogesh Sehoran, Advocate accepts notice on behalf of non-

For the reasons as are mentioned in the application, the same is allowed. Amended written statement filed by the applicant is taken on record.

Main Case

[1] This order shall decide CWP No.27864 of 2017 filed by the petitioner for issuance of No Objection Certificate (NOC) to enable him to appear in interview for the post of Assistant Professor in the subject of History as well as CWP No.17255 of 2018 for directions to the respondents to consider the petitioner eligible for appointment to the post of Assistant Professor, History in view of NOC having been issued by the respondents to the petitioner though after the last date for production of the NOC. Facts have been taken from CWP No.27864 of 2017.

[2] Brief facts of the case leading to the filing of the writ petition are that an advertisement (Annexure P/1) was issued by the Haryana Public Service Commission on 16.02.2016 inviting applications amongst others for the post of Assistant Professor, College Cadre HPSC-II in the subject of History. As per corrigendum issued to the advertisement, the last date for submitting online applications was extended to 10.05.2016. The petitioner who claims to be eligible for the post of Assistant Professor (History) submitted online application form, Annexure P/3 before the cut-off date for submitting application forms. One of the columns in the application form reads as under:-

“Are you employed in Govt/Public Sector Undertaking? (If yes and you are in regular service then give details and have to submit NOC from the employer at the time of interview).”

A perusal thereof reveals that in case an applicant was employed in the Government/Public Sector Undertaking, he was to give details of the same as also submit NOC from the employer at the time of interview. Written test was conducted for the recruitment to the aforementioned post on 05.03.2017 and result of the written test was declared on 06.11.2017 whereafter interviews were scheduled from 12.12.2017 till 14.12.2017.

[3] On declaration of result of the written test on 06.11.2017, petitioner filed CWP No.27864 of 2017 on 05.12.2017 which was listed for hearing on 07.12.2017 praying for issuance of directions to his employer to issue NOC certificate which had been applied for by him on 09.11.2017 although initially application for NOC had been submitted by the petitioner to the employer on 22.03.2016.

[4] Learned Sr. Counsel assisted by Mr. Yogesh Sheoran, Advocate contends that the application, Annexure P/4 dated 22.03.2016 was not acted upon and NOC was not issued to the petitioner whereupon the petitioner again submitted application for NOC on 09.11.2017. CWP No.27864 of 2017 was listed for hearing on 07.12.2017 on which date while issuing notice of motion, the respondents were directed to call the petitioner for interview for the post in question provisionally if he fell within the zone of consideration regardless of whether NOC had been issued by the Department of Elementary Education or not. Pursuant thereto, the petitioner appeared for interview on 13.12.2017 and as per result produced by the respondents, the petitioner has more marks than the last candidate selected for the post of Assistant Professor (History). However, NOC was issued by the employer of the petitioner to the petitioner only on 06.06.2018 whereas

interviews had been conducted for the post in question between 12th to 14th December, 2017 and final result of selection had been declared on 15.12.2017.

[5] Sole argument of learned Sr. Counsel for the petitioner is that the petitioner is not at fault since he had applied for NOC on 22.03.2016 and when no action was taken on the same, he submitted another application on 09.11.2017 and the fact that the employer of the petitioner delayed in issuing NOC and issued the same only on 06.06.2018 could not work to the prejudice of the petitioner.

[6] Per contra, learned counsel for the Commission categorically contends that a perusal of the application form makes it clear that in case of an applicant being an employee of a Government/Public Sector Undertaking, details of the same were to be mentioned in the online application form besides categorical requirement was stipulated in the column in the application form requiring the applicant to submit NOC from the employer at the time of interview. Learned counsel contends that the said requirement was essential to maintain sanctity of the timeline for conduct of the written examination, selection and appointment of selected candidates.

Learned counsel further contends that the facts of the case go to show beyond an iota of doubt that the date of advertisement was 16.02.2016 and the same was extended by corrigendum to 10.05.2016 and that although the petitioner claims that he applied for the issuance of NOC on 22.03.2016 but he did not take any action on non-issuance of NOC by the petitioner's employer and waited till the declaration of the result of the written test on 06.11.2017 and it is only thereafter that the petitioner applied for the

issuance of NOC again on 09.11.2017 and again waited and then filed a writ petition on 05.12.2017.

[7] Learned Sr. Counsel contends that be that as it may, the interviews were conducted between 12 to 14th December, 2017 and the final result declared on 15.12.2017 where after recommendations of the selected candidates were made by the Commission to the competent authority for appointment of the selected candidates. Pursuant to the recommendations, appointments were made on 12.07.2018 and that although application for interim orders for protecting the interest of the petitioner was moved, no interim orders were passed as a result of which appointments of the selected candidates to the post were made.

[8] Learned counsel for the Commission contends that if the plea of the petitioner was to be accepted then there would be no finality to the selection process and it would be open to a candidate to produce documentary proof of eligibility at any time as had been done in the instant case much after the declaration of the final result. Learned counsel further contends that the criteria adopted by the Commission is uniform and the last date for submitting of NOC from the employer has been scrupulously followed uniformly in the case of all candidates/aspirants for appointment of 1647 posts of Assistant Professor in various categories.

