IN THE HIGH COURT OF PUNJAB ANDHARYANAAT CHANDIGARH

1. ***CWP No. 6015 of 2014***

Vikram Khanna .....Petitioner

vs.

State of Haryana and others ....Respondents

2. ***CWP No. 8289 of 2014***

Vikram Khanna .....Petitioners

vs.

State of Haryana and others ....Respondents

Date of decision:-07.02.2020

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Virender Verma, Advocate
for the petitioners.

Mr. Randhir Singh, Advocate
for State of Haryana

Mr. Suneet Kumar, Advocate
for respondent No. 4 in CWP No. 6015-2014
and for respondent Nos. 4 to 7 in CWP NO. 8289-2014

Mr. Ashok Gupta, Advocate
for respondent No. 8

RITU BAHRI, J.(Oral)

This order shall dispose of the above two petitions as common question of facts are involved in all the petitions wherein petitioner is seeking quashing of result/selection list dated 27.04.2012 and appointment of private respondent No. 8. However, for facility of reference, the facts are being taken from CWP No. 6015-2014.

Brief facts of the case are that petitioner was appointed on contract basis as Account Assistant, vide letter dated 22.11.2005 and he joined on 07.12.2005 under NRHM with Civil Surgeon, Ambala and his contract was renewed from time to time. Thereafter, advertisement for the post of Finance cum Logistic Officer was advertised on 16.03.2012 by District Health and Family Welfare Society (P-3). The petitioner applied against the same by giving application form (P-5). The interview was conducted and out of 37 candidates, four candidates namely Vagish Sharma, (28.4 marks), Sushma Singla (18.75 marks), petitioner (35.366 marks) and Himanshu Gupta (38.5 marks) were found eligible. Accordingly, Himanshu Gupta-respondent No. 8 with highest marks was selected and the other candidates were kept in waiting list. Respondent No. 8 was issued appiontment letter dated 12.09.2012 and he joined the post of Finance cum Logistic Officer.

It is the contention of the counsel for the petitioner that Sh. Himanshu Gupta-respondent No. 8 has wrongly been selected on the post of Finance-cum-Logistic Officer as he does not fulfil the requisite qualification for the said post. He contends that the experience certificates, copies of which have been appended with the writ petition as Annexures P-7 and P-13, clearly indicate that these certificates have not only been issued by him but to himself. As far as Annexure P-7 is concerned, he contends that it does not specify the dates with regard to the period of experience. The experience certificate dated 31.03.2012 (Annexure P-13) also does not indicate as to who is the proprietor of the Firm. The counsel contends that Mobile No. 9034762629 is the same mobile number which is of respondent No. 8 and in this regard, he makes reference to Annexure P-6, the Application Format of the said respondent where at Sr. No. 7, which deals with the Contract Number, the same mobile number is mentioned. In Annexure P-6, it is also pointed out by the counsel that, a Note has been appended by the Selection Committee/person, who had scrutinized the forms, that the earlier experience certificate submitted by respondent No. 8 i.e. Annexure P-7 is invalid as the same is without date. He has also referred to the certificate (Annexure P-8) with regard to completion of the program titled as Swift India under the SWIFT curriculum, which would indicate the qualifications of respondent No. 8 but does not bear any date or the duration as to when respondent No. 8 had obtained the said qualifications. He further contends that as per the criteria laid down by the State Government (Annexure P-9), the criteria laid for selection contained of only 50 marks whereas in District Ambala, the criteria has been changed and the total marks have been assessed as 60, which is not permissible.

Learned State counsel on the other hand has submitted that the selection of respondent No. 8 was earlier challanged by one Sandeep Verma claiming his certificate to be not valid. The department constituted one Inquiry committee and legal opinion was sought who opined that respondent No. 8 has not committed any cheating/fraud in issuance of experience certificate. The experience certificate can be termed as not proper but it cannot be said to be invalid. The department also got the proof of the income tax return and working of respondent No. 8. The Inquiry Committee vide report dated 04.08.2014 (R-3/2) has considered the experience certificate of respondent No. 8 as valid.

Heard learned counsel for the parties.

