

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.22523 of 2014

Date of Decision :12.02.2020.

Anup Singh and another

...Petitioners

Versus

Haryana Urban Development Authority & another

....Respondents

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

Present: Mr. R.K.Malik, Sr. Advocate with Mr. Sandeep Dhull,
Advocate for the petitioners.

Mr. Mayank Aggarwal, Advocate for Mr. Vipul Sharma
Advocate for respondents.

B.S. Walia, J.

1) Prayer in the writ petition under Article 226 of the Constitution of India is for the issuance of a writ of Certiorari for quashing the impugned termination orders Annexure P/12 and P/13 dated 31.10.2014 and for grant of consequential benefits.

2) Brief facts of the case leading to the filing of the writ petition are that vide advertisement No.1/2010, the Haryana Staff Selection Commission, Haryana, (hereinafter referred to as 'the Commission), advertised 23 posts of System Officers. Qualifications stipulated in the advertisement were as under:-

(i) BE (Computer Science)/ MCA with first division and 2 years of software development experience in Govt./ Semi Govt./ Ltd. Organization.

ii) Hindi/ Sanskrit upto Matric Standard

3). Petitioners being eligible also applied in response thereto and pursuant to participation in the selection process, the petitioners were selected for the advertised post. However, the selection was challenged before this Court by way of CWP No.12056 of 2013 and other connected writ petitions, leading to grant of interim stay, but eventually vide judgment Annexure P/1 dated 21.12.2013, the High Court upheld the Selection. Thereafter, the petitioners were issued appointment letters Annexure P/4 and P/5 dated 27.01.2014.

4. That pursuant to the issuance of appointment letters Annexure P/4 and P/5 dated 27.01.2014, the petitioners joined services on 31.01.2014 and 07.02.2014 respectively. It would also be relevant to mention here that the petitioners were offered appointment letters as System Officers after verification of their certificates. Subsequently, vide Annexure P/6 to P/11, the petitioners were informed that complaints had been received regarding their qualifications / experience / documents, after their appointment, therefore, a Committee had been reconstituted under the Chairmanship of Administrator (HQ), HUDA, Panchkula, to recheck and re-verify the documents submitted by the petitioners, at the time of their appointment. The petitioners were directed to appear before the Committee along with original documents i.e. (i) matriculation certificate, (ii) educational certificates, (iii) caste certificate, (iv) domicile certificate and (v) experience certificate.

5. That the petitioners appeared before said committee along with the certificates as directed but vide orders Annexure P/12 and P/13, the services of the petitioners were terminated on the ground that the knowledge of the

petitioners in regard to development of software on examination by Experts was not found satisfactory in the on spot practical test as the petitioners failed to perform in accordance with the experience submitted by the candidate, on the basis of which, the Committee judged that the certificates acquired by the candidate did not match with the knowledge of the candidate possessed, therefore, did not recommend the appointment of the petitioners, as per the terms and conditions of the appointment letter, whereupon the services of the petitioners were dispensed with immediate effect. Relevant extract of one of the orders of termination, Annexure P/12, is reproduced as under :-

“Subject: Regarding verification/checking of the documents:-

(i) Petitioner’s qualification/experience etc. as well as genuineness of the institutes relating to appointment to the post of System Officer in HUDA.

It is intimated that on receipt of the complaints/shortcomings in respect of your documents regarding educational qualification and experience certificates as well as genuineness of the institutes, a Committee under the Chairmanship of the Administrator (HQ) HUDA, was constituted to verify/check the said documents. The Committee examined the documents enclosed with the original application form received from the Commission and compared the same with the original documents and observed as under:-

(i) if having qualifications of B.A. from Kurukshetra University Kurukshetra and MCA from MDU, Rohtak;

(ii) His having experience of more than two years of programmer for development of software from O/o the Deputy Excise and Taxation Commissioner, Hisar;

(iii) His knowledge in regard to development of software was being examined by the expert and not found satisfactory. Furthermore on the spot practical text was taken from the candidate and he failed to perform in accordance with the experience certificate submitted by him. The committee judged that the certificates so acquired by the candidate does not match with the knowledge of the candidate possesses and hence, does not recommend the appointment of the candidate as per the terms and conditions of the appointment letter.

In view of the recommendations of the Committee, you are not found suitable for the post of System Officer, therefore, your services are dispensed with immediate effect with the approval of the Chief Administrator, HUDA, Panchkula.