[9] No reply has been filed on behalf of the petitioner's employer i.e. the Director, Elementary Education, Haryana Shiksha Sadan, Sector 5, Panchkula

[10] Learned Sr. Counsel contends that the petitioner cannot be made to suffer for the inaction of his employer and although reply has not been filed in CWP No.27864 of 2017 on behalf of the petitioner's employer

who was to issue NOC, yet NOC was issued though belatedly on 06.06.2018.

[11] Learned counsel for the Commission on the other hand contended that grievance of the petitioner is against the inaction of his employer in not issuing NOC in time, however, the selection process cannot be put in abeyance in the circumstances and if the petitioner is aggrieved he can seek redress against his employer for award of damages before an appropriate forum. Learned counsel further contends that in case the petitioner had submitted an application for NOC on 22.03.2016, there is no reason as to why he should not have submitted a reminder shortly thereafter or filed a writ petition invoking the jurisdiction of the Court after a reasonable period of time for issuance of directions to the employer to consider application for issuance of NOC instead of waiting for a period of more than one and a half years till after the declaration of the result of the written test.

[12] The petitioner applied for NOC on 22.03.2016 but despite non issuance of the same took no steps except to file another application for issuance of NOC on 09.11.2017. No doubt, the petitioner was within his rights to have applied for the NOC at any point of time as long as he was in a position to produce the NOC in terms of the stipulation of the application form on the date of interview. Although the petitioner claims to have applied for NOC initially way-back on 22.03.2016, yet it is very intriguing as to why the petitioner chose to maintain a stoic silence for a period of more than one and a half years and did not follow up his request by submitting reminder or for that matter even invoking the jurisdiction of this Court for issuance of directions to the employer to process the claim of the petitioner

for issuance of NOC. Although the inaction of the petitioner's employer to issue the NOC pursuant to the application is not in any way attributable to the petitioner, yet the fact remains that the sanctity of the timeline for conduct of selection has to be adhered to and there would have been no difficulty at the NOC being produced by the petitioner upto the date of interview. However, as has been noted above, the final result of the written test as well as interview was declared on 15.12.2017 whereas the NOC was issued much later on 06.06.2018. The delay in issuance of NOC is that of the employer and not of the Department which had placed the requisition for recruitment or of the Commission which was the recommending agency. Although the petitioner claims to have applied initially for issuance of NOC on 22.03.2016, yet he maintained a stoic silence for a period of one and a half year till the declaration of the result on 06.11.2017 after which he applied for the issuance of NOC a second time on 09.03.2017 instead of straightway having invoked the jurisdiction of this Court for issuance of directions to the employer for issuance of the NOC by processing application of the petitioner claimed to have been submitted on 22.03.2016.

[13] In case the time frame for submission of documents to entitle a person to be considered for selection are not adhered to, the same would prevent selections from being finalized in time.

[14] Learned counsel for the Commission has relied upon the decision of **Rahul Prabhakar v. Punjab Technical University, 1997 (117) PLR 13** to contend that the terms and decisions and the timeline given in advertisement, brochure/application form have to be strictly adhered to and that there can be no deviation from the same. Learned counsel further contends that the selection against the advertised post having been

completed and in view of the stand of learned Sr. Counsel that appointments have been made, besides, fresh advertisement has been given, it is open to the petitioner to apply against the advertised post.

[15] Having considered the submissions of learned counsel for the parties, I am of the view that although the petitioner had applied for issuance of NOC on 09.11.2017 i.e. after the declaration of the result of the written test on 06.11.2017, yet the NOC was not issued till 06.06.2018 whereas result of the final selection in respect of the interviews conducted from 12th to 14th December, 2017 was declared on 15.12.2017 where after in view of the stand of learned Sr. Counsel, appointments have also been made on 12.07.2018. The petitioner had ample time from date of advertisement and date of submission of online application form in the year 2016 to pursue his claim for issuance of NOC with his employer but chose to invoke the jurisdiction of this Court only after the declaration of the result of the written test on 09.11.2017 and thereafter also waited till 05.12.2017 on which date he filed a writ petition for issuance of directions to the employer to release the NOC.

[16] For the delay, the grievance if any, of the petitioner can be against his employer in not issuing NOC before the date fixed for interview to enable him to comply with the conditions stipulated in the application form for which the petitioner, if so, advised may seek appropriate remedy against the employer in accordance with law.

[17] In the light of the position as noted above, writ petitions (i.e. CWP No.27864 of 2017 and CWP No.17255 of 2018) are dismissed. However, on account of failure of the petitioner's employer to process the application for issuance of NOC within reasonable period of time, costs

CWP No.27864 of 2017 (O&M)
and
CWP No.17255 of 2018

[9]

of ₹ 50,000/- are imposed against the employer to be paid by the Department/employer to the petitioner with liberty to the Department/employer to recover the costs from the officer responsible for delay in issuance of NOC after complying with the principles of natural justice.

(B.S. Walia)
Judge

06.11.2019
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.