

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

CWP No.18017 of 2017 (O&M)

Reserved on : 27.11.2020

Pronounced on : 11.12.2020

Aman Kaushik

... Petitioner

Versus

Union of India & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Puneet Jindal, Sr.Advocate
with Mr.Amandeep Singh Meho, Advocate for the petitioner.

Mr.H.S.Oberoi, Advocate, for Union of India.

Mr.Harsh Aggarwal, Advocate, for respondents No.2 & 3.

Mr.R.K.Malik, Sr.Advocate
with Mr.Sandeep Kumar Rana, Advocate, for respondent No.4.

G.S. Sandhawalia, J.

In the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the selection of respondent No.4 as Assistant Professor in the Department of Food Engineering, being illegal and arbitrary and a result of favouritism, at the cost of the petitioner. Similarly, selection of respondent No.5, in the Department of Food Business Management and Entrepreneurship Development in the category of Physically Handicapped Category instead of General Category, has also been challenged, on account of the fact that petitioner is being deprived of appointment as Assistant Professor in the Department of Food Science and Technology (FST) in the Physically Handicapped (Persons With Physical Disability) [PH PWD)] Category. Resultantly, a writ of mandamus is sought for issuance of directions to respondent No.2 to appoint the petitioner as Assistant Professor along with all consequential benefits including seniority and arrears of pay, from the

date of the appointment of others, in pursuance to the advertisement dated 24.07.2016 (Annexure P-2).

The pleaded case of the petitioner is that he belongs to the category of persons with disability and certificate dated 18.09.2013 (Annexure P-1), showing his disability as 42% on account of limitation of movement of both hips, knees, ankle, left elbow, shoulder with deformity, has been appended. It is the case of the petitioner that vide the above-said advertisement, applications were invited by respondent No.2 for various faculty posts including Assistant Professors which were 8 in number and there were 2 posts for FST and it was also mentioned that 2 posts were reserved for the Persons With Disability PH (PWD). Thereafter, corrigendum dated 30.11.2016 (Annexure P-4) was issued, raising the number of posts under FST Category to 3 while reducing the posts from FBM from 3 to 2. Petitioner being eligible had applied in response to the said advertisement for the posts of Assistant Professors in FST for which the minimum qualifications were as under:

“MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHING FACULTY (PROFESSOR, ASSOCIATE PROFESSOR AND ASSISTANT PROFESSOR) IS AS PER UGC REGULATIONS 2010 AND AMENDMENTS MADE THEREON).

Besides fulfilling the qualifications specified below for the post of Assistant Professor, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.

Candidates, who are, or have been awarded a Ph.D Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D.

Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions on Universities/Colleges/Institutions.

NET/SLET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SLET/SET is not conducted.

API Score as laid down by UGC Regulations will be applicable for teaching posts. Candidates for the posts of Professor and Associate Professor are required to submit cumulative API score based on UGC Regulations along-with application form, if applicable, in the format as prescribed by UGC.

Xxxx xxxx xxxx

1. Assistant Professor

i. Essential

First Class Master's Degree in the appointment branch* of Engineering (Engg.) & Technology (Tech.).

*ME/M.Tech./Two years MS Degree in Food Engineering/Food Technology/Food and Dairy Engineering/Food Science and Technology/Food Technology and Management.

ii. Without prejudice to the above, the following conditions may be considered desirable;

1. Teaching, research industrial and/or professional experience in a reputed organization;
2. Papers presented at Conferences and/or in referred journals.”

Initially the petitioner was not being considered eligible as he had passed his M.Tech in Food Safety and Quality Management (FSQM) from the same institute in the year 2014. Resultantly, he had given a representation dated 02.09.2016 (Annexure P-7) that his M.Tech

Degree in FSQM should be considered to make him eligible. It is not disputed that the said representation was considered favourably by the Chairman of the Screening Committee vide communication dated 15.02.2017 (Annexure R-2/1) and his candidature was recommended on account of the fact that it was one of the preferential area of specialization. On account of the said recommendation, petitioner was called for interview on 16.02.2017, vide communication dated 15.02.2017 (Annexure P-8), but not appointed. However, on account of the private-respondents being appointed, he has filed the present writ petition on the ground that he had a right against the 2 posts advertised for the PH (PWD) and that respondent No.5 had been selected in the said category, inspite of his merit and he should have been appointed in the General Category. It was also pleaded that he had wrongly been given 7 marks in the interview despite his best performance and because respondent No.3, the Director/Vice Chancellor of the Institute was biased against him. However, the said person has not been impleaded as party in person to give him an opportunity to rebut the allegations of mala fides.

In the reply filed by the Institute, it was pleaded that he had got only 7 marks in the interview out of 20 and 16.14 out of 80 marks was the academic record for the said knowledge and teaching skills. In total, he had only secured 23.14 out of 100 marks and thus, was not found eligible for the post of Assistant Professor. It was also mentioned that respondent No.5 had already resigned and vacancy was created and a fresh advertisement was to be issued. It has also been averred that the

petitioner was not possessing the requisite qualifications of 1st Class Masters Degree in the appropriate branch of Engineering & Technology as prescribed in the advertisement and more specifically, in the FST for which he had applied. The Chairman of the Screening Committee had taken a lenient view that FSM was from the same respondent-Institute and therefore, he was eligible. The Vice-Chancellor who was also Chairman of the Screening Committee apart from the other persons, submitted that the reservation of the PH (PWD) was 2 out of the total 8 candidates and 2 candidates, i.e. the petitioner and respondent No.5 had appeared under the said category. The comparative chart of the marks obtained was also given, which reads as under:

