

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

**CWP-33079-2019 (O&M)
Date of Decision : 25.11.2019**

Ramesh Goyal

... Petitioner

Versus

Punjab and Haryana High Court and another

...Respondents

CWP-33012-2019 (O&M)

Gurdeep Singh

... Petitioner

Versus

Punjab and Haryana High Court and another

.... Respondents

CWP-33394-2019 (O&M)

Ankur Lal

... Petitioner

Versus

High Court of Punjab and Haryana at Chandigarh and another

.... Respondents

CWP-33457-2019 (O&M)

Shailender Singh

... Petitioner

Versus

State of Haryana and others

.... Respondents

**CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Rakesh Gupta, Advocate for the petitioner
in CWP-33012-2019.

Mr. Sunil K. Nehra, Advocate for the petitioner
in CWP-33394-2019.

Mr. S.S.Momi, Advocate for the petitioner
in CWP-33457-2019.

Mr. Sukhwinder Singh Kamboj, Advocate
for the petitioner in CWP-33079-2019.

Mr. Kanwal Goyal, Advocate for the respondents
in CWP-33457-2019 and CWP-33079-2019.

Ms. Geeta Sharma, Advocate for respondent No.1
in CWP-33394-2019.

Mr. Rajeev Anand, Advocate for the respondents
in CWP-33012-2019.

RAKESH KUMAR JAIN, J.(ORAL)

This order shall dispose of four petitions bearing CWP No. 33012 of 2019, ***Gurdeep Singh Versus Punjab and Haryana High Court and another***, CWP No. 33079 of 2019, ***Ramesh Goyal versus Punjab and Haryana High Court and another***, CWP No.33394 of 2019, ***Ankur Lal Versus High Court of Punjab and Haryana at Chandigarh and another*** and CWP No. 33457 of 2019, ***Shailender Singh Versus State of Haryana and others***. Out of these four cases, three cases are pertaining to the selection of Haryana Superior Judicial Service and one case (CWP No.33012 of 2019) is pertaining to the

Punjab Superior Judicial Service. As per the advertisement No. 97 Gaz.I/VI.F.2, dated 30.05.2019, applications were invited to fill up 8 posts in the Punjab Superior Judicial Service in terms of Rule 7(3)(c) of the Punjab Superior Judicial Service Rules, 2007. It is submitted by the counsel for the parties that except for the fact that there were two advertisements issued to intimate the process of direct recruitment simultaneously both in the States of Punjab and Haryana, the issue involved in these petitions are common and therefore, for the sake of convenience, the facts are being extracted from the writ petition No. 33079 of 2019.

In brief, the respondents had issued a notification No.144 Gaz.I/VI.F.2 dated 07.08.2019 inviting applications to fill up 11(Eleven) posts (5 from General Category, 2 from Scheduled Caste Category, 2 from Backward Class Category (A), 1 from Backward Class Category (B) and 1 from Economically Weaker Sections) for the appointment to Haryana Superior Judicial Service by way of direct recruitment (i.e. 25% of quota) from amongst the eligible Advocates from the Bar, by way of competitive examination under Rule 6(1)(c) of Haryana Superior Judicial Service Rules, 2007 (for short 'Rules, 2007'). The last date for submission of the application was fixed as 26.08.2019. It was provided in Clause 7 (Other Important Information) of the Advertisement that "

"2. *The last date for submission of application forms for the Advocates enrolled with the District/Sub-Divisional Bar Associations of Punjab, Haryana and U.T., Chandigarh is **26.08.2019 till 5:00 PM**. All such Advocates will submit the application forms in the office of District and Sessions Judges concerned on or before the last date i.e. **26.08.2019 till 5:00 PM**. *Ld. District & Sessions Judge must forward the**

*same immediately to the O.S.D. (Recruitment), High Court of Punjab and Haryana, Chandigarh, mentioning the date of receipt of each application. All others will send/submit the application forms directly to the O.S.D. (Recruitment), High Court of Punjab and Haryana, Chandigarh through Co-ordination Branch, High Court of Punjab and Haryana, Chandigarh in an envelope superscribed as "**Application for the post of Additional District Judge in the State of Haryana**" on or before **26.08.2019 till 5:00 PM**. Incomplete applications and applications received after **26.08.2019** shall not be entertained."*

The petitioner, who is a practicing Advocate in the District Courts at Panchkula had also submitted his application form which was to be signed by him with his complete address for correspondence and he was also supposed to put his left thumb impression being a male. The petitioner submitted his duly filled application form but he did not put his left thumb impression on the application form as required. The respondents after scrutiny of the application forms made the following public notice on 04.11.2019:-

"It is hereby informed to all the concerned that Haryana Superior Judicial Service Main Written Examination 2019, to fill 6 (Six) vacancies under Rule 6(1)(b) by way of Limited Competitive Examination from the Eligible Judicial Officers and to fill 11 vacancies under Rule 6(1)(c) from amongst the members of Bar, shall be conducted from 29.11.2019 to 01.12.2019 at Chandigarh.