On 09.10.2018, this Court passed the following order:-

"*Mr. Rathee has produced photocopy of the letter dated 22.05.2014 written by the Excise & Taxation Officer (S.T.), Ambala City addressed to the Civil Surgeon, Ambala, which reveals the gross turn over of the firm (Ambala Beverages Company) for the year 2003-04 to 2013-14. The gross turn over ranges upto 70,00,000/- approximately in the year 2010- 11, while the gross turn over for the year 2012-13 and 2013-14 has been shown to be NIL. The firm is alive as per record.*

Respondent No.8 would file his personal affidavit together with the supporting document showing whether the Ambala Beverages Company is a business owned by the respondent and his family or is it a sole proprietorship and if it is, then of whom. He would also produce the original experience certificates (Annexures P-7 and P-13) for the perusal of the Court. He would also explain his application form (Annexure P-6), in which he has given his contact mobile number which is the same number as in Annexure P-13 at page 70 (of the file) on the letter head of Ambala Beverages Company. He would also explain that how his application dated 02.4.2012 was for the job of F.L.O. containing experience certificate without date (Annexure P-7) while Annexure P-13 shows the date 31.3.2012, produced at the time of interview on 27.4.2012. The affidavit would also depose whether the experience certificate has been signed by the petitioner himself.

In compliance of the above order, an affidavit has been filed on behalf of respondent No. 8 stating therein that he passed his CA Intermediate examination in the month of November, 2001 (R-8/1). He was issued another certificate dated 28.02.2010 by the Institute of Chartered Accountant (R-8/2). He started his business by the name of M/s Ambala Beverages Co dealing in the trade of soft drinks in Kripa Nagar, Baldev Nagar, Ambala City and was allotted Sales Tax No. AMB/HGST/CST/39098 on 03.12.2002. The name of the firm of respondent No. 8, Ambala Beverages Co being a sole proprietorship of respondent No. 8 was also issued passbook of Transit Challan (C Form) (R-8/3). Thus, he applied for the post of District Finance and Logistics Officer. Being a sole proprietor of the firm, he issued certificate for his working as Finance Manager in his organization for the last 08 years. By mistake, no date was mentioned in the certificate. The demand was raised for submitting certificate with date and was submitted. The earlier certificate is Annexure P-7 and subsequent certificate is Annexure P-13. Further respondent No. 8 has submitted regular sale tax returns right since the year 2003-04 till 2011-12. After joining, he stopped the work in M/s Ambala Beverages.

After going through the written statement and affidavit of respondent No. 8, for all intents and purposes, respondent No. 8 being fully qualified as CA Intermediate, had the experience of 08 years. He was the sole properietor of his firm and he was working on the post of Finance Manager in the firm. Now also respondent No. 8 after appointment on the post of Finance cum Logistic Officer had gained experience of another 08 years, which will be beneficial for the State. Further after respondent No. 8

joined on the above post, the firm has been closed. Further as per order of DGHS vide letter dated 18.06.2014, Civil Surgeon re-constituted the Inquiry Committee again vide letter dated 25.06.2014. The petitioner was told to come present in the office along with the witnesses but he did not come present. He was again told to come present, vide letter dated 04.07.2014. On 11.07.2014, the petitioner come present and earlier statement recorded by the Inquiry Committee was enclosed.

Reference at this stage can further be made to letter dated 22.05.2014 whereby District Excise and Taxation Officer, Ambala has mentioned the gross trunover of the firm for the year 2003 to 2012 and further it has been mentioned that Mr. Himanshu Gupta was the sole proprietor of the firm. He did the work of finance and accounts solely for more than 08 years. The firm has never been blacklisted. Thus, the experience certificate of Mr. Himanshu Gupta was considered as valid.

Only on the sole ground that respondent No. 8 had issued experience certificate to himself, his appointment at this stage after a gap of almost 08 years cannot be quashed. As now also he has gained experience of 08 years on this post. Further he was having the highest marks among the four candidates who were shortlisted including respondent No. 8.

In view of the above, the present writ petitions are dismissed.

(RITU BAHRI)
JUDGE

07.02.2020
G Arora

Whether speaking/reasoned : Yes
Whether reportable : No