6. That the impugned orders have been challenged on the ground that the Committee constituted vide orders Annexure P/6 to P/11, was for re-verification of documents of System Officers already appointed in HUDA i.e. for re-verifying the genuineness of the certificates and the Committee on verification had not found the certificates of qualification and experience of the petitioners as not genuine but the services of the petitioners were terminated on the ground that the Committee was of the opinion that the petitioners did not have adequate knowledge. It is the stand on behalf of the petitioners that the Committee was never appointed to re

the powers of selection of the post of System Officer vested in the Commission and HUDA had made a request to the Commission to make the selection of 23 System Officers and the Committee comprising of experts constituted by the Commission had found the petitioners fully eligible for the said post, the selection was challenged before the High Court but the High Court had upheld the selection, therefore, the Committee appointed for re-verification had no jurisdiction to go into the question whether the petitioners were having adequate knowledge, therefore, the action of the Committee was without jurisdiction, consequently, on the basis of report of said Committee, services of the petitioners could not have been dispensed with. It is also the plea on behalf of the petitioners that before issuance of the impugned orders Annexure P/12 and P/13, no show cause notice, or opportunity of any kind was granted to the petitioners and had any opportunity been granted to the petitioners, they could have explained that the function assigned to the Committee was only to verify the certificates besides it was not even remotely the case of the Committee that the certificates of the petitioners were not genuine and since the Committee was never entrusted with the function of re-selection, impugned orders Annexure P/12 and P/13, were liable to be quashed being without jurisdiction.

6. Learned Counsel for the respondents on the basis of the stand in the written statement, contended that on receipt of the names of 22 candidates including 11 candidates in the waiting list from the Secretary of the Haryana Staff Selection Commission, Panchkula, vide letter dated 01.05.2013, for the post of System Officers, the documents of the candidates were got checked and the Committee verified the documents of the candidates and found candidates including the petitioners eligible and as

per the recommendations of the Committee, the petitioners were issued appointment letters dated 27.01.2014 and appointed in HUDA on the post of System Officer with the condition that they would be on probation for a period of two years, that on receipt of complaints, a Committee was constituted under the Chairmanship of Administrator (HQ) vide order dated 07.07.2014 and the petitioners were asked to appear before the Committee, which examined the documents and qualification, experience and other related issues and observed that the candidate's knowledge in regard to development of software on examination by an expert was not found satisfactory in the on spot, practical test in which the petitioners failed to perform in accordance with the experience certificate submitted, on the basis of which, the Committee judged that the certificates acquired by the candidate did not match with the knowledge of the candidate possessed. Consequentially, services of the petitioners were dispensed with immediate effect and since the petitioners were on probation, their services were rightly dispensed with for although the petitioners were selected by the Commission, verification of qualification/experience was to be done by the respondents.

7. Learned counsel for the petitioners has referred to the observations of the learned Single Bench in CWP No.12065 of 2013, in case titled as Tarun Arora and others vs. State of Haryana and others. Relevant extract of the same is reproduced as under:-

“So far as the experience of the selected candidates is concerned, I have carefully gone through the original record and found that the allegations of the petitioners that the private respondents did not possess two years experience are baseless.” xxx

EXPERIENCE: ALLEGATIONS REGARDING
VIOLATION OF THE CRITERIA OF ELIGIBILITY I.E.
EXPERIENCE.

The petitioners had initially challenged the validity of the selection of respondents mainly on the ground that the private respondents did not possess any experience vide advertisement Annexure P-5, prescribing 2 years of Software Development experience in Government/ semi Government/ Limited organization would be required alongwith the qualification of B.E. (Computer Science)/ MCA with first Division but perusal of the original record and the original applications of the private respondents reveals that the said respondents had mentioned the experience in their applications and they had also appended certificates. Faced with above said situation having arisen after perusal of the record, counsel for the petitioners has shifted his stand alleging that the salary was also required to be disclosed in the application forms and the experience certificates but this has not been done and I am of the opinion that the validity of an experience certificate cannot be doubted solely on the ground that the salary received by the candidates is not disclosed. But even otherwise, almost in all the cases, the salary has been disclosed. Even if it is presumed for the sake of arguments that salary has not been mentioned by any candidate, this itself is not a sufficient ground to set aside the selection of a candidate on the ground that he/she did not possess the requisite experience. It is always the satisfaction of the Selection Committee or the appointing authority to examine the validity and authenticity of the

documents before issuing appointment letter to a candidate. It is settled proposition of law that fraud vitiates all the transactions. It is observed that in case the experience certificate of any candidate, on verification is found to be fake or fictitious, it will be open to the appointing authority to cancel the selection and deny appointment letter to the selected candidate. It is, therefore, held that selection of private respondents is not invalid but it is subject to the verification of the authenticity of the documents appended with the application including the experience certificate.”

xx xx

“The experience of a candidate in the subject of computer can be determined by an expert in the Computer Science. The Court, has got no jurisdiction to enter into the controversy whether experience as a programmer or any other post of computer expert can be said to be the Software Development experience or not. It is a settled proposition of law that the Court cannot assumed the jurisdiction as an Appellate Authority to ponder upon the selection made by Committee consisting of expert. A perusal of the record indicates that all the committees consisted of a member from the Haryana Staff Selection Commission alongwith technical expert. In Committees ‘A’ and ‘D’- Rajinder Singh, Assistant GM, HARTRON, in Committee ‘B’-Sanjay Sharma, GM IT, HUDA in Committee ‘C’ Mr. Sanjay Sethi, System Analyst, HARTRON and on December 22, 2010, Mr. Naveen Chaudhary, System Analyst, HARTRON assisted the members

of the Commission of Haryana Staff Selection Committee. A perusal of the record reflects that four committees deputed for interviews on December 21, 2010 and December 22, 2010 consisted of technical expert to assist the Commission. It is not the case of the petitioners that different Committees making selections at different times were not capable of determining the actual merit of the candidates or were not able to indulge in fair selection. A doubt may arise regarding the validity of selection by different committees at different times in the absence of any parameters laid down for determining merit pertaining to different trades but since there is no allegation of malafide or nepotism pertaining to any candidate, the selection of the private respondents cannot be held to be vitiated on the ground of adoption of an arbitrary procedure.”