The list of applicants who do not fulfill eligibility conditions to appear in the Haryana Superior Judicial Service Examination-2019 under

Rule 6(1)(c) of Haryana Superior Judicial Service Rules, 2007 and their candidature has been rejected on the basis of Preliminary scrutiny of the applications, and the reason(s) has/have been mentioned against their name in the remarks column, the list is at Annexure 'B'.

The remaining applicants whose name does not appear in the list at Annexure 'B' have been provisionally allowed to appear in the examination subject to their fulfilling all eligibility condition. Admit Cards to the candidates who have been provisionally allowed to appear in the examination shall be issued in due course. The date-sheet of the examination shall be uploaded shortly.

Sd/-04.11.2019

O.S.D. (Recruitment)"

In the public notice, the list of the candidates whose application form were rejected, due to various reasons, was published, in which name of the petitioner is at Serial No.53, informing him that his application has been rejected because he had not put his thumb impression as required.

Aggrieved against the said action of the respondents, the present petition has been filed by the petitioner and similarly by the other candidates who have filed separate writ petitions which are being disposed of together by this common order.

Counsel for the petitioner has vehemently argued that the respondents have erred in acting on a hypertechnical issue by rejecting their application form, as the said deficiency, found in their application form could have been cured even after accepting the form. In this regard, they have relied upon various decisions, namely, ***Union of India***

through the Central Forensic Science Laboratory and another Versus Bhanu Pratap Singh, LPA No. 990 of 2009, decided on 07.10.2009, (P&H), *The Kerala Public Service Commission Represented by its Secretary, Thulasi Hills, Pattom Palace P.O., Thiruvananthapuram, Kerala Versus Rajan K.R.*, 2017 LIC 257, *Sanjeev Kumar Saini Versus Union of India and others*, Manu/RH/0766/2015 (Rajasthan High Court DB) and *Satyveer Versus Assistant Personnel Officer (Recruitment)*, NWR Manu/RH/0835/2015 (Rajasthan High Court DB).

On the other hand, counsel for the respondents, during the course of hearing, filed an affidavit dated 25.11.2015 sworn by Dharminder Paul Singla, OSD (Litigation), Punjab and Haryana High Court, Chandigarh, in which he has made the following averments:-

"1. That relevant column for thumb impression has been specifically kept in order to ensure that there is no impersonation in respect of the candidate who is filling his candidature for the exam. The said "thumb impression" assumes significance and is cross applied again by the candidate when the candidate appears for the written examination and appends the thumb impression in presence of the invigilator on the attendance sheet in each paper.

2. That the thumb impression is an integral and important requirement of the application form and without the same the application is treated as "Incomplete" and thus liable to be rejected under Clause 7(2) of the advertisement."

Counsel for the respondents have also relied upon the decisions rendered in the case of *Bedanga Talukdar Versus Saifudaullah Khan and others*, (2011) 12 Supreme Court Cases 85 and the full Bench of this Court in the case of *Rahul Prabhakar Versus*

Punjab Technical University, Jalandhar 1997(3) S.C.T.526, to contend that the error committed by the petitioner cannot be cured at this stage as it was made clear to the petitioner in the advertisement itself that the incomplete application shall not be entertained.

We have heard learned counsel for the parties and perused the record with their able assistance.

The facts are not in dispute, therefore, we have to refer to the provisions of the advertisement to find out as to whether there is any relevance of the thumb impression, to be affixed on the application form, when the same is already signed by the candidate having his photograph as well?

No doubt, the advertisement was issued to fill up the posts of Additional District and Sessions Judges in the Haryana Superior Judicial Services by way of written examination in terms of Rule 6(1)(c) of the Rules, 2007 and it has been made clear in the advertisement, in so many words that *"Incomplete applications and applications received after **26.08.2019** shall not be entertained."* Thus, there were two conditions; firstly, the application should not be incomplete and secondly, the application should reach before **26.08.2019** otherwise application would not be considered. For the convenience of the applicants, the application form was also printed and it was categorically mentioned in the beginning that *"1. **Please read the notification carefully before filling the application form.** 2. **No column be left blank.**"*

