

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

CWP No. 15533 of 2019

Date of decision : 23.01.2020

Rachna Jangra

.... Petitioner

Versus

Lala Lajpat Rai University of Veterinary & Animal Sciences. Respondent

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Sanjay Vashisth, Advocate for the petitioner.

Mr. D. S. Rawat, Advocate for the respondent.

B S Walia J.,

1. Prayer in the petition under article 226/227 of the Constitution of India is for the issuance of a writ in the nature of certiorari for quashing/ignoring of the type test of the petitioner conducted on 20th May 2019 for the post of clerk BC (A) as also for the issuance of a writ in the nature of mandamus directing the respondent to reconduct the type test of the petitioner because on the date of the type test i.e. 20th, 21st & 22nd May 2019 the petitioner was suffering from labour pains since 10th May 2019 resulting in her giving birth to a female child on 21st May 2019.

2. That the brief facts of the case as set up by the petitioner are that in response to advertisement Annexure P-1 the petitioner being eligible applied for the post of clerk under BC (A) category and was allotted role No. 6933 and her written examination date was fixed as 09.02.2019. The petitioner qualified

the written examination and was called for type test vide annexure P-5 for 22nd

of May 2019. Since the petitioner was pregnant and likely to deliver a child any day, she approached the Registrar of the University on 17th/18.05.2019 for postponing her date of type test. In response thereto the petitioner was apprised that the date of type test could be postponed upto 22.05.2019 only as the date for type test for all candidates was fixed between 20th to 22nd of May 2019, therefore she could choose any date out of the dates already fixed for the other candidates. In the circumstances the petitioner appeared for the type test on 20th May 2019 but during the course of test she developed labour pains and despite her pointing out the same to the staff present there, no medical help was provided and in the circumstances it was impossible for the petitioner to come out of the natural anxiety due to labour pains due to advanced stage of pregnancy for which the petitioner had to rush to the hospital and get herself admitted at 1411 hours on 20th May 2019. In the circumstances the petitioner submitted an application to the Vice Chancellor of the University which was received on 21st May 2019 along with medical record i.e. annexure P6 stating therein that at the time of her type test on 20th May 2019, the petitioner was suffering from labour pains and could not attempt as per her fullest capability/potential, therefore prayed for conducting of test after 20 days on regaining of her health as on 20th May 2019 the petitioner did not get adequate and reasonable opportunity viz a viz other candidates who attempted the type test.

3. Written statement has been filed on behalf of the University stating that there was no rule / regulations / instruction under which the petitioner could claim reconduct of a type test or under which the University could conduct a retest and that if re conduct of type test was allowed to the petitioner on the ground that she could not fare well in the type test because of labour pains then

that would open floodgates for other candidates to come forward with any other reason like marriage, death in the family, illness etc. for claiming that he / she be permitted to re-appear in the examination, that if a candidate had failed to perform well in the written examination or type test because of reason for which the selection committee of the University could not be held responsible then such a candidate had absolutely no fundamental right to seek reconduct of his / her written examination or type test more so when the respondent University had already tried to help out the petitioner by conducting her type test on 20th May 2019 instead of 22.05.2019 for which date the type test of the petitioner was scheduled for. Beside since the type test were scheduled only for 3 days i.e. 20th 21st and 22nd May, 2019 therefore when the respondent University received the request from the petitioner on 17th May 2019 to change date of type test from 22nd May to the 19th to 20th May, 2019 on account of medical reasons, the respondent acceded to the said request and preponed the date of typing test of the petitioner from 22.05.2019 to the date of her choice, i.e. 20th May 2019 to be conducted by the Haryana Knowledge Corporation Limited, Panchkula and that in the circumstances after appearing in the type test on 20th May 2019, the petitioner could not turn around and claim reconduct of the type test in which perhaps she had not performed well. Besides it was absolutely wrong that before or during the type test at 11 AM the petitioner ever complained of any labour pains and the plea that no assistance was provided despite petitioner claiming of labour pains was an afterthought as the typing speed of each candidate was shown on the computer to each candidate in order to maintain transparency in the conduct of the typing test and since the speed of the typing test was known to all candidates the petitioner who perhaps had typing speed of less than the requisite 30 words per minute and therefore

apprehended that she would not be able to qualify the typing test filed the writ petition for re conduct of the typing test.