Eventually, the learned Single Bench did not find any ground to interfere in the selection made by the Commission and the writ petition were dismissed and interim orders were vacated.

8. That on the aforementioned basis, learned counsel for the petitioners contends that the selection Committee constituted by the Commission comprised of technical experts and the only right of the Appointing Authority was to examine the validity and authenticity of the documents before issuance of appointment letter to a candidate which was done as is evident from preliminary submission No.2 and 3 as per which on receipt of names of candidates recommended by the Secretary, Haryana Staff Selection Commission, Panchkula, vide letter Annexure R/1 dated 01.05.2013, the Committee verified the documents of the candidates and

found various candidates including the petitioners eligible, and on the recommendations of the Committee, the petitioners were appointed in HUDA, vide Annexure R/2 dated 27.01.2014. Learned Counsel further contended that the Committee constituted vide Annexure P/6 to P/11 was merely to re-verify the matriculation certificate, educational certificate, caste certificate, domicile certificate and experience certificate of the System Officer already appointed in HUDA but not to conduct re selection.

9. I have considered the submissions of learned counsel for the parties. Admittedly selection for the post of System Officer was made by the Commission, through a Committee, which was assisted by technical experts as referred to in the decision, Annexure P/1. Thereafter, the names of the candidates including the petitioners were recommended vide Annexure R3/1, for the post of System Officer, vide letter dated 01.05.2013 and the respondents got the documents of the candidates recommended vide Annexure R/1 checked and verified by a Committee which found the candidates including the petitioners eligible, whereupon, the petitioners were appointed as System Officers in HUDA, vide letter Annexure P/4 and P/5 dated 27.01.2014. Communication Annexure P/6 to P/11, were merely for re-verification of original documents of System Officer already appointed in HUDA i.e. matriculation certificate, educational certificate, caste certificate, domicile certificate and experience certificate, whereas as is evident from Annexure P/12 and P/13, the Committee constituted vide Annexure P/6 to P/11, exceeded its jurisdiction and proceeded to conduct reselection. As per the rules applicable, the power of selection of System Officers vests exclusively with the Commission. The respondents could have merely verified the issuance of experience certificate by the organization by which it was claimed to have been issued. It is not the case

of the Committee that the original certificates of qualification, experience etc. of the petitioners were not authentic. The committee could not have conducted a fresh selection. Likewise reliance on Condition 2 of the letter of appointment is also without any basis. Condition No. 2 in the letter of appointment reads as under :

“2. You will be on probation for a period of two years, which can be extended upto three years. During the period of probation, your services can be terminated at any time without any notice and without assigning any reason thereof, if your work and conduct are not found satisfactory. Before completion of probation period, you have to undergo training and test to be conducted/organized by the authority. ”

However, the stand of the respondents that the services of the petitioners were terminated as per condition No. 2 of their letter of appointment as they were still under probation does not stand judicial scrutiny as firstly the impugned orders were not passed in accordance with condition No. 2 as is evident from the tenor of the communications Annexures P-6 to P-11 as also the impugned orders which reveal that the although the exercise was for re verification of the original documents, yet the respondents exceeded their jurisdiction qua the mandate in Annexures P-6 to P-11 and conducted a re selection despite the fact that the authority for selection vests exclusively with the Commission. The Committee constituted by the respondents exceeded its jurisdiction by going beyond verifying and checking the original documents of the petitioner and overriding the recommendation of the Commission, which were based on the recommendations of a Selection Committee, which was duly assisted by technical experts. The termination orders were passed without giving any

opportunity to the petitioners to submit objections that the function entrusted to the Committee was only to verify the certificates. Even otherwise, it is not the stand of the Committee that the certificates of the petitioners were not genuine. The termination was recommended only on the ground that the petitioners did not perform well in accordance with the spot practical test, therefore, the certificates did not match with the knowledge possessed by the candidates. The same was clearly beyond the scope of the Committee and neither were the petitioners put to notice that a test was to be conducted. Besides, the impugned orders are stigmatic and required compliance with the principles of Natural Justice which is missing.

10. Accordingly in the light of the position as noted above, the writ petition is allowed. Impugned orders Annexure P/12 and P/13 dated 31.10.2014 are quashed. Petitioners are held entitled to reinstatement with continuity in service and all consequential benefits.

(B.S. Walia)
Judge

12.02.2020
'rajesh.k.khurana.

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No