It is no doubt clear that any application without the sign of the applicant is incomplete but here is a case where the candidate was not only to sign the application form but was also to put up his left thumb

impression in case of male and right thumb impression in case of female. According to the petitioner, once the signature has been put by the applicant at the time of submitting the application form, the thumb impression, whether in the case of male or female, is an empty formality or in case it is a technical defect then it could have been cured had the petitioner been called by the respondents at the time of scrutiny of the applications. In this regard, the arguments of the respondents may be looked into who has submitted, with reference to the affidavit sworn by the O.S.D. (Litigation), Punjab and Haryana High Court that the procedure for getting the thumb impression also of the candidates was evolved to avoid impersonation at the time of examination. As per the affidavit, the candidate, who, after the application is submitted and accepted, appear for written examination has to append his thumb impression in the presence of the Invigilator on the attendance sheet. This procedure has been evolved to ensure that in case there is an allegation that the person who had appeared in the examination is not the same person who had signed the application form then it could be decided with the help of forensic science by comparing the thumb impression that the person who had signed and had appeared was actually the same person who had put his thumb impression on the application form and in the written examination paper in the presence of the Invigilator.

We find that there is a reasonable nexus sought to be achieved by the examiner by asking the applicant to put his thumb-impression as well besides signing the application form and therefore, it is not an empty formality as argued by counsel for the petitioner. The judgments relied

upon by learned counsel for the petitioner i.e. in the case of **Bhanu Partap Singh** (supra) is of no help because in that case the issue was regarding the experience for the post for which the application was filed and it has been found that even if the relevant details were not given in the chronological order, the annexures have been appended by the candidate giving all the details of the experience gained by him.

In the case of **Rajan K.R.** (supra) of the Kerala High Court, some discrepancies had occurred because the system of online application was evolved for the first time and in that background it was held that the strict interpretation to the 'general conditions' should not be given.

The other two judgments relied upon by the petitioner in the case of **Sanjeev Kumar Saini** (supra), the appointment was to the Group 'D' post in various categories by the Railway Recruitment Cell. In the said case, though the thumb impression was affixed but the signatures in the capital letters both in English and Hindi were not appended. In this background, the Rajasthan High Court has held that once thumb impression has been affixed along with the photograph then the question of impersonation is completely ruled out. Whereas in the present case, the situation is reverse because in this case, the thumb impression has not been appended and the purpose of the thumb impression is to rule out the chances of impersonation by the candidates. Similarly in the case of **Satyveer** (supra) which was also relating to the same aforesaid recruitment by the Railway to the Class D post, in which the date of birth was wrongly mentioned but the certificate of the Secondary School Education Board indicating his correct date of birth was appended. The aforesaid two judgments rendered by the Hon'ble Rajasthan High Court

are also not relevant for the adjudication of the present controversy.

Now we will refer to the decisions relied upon by the respondents in the case of ***Bedanga Talukdar*** (supra) in which the Hon'ble Supreme Court has said that unless and until there is a provision of relaxation in the advertisement, it cannot be provided, meaning thereby the application form which is not duly filled cannot be asked to be filled again if there is a mistake and in the case of ***Rahul Parbhakar*** (supra), the said petitioners before the Court were seeking parity in terms of Article 14 of the Constitution of India on the ground that some candidates have been given time to rectify their mistakes but they have not been given the same treatment, but this argument was also not accepted.

Adverting back to the facts of the present case and looking into the seriousness of the examination which is being conducted, wherein the applications have been invited from the candidates to fill up the posts of Additional District Judges, it is expected from such candidates, at least to read the advertisement and the application form carefully before submitting the same. It is unlike the cases of ***Sanjeev Kumar Saini*** (supra) and ***Satyveer*** (supra) who were competing for the recruitment of Group 'D' post in the Railways. It was also made clear to all the candidates that they should read the notification carefully before filling the application form and were also not required to keep any column of the form blank. It appears that the candidates/petitioners either did not read the application form thoroughly/carefully or they have not given any serious thought to the requirement of putting their thumb impression on the application form as well after signing the same in English or Hindi as the case may be. Such type of lapse cannot be accepted at least

from the candidates who had applied for the recruitment to the posts of Additional District Judges and specially when we have found the requirement of putting their thumb impression on the application form was not an empty formality but has a great purpose to achieve as the examiner was afraid that there may be a case of impersonation and to avoid any such eventuality to happen, provided in the application form at a specific place, to bring the notice of the candidate to put his thumb impression making it further clear to him that if he is a male then he has to put his left thumb impression and if she is a female then right thumb impression. No other precautions could have been taken by the respondents/examiners and in such a situation, the lapse on the part of the petitioner is not well deserving to be condoned as the respondents have not allowed any candidate in this examination who have committed such type of mistake and their application forms have been rejected.

Thus, in view of the aforesaid facts and circumstances, we do not find any merit in the present petitions and the same are hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(SUVIR SEHGAL)
JUDGE

25.11.2019
pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No