

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6463 of 2017 (O&M)

Date of Decision: 11.01.2019

Ramveer and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.K. Ganga, Advocate, for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. An affidavit of Sh. Parth Gupta, Secretary, Haryana Staff Selection Commission, Panchkula has been filed in Court by Ms. Goyal, which is taken on record. The affidavit has been filed in deference to the order dated December 20, 2018 calling upon the respondents to act as follows:-

“Learned counsel for the State will file an affidavit of the responsible officer of respondent No. 2 to the Civil Miscellaneous No.14058 of 2018 whereby the learned counsel for the applicants has given details of the marks obtained by the selected candidates under the SC category and the details of the marks obtained by the petitioners, who have secured higher marks, and will explain as to how candidates lower in merit, have been recommended?”

2. The affidavit dwells on Note 1 of the public notice dated February 04, 2017 informing candidates that in case they do not appear for scrutiny of documents they will not be considered for viva-voce/interview

and no further opportunity will be given thereafter. It is settled position that all the petitioners except Gurjant Singh did not appear for the interview on March 16, 2017. The attendance sheet of the interview is attached as Annex R-2/2.

3. The brief facts are that the petitioners have applied for the post of Ayurvedic Dispenser advertised for filling up in the Department of Ayush, Haryana. The last date for submission of online application forms was February 29, 2016. The essential qualification required for the post was possession of a Diploma in Pharmacy Upvaid (Ayurvedic). The petitioners had appeared in the second year examination of the diploma course held in November 2015 and the result of the examination was compiled by the office of the Faculty of the Ayurvedic and Unani Systems of Medicine, Punjab to put up before the Secretary of the Faculty on February 17, 2016. It was uploaded on the website on February 19, 2016. These facts are as per the affidavit of the Secretary, Punjab State Faculty of Ayurvedic & Unani Systems of Medicine dated February 08, 2018 filed in these proceedings as a result of direction issued impleading the Punjab faculty as a respondent. The fact remains that the result of the essential qualification was declared on February 19, 2016 but the physical document certifying qualifying the diploma was issued on August 16, 2016.

4. Mr. Ganga submits that with the declaration of result valuable rights had accrued to the petitioners and they would be deemed to have passed the diploma examination successfully. The issuance of diploma certificate in August 2016 would relate back to the declaration of result i.e. February 19, 2016 which is before the cut off date.

5. On the other hand, Ms. Goyal submits that in the absence of provisional mark sheets, provisional diploma/degree and the final degree awarded to a candidate, the Commission would be well within its jurisdiction to deny consideration to a candidate who did not possess the final certificate before the date fixed even though he may be higher in merit than the last candidate selected. She says that if the Commission is to wait for the degrees and diplomas to be awarded to the applicants it would result in delay in selection apart from damaging rights of third parties who may be similarly circumstanced but who have either not come forward or have remained sanguine that the cut off date defeats their rights had they acted promptly in accordance with the terms and conditions of the advertisement/notice.

6. I have considered the divergent stands of the learned counsel and am largely persuaded by the notice dated March 06, 2017 issued by the respondent-Haryana Staff Selection Commission, which reads as follows:-

“It is notified for the information of the candidates that it has come to the notice of the Commission that many candidates approached the Hon'ble High Court mentioning that their result had been declared by the concerned Board/University before the last date, but the date mentioned on the DMC/degree is of the date later than the last date and they sought intervention of the Hon'ble High Court for directing the Commission to consider the date of the declaration of the result for considering the eligibility of the candidates.

Now as the eligibility of the candidate is to be considered on the last date of advertisement and the declaration of the result prior to the last date means that the candidate has passed the examination before

the last date of submission of application form, therefore, the Commission has decided that if the result of the candidate has been declared prior to the last date of the advertisement then while coming to the Commission for scrutiny of documents/interview the candidates should bring a certificate from the concerned Board/University mentioning the date of declaration of the result of the concerned course so that the eligibility of the candidates may be considered accordingly. In case, the candidates do not bring the certificate of date of declaration of result then the date as mentioned on the DMC shall be considered.”