4. Stand has also been taken up in the written statement that it is settled principle of law that it is the right of a female to choose a family life and have a child at the pre-employment stage but the same could not be made a compulsion for an employer to mould the terms and conditions of selection process for the convenience of the candidates otherwise it would be open to other candidates also to come forward with any other excuse such as marriage, death in the family illness etc. and entitle candidates to claim that he/she be permitted to reappear in the examination, that the petitioner had only a fundamental right for fair participation in the selection process undertaken by the respondent University and since the petitioner had already been granted fair opportunity by the University in the type test conducted by the Haryana Knowledge Corporation Limited, Panchkula, no fundamental right of the petitioner had been violated, that the type test had taken place at 11 AM whereas the petitioner got herself admitted in hospital at 2:11 PM on 20th May 2019 while the delivery took place on 21st May 2019 at 5:11 PM and that the entire story had been concocted as the petitioner had come to know during the course of the typing test that her typing speed was less than 30 words per minute, that the petitioner had not made any complaint of labour pains during the conduct of the typing test, facility of ambulance service was available and could have been provided had a complaint of labour pains been made. In the aforementioned background prayer is for dismissal of the writ petition.

5. I have considered the submissions of Ld. counsel and am of the view that the University which was conducting a selection process for recruitment to

the post of clerk had stipulated a written test followed by a type test on stipulated dates. Due to circumstances it so happened that the date of delivery of the child of the petitioner fell around the date of type test scheduled for the petitioner i.e. 22nd May 2019. However on request of the petitioner on 17th/18.05.2019 of her inability to take the type test on 22.05.2019 on account of a medical condition the respondent University accommodated the petitioner by permitting her to choose one of the 3 dates fixed for the type test of all candidates i.e. 20th 21st and 22nd May, 2019. The petitioner opted to appear in the type test on 20th May, 2019 and the type test was conducted at 11 AM in which the candidate was required to achieve minimum speed of 30 words per minute. The speed achieved by a candidate was reflected simultaneously on the computer in order to maintain transparency in the selection process. At no point of time either before or during the conduct of the type test the petitioner complained of labour pains and there seems to be merit in the stand of the respondents that having come to know that she had not performed well in the type test perhaps by not obtaining the requisite speed the petitioner concocted the story of labour pains for the type test was conducted at 11 AM whereas as per her own showing, the petitioner was admitted in the hospital at 2:11 PM on 20th May 2019 while delivery of the child took place on 21st May 2019 at 5:11 PM. The University accommodated the petitioner to the best of its ability without disrupting the selection process and the conduct of the type test. There are no rules or regulations permitting rescheduling reconduct of type test. The same is within the discretion of the University taking into account all aspects of the matter. The University as has been noted above accommodated the petitioner by rescheduling her type test. The petitioner appeared in the type test at 11 AM and in the representation took up plea of her suffering from labour

pains during the conduct of the type test and of no medical aid being provided to her despite request. The same has been vehemently disputed by the University by contending that the plea is an afterthought and concoction of facts with a view to make out a case and that at no point of time the petitioner had complained of labour pains before or during the conduct of the type test and that had any complaint been so made she would have been provided ambulance facility available. Reliance has also been placed on the decision in case titled as **The Chairman, Central Selection Board (Constable Appointment), Bihar, Partner Versus Ishika Raj, daughter of Rajendra Mandal (2019) (2) SCT 676** wherein a Division Bench of the Patna High Court categorically held that the right of a female to choose a family life and have a child at the pre-employment stage itself cannot be a compulsion on the employer to mould the terms and conditions of selection process at the convenience of the candidates otherwise any other candidate could come forward with any other reason such as illness or death in the family to claim that he/she be permitted to reappear in the examination as they could not perform well. Relevant extract of the aforementioned decision is reproduced as under :

