

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

Civil Writ Petition No.30737 of 2018

Reserved on : July 08, 2019

Date of decision: July 31, 2019

Varinder Hans

...Petitioner

Versus

Union of India and others

...Repondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Mr.Shobit Phutela, Standing Counsel
for Union of India.

Mr.Amit Jhanji, Advocate
for respondents No.3 and 4.

HARINDER SINGH SIDHU, J.

1. The petitioner has filed the present writ petition impugning the order of the Central Administrative Tribunal, Chandigarh Bench dated 13.12.2017, whereby, Original Application No.060/00177/2016 filed by him challenging his termination order dated 1.10.2015 has been dismissed.
2. The Recruitment Cell of the Post Graduate Institute of the Medical Education & Research (PGI) issued advertisement dated 18.09.2012 inviting online applications for recruitment to various posts including Technician Grade-IV (Cane-man).
3. The qualification of the said post was as under:

“Matric/ 10th Standard with ITI Certificate in the respective

trade.

Or

Matric with trade certificate from a recognized Institute/ Board or Authority with 5 years experience in respect of trades for which ITI Certificate/ Training is not available.”

4. The Selection Procedure was outlined in the advertisement and is as under:-

“C. SELECTION PROCEDURE:-

After the closing of last date of applications, all the candidates who have applied for the posts will be called for the written examination. The eligibility of the candidates for written examination those who have paid requisite application fee and after reconciliation it is confirmed that the candidate has paid the required fee in the bank for the written examination.

The eligibility of the candidates regarding educational qualification, age etc. will not be checked at this stage because no certificates/documents are called from the candidates alongwith application forms. These candidates are required to sit in the written examination, which will be held in Chandigarh only. The date, examination centre and roll number instruction for candidate etc. will be intimated to the candidates in Admit Cards which will be available on the website of the PGI. The written examination of One and Half Hours duration and will consist of 85 marks. There will be 85 multiple choice objective type questions. Each question will be of 1 mark. There will be no negative marking. During these One and Half hours the candidates will be required to undergo biometrics test so as to check any impersonation in the examination. The syllabus of the examination will be of such nature as the candidate has studied during his/her

professional course.

On the basis of written examination a merit will be prepared and based on this merit, candidates, four times of the vacancies advertised, will be required to apply again on a given format alongwith all the certificates/documents testimonials etc. Based on these documents supplied by the candidates, the scrutiny of the applications, will be done and only those candidates who are found eligible after scrutiny will be called for interview. The interview will consist of 15 marks.

It is, therefore, desired that candidates should make sure themselves that they fulfill all the eligibility criteria before applying for the post. The final selection will be made on the basis of marks obtained by the candidates in the written examination and the marks obtained in the interview. This merit will be made on the basis of marks obtained out of total 100 marks. It is made clear that merely appearing for the written test does not make a candidate eligible for the post for which the candidate has applied.”

5. The petitioner applied for the said post under the Scheduled Caste category. He had passed 10 + 2 (CBSE) in 2005.

6. He had about eight years of experience of having worked part time with M/s Perfect Furniture Solutions, 286, Phase-9, Focal Point, Industrial Area, Mohali in their factory as a Cane-man from May, 2002 to July, 2010.

7. Vide letter dated 10/12.01.2013 he was asked to submit documents and furnish particulars as per attached application form and send copies of requisite certificates for checking his eligibility by the Scrutiny

Committee. The letter stipulated that if a candidate is found eligible after scrutiny he will be called for interview. The petitioner submitted the application and relevant documents. After scrutiny five candidates, including the petitioner were found eligible. Vide letter dated 04.04.2013 the petitioner was asked to appear before the Selection Committee on 27.04.2013. The Selection Committee in addition to interviewing the candidates also evaluated them for technical skill by giving them a job to cane chair seat frames within 30 minutes. The job performed by the candidates was video-graphed and photographed. In the reserved Scheduled Caste category, the petitioner was found most meritorious with 32 marks. Next to him was Sanjay Kumar who was awarded 30 marks. Accordingly the petitioner was recommended for appointment as Technical Grade-IV (Cane-man) against the single post reserved for Schedule Caste category. Sanjay Kumar was placed in the waiting list. The petitioner was issued appointment letter dated 03.02.2014. He joined on 05.02.2014.

8. Sanjay Kumar the wait-listed candidate submitted a complaint dated 04.04.2013 raising doubts about the part- time experience certificate of the petitioner. Vide order dated 12.01.2015, the respondent-PGI constituted a four member committee to verify the genuineness of the experience certificate. The Committee verified the genuineness of the experience certificate of the petitioner from M/s Perfect Furniture Solution Limited who certified the same as being true and genuine. The Committee however left it to the competent authority to examine as to whether the part time experience certificate submitted by the petitioner was to be considered for appointment of regular post of Technician Grade-IV or not. The

Committee further observed that though the Scrutiny Committee had found the petitioner eligible for the post of Technician Grade-IV (Cane-man) however he did not possess the qualification for the said post. He neither had ITI certificate in the respective trade nor did he have a Trade certificate from a recognized Institute which was the alternative requirement. The Committee opined that it appeared that the Scrutiny Committee had not codified the requirements clearly. It recommended that the selection process of Technician Grade-IV (Cane-man) be reviewed.

9. Based on the report of the Committee, the services of the petitioner were terminated vide order dated 01.10.2015 on the ground that the petitioner did not possess the mandatory trade certificate as required by the recruitment rules.