7. The significant fact remains that this notice was issued on March 06, 2017 while interviews were held on March 16, 2017 i.e. ten days thereafter. The general principle in the notice aptly applies to this case and promotes the case of the petitioners that their rights should be determined from the date of declaration of result and the diploma-document was available in August 2016 well before the interviews. The date of scrutiny was March 07, 2017 when the diploma was available.

8. Ms. Goyal points out that in this case, the terms of the notice were not fulfilled by the candidates since they did not bring a certificate from concerned Board/University mentioning the date of declaration of the result of the concerned examination so that the eligibility of the candidates may be considered accordingly. It is for these reasons, provisional degrees and diplomas are issued by the educational institutions to facilitate people while applying for various jobs before the degrees, diplomas are actually awarded which may be later. In case, where the scrutiny itself takes place one year after the cut off date then the argument of Ms. Goyal considerably dilutes as on that date proof of essential qualification by way of diploma

was available.

9. It is contended by Ms. Goyal that if the Commission is not made aware of by way of proof of eligibility at the appropriate time then its action cannot be faulted in denying processing the case of such an applicant for interviews.

10. To counter this, Mr. Ganga points out to Annex P-1. There may be some weight in his submission but looking to the facts and circumstances and that the selection process took time and the interviews could only be held in March 2017 i.e. after one year of the cut off date and by then the diploma was available, then the rights of the petitioners cannot be underscored and clipped so as to oust them altogether from consideration. It is not disputed before me that the petitioners are more meritorious than the last candidate selected in their category. Persons who are lower in merit have been appointed.

11. Ms. Goyal submits that eligibility has to be determined on the cut off date and no proof of eligibility was available to the Commission in any of the columns filled by the petitioners in the online application forms where there is a requirement to state if they had cleared the diploma examination in November 2015 whereas the result was declared subsequently on February 19, 2016. The petitioners are not correct in making the statement as they had not submitted proof of passing the examination provisionally by the respective institutions.

12. I have paid considerable thought to the submissions. All such candidates who have in the online declarations, to claim that they have passed the examinations for the essential qualification, and mentioned so, it

is only those who would have a right to relate back the award of diplomas to the date of declaration of result which was before the cut off date for interviews/verification of documents. All others would stand excluded.

13. For the foregoing discussion, I am of the view that the diploma would relate back to a date prior to the cut off date and thus the petitioners have a right of consideration by treating them as eligible candidates notwithstanding the technicality in the notice dated March 06, 2017 of production of some evidence by way of a certificate from the authority mentioning the date of declaration of result. In the notice the Commission itself goes by the date of declaration of result being prior to the cut off date. A meaningful construction has to be given to the notice which promotes the cause of justice. Those of the petitioners who have secured higher merit than the last candidate selected and appointed deserve to be considered as eligible and their cases reviewed accordingly subject to fulfilling other formalities as the rules and law may require.

14. It may be mentioned that the petitioners have been interviewed under interim directions of this Court. The result of the interviews has been produced before this Court reveals that all the six petitioners have secured higher merit than the candidates selected and appointed in their category of reservation. In the ultimate analysis merit must prevail in public appointments.

15. Mr. Ganga submits that there are 13 vacancies available and if that is so, then the case of the petitioners may be considered against those vacancies in the respective categories to which the petitioners belong, that is, SC (Ex-Servicemen) and SC in accordance with Haryana Government

instructions on the subject. The interim stay dated May 04, 2018 would continue to operate qua six vacancies irrespective of any other advertisement for filling up the post of Ayurvedic Dispenser till the case of the petitioners is considered for appointment.

16. The respondents are directed to consider the cases of the petitioners within six weeks from the date of supply of certified copy of this order.

17. With these observations and directions, the petition is allowed.

(RAJIV NARAIN RAINA)
JUDGE

11.01.2019

manju/Vimal

Whether speaking/reasoned Yes

Whether reportable No