

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

**Date of Decision: July 04, 2019**

**CWP No.24327 of 2018 (O&M)**

**Ankit Mehla & others**

...Petitioners

Versus

**State of Haryana & others**

...Respondents

**CWP No.26801 of 2018 (O&M)**

**Amit Kumar & another**

...Petitioners

Versus

**State of Haryana & others**

...Respondents

**COCP No.362 of 2019**

**Ankit Mehla & others**

...Petitioners

Versus

**Shyam Sunder Prashad & others**

...Respondents

**COCP No.422 of 2019**

**Amit Kumar & another**

...Petitioners

Versus

**Shyam Sunder Prashad & others**

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Vishal Gupta, Advocates,  
for the petitioners in all the cases.

Ms. Palika Monga, DAG, Haryana,  
for the State.

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**AMIT RAWAL, J.**

This order of mine shall dispose of four cases, i.e., Civil Writ

Petitions No.24327, 26801 of 2018 and COCP Nos.362 and 422 of 2019 as the questions of law and facts are identical and, therefore, are being decided together. The facts are being taken from CWP No.24327 of 2018.

There are two sets of petitions filed by the petitioners claiming identical relief in seeking quashing of Advertisement No.4 of 2018 (Annexure P-7) dated 26.08.2018, whereby 37 posts of Laboratory Attendant (2 posts of Viscera Cutter in CWP No.26801 of 2018) were sought to be filled by the respondents allegedly in contravention of the Service Bye Laws as applicable to the petitioners with a further direction to fill up the post of Laboratory Attendant strictly in accordance with the Haryana Police Department (State Service Group-D) Service Rules, 2000 (for short, 2000 Rules).

It is alleged that, through regular process, petitioners on contract basis have been appointed in the office of respondent No.4 as Laboratory Attendant and drawing the salary/wages. They are discharging the duties to the satisfaction of the seniors for many years. Reference has been made to the chart (Annexure P-3) indicating the date of appointment along with date of birth.

Mr. Vishal Gupta, learned counsel representing the petitioners in all the cases submitted that owing to the threat extended by the department to dispense with the services, petitioners were constrained to approach this Court vide CWP Nos.11509 and 11253 of 2013, whereby this Court protected the services of the petitioners by indicating that there shall not be discontinuation of the service replaced by another set of employees except through regular process and as such all the petitioners have been working and discharging the duties. Even some of the petitioners have been

allotted Government accommodation, i.e., LIG type quarter.

It was further contended that this Court issued directions in case titled as Yogesh Tyagi and others Versus State of Haryana to fill up the vacancies on regular basis and also quashed the appointments of those persons, whose services were regularized by the State Government in pursuance to the regularization policy dated 16.06.2014, 18.06.2014, 07.07.2014 (Group-B) and 07.07.2014 (Group C & D). The Haryana Staff Selection Commission-respondent No.2 issued the advertisement, impugned, aforementioned, whereby the applications were invited to fill up the posts as noticed above fixing the qualification, i.e., education & experience as under:-

- “i) Matriculation from a recognized Board*
- ii) Hindi/Sanskrit upto Matriculation, as one of the subject.”*

The Service Rules, 2000 provides the method of recruitment as under:-

*9. Recruitment of the service shall be made.-*

*(a) In the case of Skelton Moteelal Cleaner and Viscera Cutter:*

*(i) 10% by promotion from amongst Carpenter, Mason, Painter, electrician, Blacksmith, Record Lifter, Daftri, Jamadar and Tailor and*

*(ii) 90% by direct recruitment; or*

*(iii) by transfer or deputation of an official already in the service of any State Government or the Government of India;*

*(b) In the case of Carpenter, Mason, Painter, Electrician, Blacksmith, Record Lifter, Daftri, Jamadar and Tailor:-*

*(i) 10% by promotion from amongst Cook, Water Carrier, Mali, Sweeper, Barber, Dhobi, Mochi, Laboratory Attendant and Care Taker; and*

- (ii) 90% by direct recruitment; or*
- (iii) by transfer or deputation of an official already in the service of any State Government of the Government of India.*
- (c) In the case of Cook, Water Carrier, Mali, Sweeper, Barber, Dhobi, Mochi, Laboratory Attendant and Care Taker:-*
  - (i) 10% by promotion from amongst Khalasi, Helper Kennelman, Attendant, Chowkidar, Ward Servant, Peon and Labourer (Helper to Mason); and*
  - (ii) 90% by direct recruitment; or*
  - (iii) by transfer or deputation of an official already in the service of any State Government or the Government of India;*
- (d) In the case of Khalasi, Helper, Kennelman, Attendant, Chowkidar, Ward Servant, peon and Labourer (Helper to Mason),-*
  - (i) by direct recruitment; or*
  - (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India.*
- (2) All promotions unless otherwise provided shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions.*
- (3) Unless otherwise provided, whenever any vacancy occurs or is about to occur the appointing authority, shall determine the manner in which it shall be filled in.*

The Service Rules, 2000 provided the academic qualification for Laboratory Attendant to be middle pass with Hindi and at least six months experience in Laboratory. As per Appendix-B, under Rule 7 of the Rules, the academic qualification for direct recruitment for Laboratory Attendant is middle pass with Hindi and at least 6 months experience in Laboratory, in case of Laboratory Attendants in Electrical and Instrumentation disciplines; or matriculation with science as one of the subject; or Matric with ITI diploma in the relevant subject and for appointment other than by direct recruitment, middle pass with Hindi and 5

years experience as Khalasi, Helper, Kennelman, Attendant, Chowkidar, Ward Servant, Peon and Labourer (Helper to Mason) along with some experiences of Laboratory works, working knowledge of Laboratory Attendant. The advertisement, impugned, prescribed the qualification as matriculation from a recognized board with Hindi/Sanskrit upto matriculation, but does not include 6 months' experience, thus, it is not in consonance with the rules. It is settled law that the State Government cannot advertise the posts in contravention of the bye laws and the rules. The petitioners were fully eligible for the post and having not only fulfilled the requisite qualification and experience, cannot be permitted to compete with ineligible candidates as it would open the doors for the post of Laboratory Attendant, who would not have any basic knowledge and not only the petitioners but also many other eligible candidates would be put to disadvantage.

It has been further pointed out that this Court while issuing notice of motion also granted the interim stay as under:-

Learned counsel is seeking quashing of advertisement dated 26.08.2018 (Annexure P-7), as the same is in contravention of the Service Bye laws applicable to the petitioners, who are working on the post of Laboratory Attendant with respondent No. 4. Learned counsel submits that in the above advertisement, the qualification and experience has been prescribed as under:-

*“Qualifications-Education and Experience*

*i. Matriculation from a recognized Board.*

*ii Hindi/Sanskrit upto Matriculation, as one of the subject.”*

*Learned counsel submits that as per Haryana Police Department (State Service Group-D) Service Rules, 2000 which are applicable to the post of Laboratory Assistant in the respondent-Department and as per notification dated 11.08.2000, the academic qualification and experience of a person should be middle pass with Hindi and at least 06 months experience in Laboratory, in case of Laboratory Attendants in Electrical and Instrumentation disciplines; or matriculation with science as one of the subject; or matric with ITI diploma in the relevant subject.*

*Notice of motion for 16.11.2018.*

*In the meantime, the selection process may continue but no appointments be given to the successful candidates. 12.10.2018.”*

However, the respondents caused willful disobedience of the order that the selection process may continue, but no appointment be given to the successful candidates, therefore, two contempt petitions bearing No.362 and 422 of 2019 have been filed.

Respondent Nos.1, 3 and 4 opposed the writ petition by raising preliminary submissions regarding the suppression of material facts and supported the issuance of the advertisement by averring that in order to bring uniformity and transparency in recruitment and conditions of service of the Haryana Group D Employees, State Legislature enacted Haryana Group-D Employees (Recruitment and Conditions of Service) Act, 2018 (for short, 2018 Act) and the qualification- education & experience has been kept as matriculation from a recognized board with Hindi/Sanskrit upto matriculation, as one of the subject fixing the age from 18 to 42 years. Section 9 of 2018 Act provides that no person shall be appointed to any post in the service, unless in possession of qualification and experience specified in column 3 of the First Schedule in case of direct recruitment and in case of

persons appointed under other than by direct recruitment specified in column 4 of the aforesaid Schedule. Section 23 envisages the overriding effect, thus, the case of the petitioners is wholly misplaced and cannot be entertained, much less interim order is liable to be vacated, for, the advertisement is not on contravention of 2000 Rules, which are not in existence, in view of the promulgation of 2018 Act.

Haryana Staff Selection Commission also submitted an application, i.e., CM No.19376 of 2018 for vacation of stay by annexing R-2/1 to R-2/3 indicating that the advertisement strictly provided that the selection would be made in accordance with the Haryana Group D Employees (Recruitment and Conditions of Service) Act, 2018, i.e., Haryana Act No.5 of 2018 and the instructions issued from time to time and, thus, learned State counsel submitted that the case of the petitioners is wholly fallacious and liable to be dismissed.

I have heard the learned counsel for the parties, appraised the paper book and of the view that the writ petitions deserve to be dismissed being devoid of merit for the simple reason that the petitioners have no locus standi to challenge the same being working as contractual employees but there is no challenge to the 2018 Act. The advertisement is dated 26.08.2018. It would be apt to reproduce Sections 9 and 23 of the 2018 Act. The same read thus:-

*“9.(1)No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of the First Schedule in the case of direct recruitment and these specified in column 4 of the aforesaid Schedule in the case of persons appointed other than by direct recruitment.”*

*23. Overriding effect:- Notwithstanding anything contained*

*in any service rule for the time being in force, the provision of this Act, shall have effect for regulating the recruitments and conditions of service for appointment to Group-D post.”*

Thus, for all intents and purposes, the Act has an overriding effect on the service rules in respect of Group-D employees.

As regards the case of relaxation of Yogesh Tyagi, it is a matter of record that the aforementioned judgment is under challenge before the Hon'ble Supreme Court and there is a status quo order. Though a faint attempt has been made in the replication to rebut the specific contention in the written statement regarding the applicability of Act No.5 of 2018 fixing the qualification of Group-D employees of all the Departments of the State of Haryana to be in contravention of the statutory Service Rules of 2000 and having no overriding effect, but I am of the view that there is no force in the aforementioned contention as the language of Section 23 of 2018 Act does not leave any ambiguity. It is a matter of record that the selected candidates had already been issued appointment letters, but despite that no effort had been made to implead them. Be that as it may, in view of the observations made here-in-above qua the locus standi and Sections of 2018 Act, the action of the respondents cannot be said to be vitiated in law to bring the case within the realm of judicial review. Resultantly, the writ petitions and the contempt petitions are hereby dismissed.

Interim stay granted vide order dated 12.10.2018 stands vacated.

**July 04, 2019**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**