Sr.	Name	Category	Marks obtained in Academic Record, Research, Performance, Domain Knowledge and teaching skill	Marks obtained in Interview	Grand Total	Deptt
1.	Er.Arun Sharma	Gen	36.97	18.00	54.97	FE
2.	Dr.Tribhuvan Nath	OBC	30.09	18.00	48.09	FBM
3.	Dr.Murlidhar Meghwal	SC	44.02	08.00	52.02	FST
4.	Dr.Pramod Kumar Prabhakar	SC	28.18	17.00	45.18	FST
5.	Sh.Sanatan Tiwari	PH-Gen	23.69	15.00	38.69	FBM

..	Sh.Aman Kaushik (Petitioner)	PH-Gen	16.14	07.00	23.14	FST
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It is submitted that the evaluation sheets of all candidates

could be shown from the records. The joining letters had been issued to the competent candidates after approval of the appointing authority and there was no mala fide or bias of respondent No.3. The petitioner was not found upto the mark in the entire selection and therefore, he was not being appointed. It was further averred that being under PH (PWD) Category, he did not have a right to be selected for the post even if he was found fit for the post. The bias of the Vice-Chancellor was also denied and if it was so he would not have allowed to review the eligibility criteria on the basis of the M.Tech in FSQM, which is a different stream.

Respondent No.4 defended his appointment on the ground that his merit was 54.97 and the merit of the petitioner was 23.14.

Respondent No.5, Shri Santan Tiwari, as noticed, already left the Institute and therefore, remains un-represented.

Senior Counsel Mr. Puneet Jindal, for the petitioner, thus, has vehemently submitted that the petitioner has a right for appointment and therefore, once the 2 posts for PH (PWD) were available, he should have been appointed. It was further averred in the replication that since respondent No.5 had resigned, the said vacancy had to be filled up from the candidates who had applied and therefore, the petitioner could not be denied selection as not even a single candidate had been practically appointed and there was a backlog of PH (PWD) posts. It is further his case that the criteria of shortlisting has wrongly been changed that the candidates have to have 20 marks as minimum across the board, due to which, petitioner was being kept away from appointment.

Counsel for the Institute has defended the non-appointment of the petitioner on the ground that he has a right of consideration and not a right of appointment. Reliance has been placed upon the evaluation sheet (Annexure R-2/3) which was stated to have been done by awarding marks for educational qualifications to submit that he did not have any higher qualifications or neither had any research papers presented in conference or journals etc. It was submitted that in such circumstances, he has rightly been denied appointment. It was further submitted that in the interview also, he had only secured 7 marks and having a total of 23.14, was lowly placed.

From the above facts and circumstances, it would be clear that the petitioner's case was duly considered and at one stage, he was found ineligible. Thereafter, on the positive recommendation of the Chairman of the Screening Committee, he was called for the interview. The break-up of the marks obtained by him on account of academic records, research, performance, domain, knowledge and teaching skills, would go on to show that he had obtained only 16.14 marks in comparison to the higher marks obtained by the other candidates including the successful ones. His performance in the interview was also on the lower side whereby he had only secured 7 marks out of 20. In such circumstances, it cannot be said that he had an absolute right of appointment under the PH (PWD) category seats. More so, the Institute had fixed the criteria of possessing minimum of 20 marks in the said category, across the board and the petitioner failed to cross the threshold.

A perusal of the marks which had been awarded would also go on to show that other candidates were higher in merit and had not only the Ph.D qualification but some had research papers for which they were given due benefits and for which, the award was of 20 marks. Similarly, teaching experience marks were also awarded to them and they were at a higher pedestal than the petitioner who did not had any other category except the Post-Graduate Degree and no Ph.D degree. Thus, it is apparent that his case was duly considered. The Apex Court in **P Suseela & others Vs. University Grants Commission & others (2015) 8 SCC 129** has observed that there is right of consideration to a candidate but not a right of appointment. Relevant observations read as under:-

“15. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.”

Similar are the observations made in **Kulwinder Pal Singh**

& another Vs. State of Punjab & others, 2016 (2) SCC 102. Relevant observations read as under:-

“11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide [Food Corporation of India and Ors. v. Bhanu Lodh and Ors.](#), (2005) 3 SCC 618; [All India SC & ST Employees' Association & Anr. v. A. Arthur Jeen & Ors.](#) (2001) 6 SCC 380 and [Union of Public Service Commission v. Gaurav Dwivedi and Ors.](#) (1999) 5 SCC 180.

The claim of the petitioner for appointment, thus, on account of vacancy having been not filled by any of the category of Physically Handicapped, is without any basis. The petitioner does not have any right of appointment and he did not also make the minimum grade in the category, which had been fixed. Therefore, no fault can be found in the selection process conducted by the official respondents. Resultantly, challenge raised to the appointment of respondent No.4 who is higher in merit, is without any basis. Similarly, the prayer for mandamus for appointment of the petitioner in the PH (PWD) category can not be accepted, in the facts and circumstances. The prayer against respondent No.5 also has, otherwise become infructuous since he has resigned from the services of the respondent-Institute.

Resultantly, finding no merit in the present writ petition, the same is hereby dismissed.

11.12.2020

Sailesh

Whether speaking/reasoned:
Whether Reportable:

(G.S. SANDHAWALIA)
JUDGE

Yes/No
Yes/No