“31. We find on the other hand that the appellants have placed a reasonable restriction by giving one opportunity to everyone to appear in the Physical Evaluation Test and failure to appear therein would entail a disqualification. Such restriction of a single opportunity to appear in the Physical Evaluation Test is neither arbitrary nor discriminatory and is neither against public interest or public policy. Consequently, in our opinion, the fundamental right to beget a child is nowhere violated when the right to appear in the Physical Evaluation Test is protected by providing an opportunity. It is the respondent-petitioners who want an additional opportunity or concession or holding of a separate Physical Evaluation Test for them which in our opinion is neither a legal right nor a fundamental right. There is no fundamental right to have a second chance in a matter of selection and appointment. There is therefore no conflict in the competing rights of the respondent-petitioners so as to

castigate the appellants of having violated the fundamental rights of the respondent-petitioners.

32. On the other hand, it is the competing legal rights of those who have appeared at the test, on the appointed day and time, abiding by the terms and conditions that would be infringed by accommodating the respondent-petitioners on concession. As stated herein this would also be unfair to those who either had not applied in absence of any such announcement for future adjustment and second chance or had applied and chose to opt out on account of their pregnancy. The competing rights of those who have succeeded in the PET cannot be jeopardized at the desired convenience of the respondent-petitioners. This would be treating others unequally.

33. The appellants have not been found to have planned the elimination of the respondent-petitioners so as to infer either malice in fact or in law. If the respondent-petitioners are now accommodated then those who have faced the test and have been successful will have to be eliminated. This will be unjust as against those who have competed against those who have chosen to abstain voluntarily.

38. In our opinion, the right of a female to choose a family life and have a child at the pre-employment stage cannot be a compulsion on the employer to mould the terms and conditions of the selection process at the convenience of candidates which is evident from the choice expressed by such candidates as indicated in the chart reproduced hereinabove. ”

Likewise in Bihar Police Sub Ordinate Service Commission v. Khusbu Sharma, (Patna)(DB) : 2019(2) B.L.Jud. 449 : 2019(3) PLJR 1133 a Division Bench of the Patna High Court after taking into account the facts of the case namely

“4. This is a case with regard to appointment on the post of a Police Sub-Inspector against Advertisement No. 01 of 2017 dated 16.09.2017. The preliminary examinations were held on 11th March, 2018 and 15th April, 2018. The main examinations in which the respondent qualified was held on 22nd July, 2018, the results whereof were declared on 5th August, 2018. The Physical Evaluation Test was scheduled on 25th September, 2018.

5. The respondent-petitioner moved a representation on 10th of August, 2018 stating therein that she was undergoing pregnancy and was likely to deliver her child on 3rd October, 2018 as diagnosed therefore she prayed for an extension of time for appearing in the Physical Evaluation Test. “ held as under

10. To our mind, this cannot be a process adopted in respect of the examinations or holding selections for which we have given detail reasons in the judgment delivered today in LPA No. 1535 of 2017. The respondent-petitioner did not have any vested right of employment so as to jeopardize her career or social security. She was yet to be selected and

for which she had to compulsorily appear in the Physical Evaluation Test. Any extension of concession to one candidate would therefore lead to a chaos in the selections which otherwise had to be concluded in terms of the judgment of the Apex Court ***dated 5th May, 2017 in Writ Petition (c) No. 183 of 2013 (Manish Kumar v. Union of India and Ors.)***. It may also be mentioned that the respondent-petitioner does not loose her right to appear in future examinations and, therefore, none of her rights relating to opportunity of employment are infringed.

Accordingly, the appeal was allowed and the impugned judgment dated 3rd October, 2018 was set aside and the writ petition dismissed.

6. The claim in the instant case is squarely covered by the aforementioned decisions. Accordingly, for the position as noted above as well as reasons recorded besides judgments referred to above, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed.

23.01.2020
DP &S

(B.S. Walia)
Judge

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| 1. Whether speaking/reasoned : | Yes/No. |
| 2. Whether reportable : | Yes/No. |