10. His Original Application having been dismissed, the petitioner has filed this writ petition.

11. What emerges from the above is that the petitioner applied for the post of Technician Grade-IV (Cane-man) in response to the advertisement by the PGI. There was first to be a written examination. The eligibility of the candidates regarding educational qualifications, age etc. was not to be checked at that stage because no certificates/ documents were called along with the application form. Based on the result of the written examination a merit list was to be prepared. Candidates four times the number of vacancies advertised were required to apply again on a given format alongwith certificates/ documents testimonials etc. Based on the documents supplied by the candidates the applications were to be scrutinized. Only the candidates found eligible were to be called for

interview. The final selection was to be made thereafter on the basis of marks in the written examination and interview.

12. Vide letter dated 10/12.01.2013 the petitioner was asked to submit documents and furnish particulars as per attached application form and send copies of requisite certificates for checking his eligibility by the Scrutiny Committee. The petitioner submitted the application and relevant documents. After scrutiny by the Scrutiny Committee he was found eligible. He was called for the interview on 27.04.2013. Apart from interview the candidates were evaluated for technical skill by giving them a job to cane chair seat frames within 30 minutes. The job performed by the candidates was video-graphed and photographed. In the reserved Scheduled Caste category the petitioner scored the maximum marks. He was selected and issued appointment letter pursuant where to he joined on 5.2.2014.

13. The Wait listed candidate Sanjay Kumar filed a complaint raising doubts about the experience certificate submitted by the petitioner. The committee set up to look into this found the certificate to be genuine. However it opined that the petitioner did not possess the mandatory trade certificate. It recommended a review of the selection. Thereafter the services of the petitioner were terminated vide order dated 1.10.2015.

14. From the above, it is clear that there is no allegation of any misrepresentation on the part of the petitioner. The documents submitted by him were duly scrutinized. He was found eligible. He appeared for the interview. His skill at caning was put to test. He secured the maximum marks. The expert who evaluated the skill of the candidates did not find the petitioner lacking in any manner. He was recommended for appointment

and joined on 5.2.2014. He was terminated on 1.10.2015 after he had worked for about one year and eight months. There is no observation that he was lacking in skill or that his work at the PGI was not upto the standards.

15. Hon'ble Supreme Court in **Dr. M.S. Mudhol v. Shri S.D. Halegkar** 1993 (3) SCC 591 held that where there was no misrepresentation by a candidate, and despite his not possessing the qualifications he had been appointed and had worked for considerable time it would be iniquitous to disturb him. It was observed as under:

“6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.”

16. The Hon'ble Supreme Court in **Bhagwati Prasad and ors. Versus Delhi State Mineral Development Corporation** 1990(1) SCC 361 held that even where the candidates did not possess the essential qualifications but they have worked and gained sufficient experience it would be harsh to deny them confirmation on the ground that they lacked essential qualifications. Hon'ble Court observed as under:

“6. The main controversy centers round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Since the petitioners before us satisfy the requirement of three years' service as calculated above, we direct that 40 of the senior-most workmen should be regularised with immediate effect and the remaining 118 petitioners should be regularised in a phased manner, before April 1, 1991 and promoted to the next higher post according to the standing orders. All the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts. We further direct that 16 of the petitioners who are ousted from the service pending the writ petition should be reinstated immediately. Suitable promotional avenues should be created and the respondent should consider the eligible candidates for being promoted to such posts. The respondent is directed to deposit a sum of Rs. 10,000 in the Registry of this Court within four weeks to meet the remuneration of the Industrial Tribunal. The writ petitions are accordingly allowed, but without costs.”

17. A Division Bench of this Court in **Sarabjeet Kaur Dhaliwal v.**

Punjab Agricultural University 2003 (4) S.C.T 132 reiterated the same as

under :

14. The Courts have held that where there is no misrepresentation on the part of the candidate for seeking appointment to a post but the candidate is appointed despite his not having the requisite qualifications, his services are not liable to be dispensed with. This Court in the case of **Saudamini Prabha v. State of Punjab, 1999(3) Recent Services Judgments 499**, held in para-5 as follows :-

*"After considering the matter, I am of the view that this case can be disposed of on the short ground that though the petitioner may not have had the requisite qualification at the time of her initial appointment in the year 1976 but by efflux of time and the experience gained she should be deemed to have acquired the necessary expertise in the subject. This has been so held by the Hon'ble Supreme Court in **Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371.**"*

15. Besides, the Supreme Court in the case of **Dr. M.S. Mudhol v. S.D. Halegkar, 1993(4) S.C.T. 226 : JT 1993(4) SC 143** considered the case of a Principal of a private aided school who was appointed due to the default of the Selection Committee in 1981, although he did not have the requisite qualification, but there was nothing on record to show that he projected qualification other than he possessed. The Supreme Court held that it would be iniquitous to make him suffer for the same now after a period of 12 years. The following observations of the Hon'ble Supreme Court of India are apposite :-

"Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the Selection Committee, the Selection Committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be iniquitous to make him suffer for the same now. Illegality, if any, was committed by the Selection Committee and the 2nd respondent. They are alone to be blamed for the same".

18. Accordingly, this petition is allowed. The impugned judgment of the Ld. Central Administrative Tribunal is set aside. The order dated 01.10.2015 terminating the services of the petitioner is set aside. The petitioner is directed to be reinstated in service with all consequential benefits.

(RAJIV SHARMA) (HARINDER SINGH SIDHU)
JUDGE JUDGE

July 31, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes