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

CWP-12522 of 2020

Date of decision: August 21, 2020

Ishwar Singh and another

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sajjan Singh, Advocate for the petitioners.

MAHABIR SINGH SINDHU, J

Both the petitioners claiming themselves to be Ex-Servicemen (ESM); are aspirants for selection to the post(s) of Physical Training Instructor (for short 'PTI'), but feeling aggrieved against the selection criteria issued by respondent No.3-Haryana Staff Selection Commission, Panchkula (for short 'Commission') vide impugned notices dated 15.05.2020 and 30.07.2020 (P-5 & P-6) respectively. Hence, the present writ petition under Articles 226/227 of the Constitution of India.

2. Sole grievance of the petitioners is that according to the service rules, namely Haryana State Education School Cadre (Group-C) Service Rules, 1998 (for short 'Rules of 1998'), the education qualification prescribed for direct recruitment to the post(s) of PTI (for short 'ESM Category') is Middle Pass along with Training in Physical Education from a Military School, whereas the Commission while notifying the impugned selection criteria (P-5 & P-6) has decided that written examination for the post in

question would be of “upto matric standard”; thus, the same is in breach of above statutory rules and liable to set aside.

3. Heard learned counsel for the petitioners and perused the case file.

4. Paper-book reveals that initially, vide Advertisement No.6 of 2006 dated 20.07.2006, Commission invited applications for various posts including 1983 posts of PTIs (item No.23). As per Appendix-B (rule-3) of Rules of 1998, academic qualification and experience for direct recruitment to the post(s) of PTI is as under:-

“(i) Matric from Haryana School Education Board or an equivalent qualification recognized by the Haryana School Education Board;

(ii) Certificate in Physical Education conducted by the Haryana Education Department or an equivalent qualification recognized by the Haryana School Education Board;

(iii) Knowledge of Hindi upto Matric Standard.

For EX-SERVICEMEN:-

(i) Middle Pass;

(ii) Training in Physical Education from a Military School.”

The above advertisement also contained following special instructions:-

“SPECIAL INSTRUCTIONS:

The prescribed essential qualification does not entitle a candidate to be called for interview. The Commission may short list the candidates for interview by holding a written examination or on the basis of a rational criteria to be adopted by the Commission. The decision of the Commission in all matters relating to acceptance or rejection of an application, eligibility/suitability of the candidates, mode of and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard.”

Thereafter, Commission issued notice dated 28.12.2006 in various newspapers for conducting the written examination to be held on 21.01.2007 and it contained selection criteria also to the effect that examination shall have 100 objective type Multiple Choice Questions and each question was to carry two marks. Minimum qualifying marks in the written test were also prescribed in different categories, which read as under:-

- | | | | |
|-----|------------------------------------|---|--|
| (a) | General Category | - | 50% |
| (b) | SC/BC | - | 45% |
| (c) | ESM | - | 40% |
| (d) | DESM and outstanding sportspersons | - | As per general, SC, BC candidates, as the case may be. |

25 Marks were assigned for the viva-voce.

It was further mentioned that candidates equal to three times the number of vacancies will be called for interview based on their performance in the written test and total marks obtained in the written and viva-voce will determine the merit of the candidates in their respective categories. The written test was held on 21.02.2007, as per schedule.

Again a public notice was issued on 01.02.2007 that due to several complaints/reports with regard to malpractices and cheating committed during written examination held on 21.01.2007, the Commission has decided to cancel the aforesaid examination.

Another notice dated 11.06.2008 was issued by the Commission re-notifying the written examination for the post(s) in question to be held on 20.07.2008, but before that date, another notice dated 30.06.2008 was issued thereby cancelling the proposed written test. Thereafter, again public notice dated 11.07.2008 was issued by the Commission to shortlist the eight times

the candidates of the advertised post(s) in their respective categories for interview on the basis of essential academic qualifications.

On 18.07.2008, schedule of interview was published by the Commission w.e.f. 02.09.2008 to 17.10.2008, which was completed in the year 2008, but result of the selection was declared on 10.04.2010, which was published in various newspapers on 11.04.2010. At the end of the result, criteria adopted for selection was also mentioned which reads as under:-

“CRITERIA ADOPTED FOR SELECTION:

The criteria adopted by the Commission for making selection is given below: -

- | | | |
|-------------------------|--|-----------------|
| 1) | <i>Academic marks</i> | <i>60 marks</i> |
| 2) | <i>Marks obtained in the Viva-voice out of</i> | <i>30 marks</i> |
| <i>Total: 90 marks”</i> | | |

5. Above selection result was challenged before this Court through number of writ petitions, including **CWP No.15656 of 2010, Sanjeev Kumar and others versus State of Haryana and others**. Main ground for challenge in the writ petitions was that once the criteria was laid down by the Commission on 28.12.2006, then the same was required to be followed strictly for finalizing the selection and it was not open for the Commission to change the criteria in the midway; thus, the action of the respondents was alleged to be suffering from *mala fide* to get the desired result in order to accommodate the candidates for granting them undue benefits.

6. Writ petitions were allowed by learned Single Bench of this Court on 11.09.2012 and entire selection was quashed and set aside. Directions were issued to the Commission to hold fresh selection, in

accordance with law, within a period of five months from the date of certified copy of the order.

7. Aggrieved against the order of learned Single Judge, various LPAs including LPA No.1594 of 2012 were filed, but all were dismissed by Division Bench of this Court, on 30.09.2013.

8. The matter went to Hon'ble Supreme Court in **Civil Appeal No.2103 of 2020 (arising out of SLP (C) No.35373 of 2013), titled as 'Ramjit Singh Kardam and others versus Sanjeev Kumar and others.** The Hon'ble Supreme Court upheld the order of this Court vide judgment dated 08.04.2020, subject to the modifications contained in Para Nos.72, 73, which are as under:-

“72. The selection on the post of PTI vide advertisement No.6/2006 was under the statutory rules then existing and selection process, which has been initiated under erstwhile rules was to be continued and had not to be scrapped as is clear from the Scheme of Rules, 2012. In any view of the matter, when the selection for 1983 posts of PTI was set aside and the High Court directed to hold a fresh selection, the selection process was to be continued and completed under the orders of the High Court. We, thus, reject the submission of the learned counsel for the Commission and the State that fresh selection cannot be held as per direction of the learned Single Judge affirmed by the Division Bench. We, however, are of the view that selection initiated vide advertisement No.6 of 2006 has to be proceeded further from the stage the criterion was arbitrarily changed by the Chairman. The completion of selection has to be only from amongst the candidates who had applied against post of PTI, including those who were selected.

73. *The learned Single Judge after quashing the select list published on 11.04.2010 directed for fresh selection on post of PTI. The learned Single Judge, however, did not issue appropriate consequential directions for holding the fresh selection. There was no defect in the advertisement dated 20.06.2006 and mode of selection as envisaged by public notice dated 28.12.2006. The arbitrariness crept thereafter from the stage of scrapping the written test scheduled to take place on 20.07.2008. The directions ought to have been issued to complete the process from that stage i.e. the stage of holding the written test. All the candidates who had applied for the post of PTI including those selected, ought to have been permitted to take the written test. We need to clarify that in the facts of the present case there was no requirement of fresh advertisement and inviting fresh applications. In the event fresh applications are called, large number of applicants who participated in the selection would have become over age. All the applicants who had applied in response to advertisement No.6 of 2006 had right to participate in selection as per criterion notified on 28.12.2006. The direction of learned Single Judge needs modification and clarification to the above effect”*

Ultimately, in Para-75, Hon’ble Supreme Court issued certain directions and relevant part of the same is extracted as under:-

“75. In view of the foregoing discussions and conclusions, we dispose of these appeals with the following directions:

(i) The Commission shall conclude the entire selection process initiated by the advertisement No.6 of 2006 as per criterion notified on 28.12.2006 i.e. holding objective type written test of 200 marks and viva voce of 25 marks. All the applicants who had submitted applications in response to the above advertisement including those who were selected

shall be permitted to participate in the fresh selection as directed.

(ii) -----.

(iii) *The entire process be completed by the Commission within a period of five months from the date Commission starts working after the present lockdown is over, which was the time fixed by the learned Single Judge for completing the process*

(iv) -----.”

Perusal of the above directions given by the Hon'ble Supreme Court make it apparently clear that selection process in terms of the advertisement No.6 of 2006 is to be concluded, by the Commission as per criteria notified on 28.12.2006, within a period of five months from the date when the Commission starts working after the lockdown is over.

9. In compliance of the above directions, public notice dated 15.05.2020 (P-5) was issued by the Commission for inviting the online applications from the respective candidates and the selection criteria notified on 28.12.2006 has been incorporated therein. Thereafter, another public notice dated 30.07.2020 (P-6) was issued for conducting the written test on 23.08.2020 (Sunday) between 11:00 A.M. to 02:15 P.M. and selection criteria dated 28.12.2006 is mentioned therein.

Undisputedly, the criteria mentioned in both the impugned notices (P-5) and (P-6) is verbatim to the original selection criteria notified on 28.12.2006 and that has been issued in compliance of the directions of Hon'ble Supreme Court. Thus, the Commission while issuing the impugned notices and incorporating the original selection criteria dated 28.12.2006 has complied with the directions of Hon'ble Supreme Court in letter and spirit.

There is no allegation that Commission has deviated or issued the impugned

notices contrary to the original selection criteria dated 28.12.2006 in any manner. If that be so, then merely on account of the fact that academic qualification prescribed for the ESM Category for the post(s) of PTI, under the Rules of 1998, is middle pass, the same would not interdict the Commission from fixing the criteria for conducting the written test to evaluate the suitability of candidates relating to general knowledge, general English and Hindi upto matric standard for the post(s) in question. Even otherwise, prescribing of the education qualification for a particular post, is only for the purpose of determining the eligibility and the same cannot be treated as a bar for the Commission to frame the selection criteria for judging the suitability of a candidate in the best interest of the service.

Concededly, once a candidate is appointed on the post of PTI, he would be supposed to impart the instructions in physical education to the students upto the level of 10th standard in the School(s); thus, on that count also, there is nothing wrong to fix the written test upto the matric standard relating to general knowledge, general English and Hindi for the post in question.

Still further, the acceptance of the notion projected by the petitioners would result into conducting two separate written examinations, i.e. one for general category along with other reserved categories and second for ESM category, thus, such a proposition would not only be wholly absurd; rather complete negation of the equality clause contained in the Article 14 of the Constitution.

10. As discussed above, written test for the post(s) in question is going to be held on 23.08.2020 (Sunday) and the petitioners have filed the

present writ petition at the eleventh hour on 19.08.2020 with sole motive to halt the selection process by totally misconceived idea on non-existent ground and thus, the same deserves no acceptance.

For the sake of repetition, there is no change in the original selection criteria by the Commission while issuing the impugned notices (P-5 & P-6); rather the same is re-notified for the information of the candidates in terms of the order dated 08.04.2020 passed by the Hon'ble Supreme Court, thus, in the opinion of this Court, the action of the Commission is perfectly legal and valid.

11. In view of the above discussion, this Court has no option except to dismiss the petition.

Ordered accordingly.

(MAHABIR SINGH SINDHU)
JUDGE

August 21, 2020
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No