

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 35362 of 2019 (O&M)

Date of Decision: 08.09.2020

Sukhpreet Singh and Others

... Petitioner(s)

Versus

Sant Longowal Institute of Engineering & Technology and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sunny Singla, Advocate
for the petitioners.

Mr. Chetan Mittal, Senior Advocate
with Mr. Shivoy Dhir, Advocate
for the Union of India.

Anil Kshetarpal, J.

The petitioners have filed this writ petition under Articles 226 and 227 of the Constitution of India seeking following substantive reliefs:

“I) To issue an appropriate writ, direction or order in nature of certiorari for quashing the Screening/Written Test as well as subsequent result as about 20% questions were wrong in the question paper of Screening/written test of Computer Science and Engineering held on 10.11.2019 and 9% questions are wrong in Mechanical Engineering and Electronics and Communication Engineering and respondents may kindly be directed to re-conduct the Screening/Written Test by setting aside the test held on 10.11.2019.

II) Further a writ in nature of certiorari for quashing recruitment notice dated 20.07.2019 (P-1) being illegal, arbitrary, violation of article 14 & 16 of the Constitution of India and contrary to 12.6 of 12th agenda of BOM in which it is directed that SLIET being a “State” organization bound by article 14 and 16 regarding the fundamental rights of citizen cannot discriminate the State universities/Deemed universities on the ground that there are enough candidates available from IITs/NITs/other centrally founded technical institutions.

III) Further issue a writ of prohibition to the respondents be restricted from making recruitment in pursuance to the aforementioned recruitment notice and Screening/written test”.

FACTS:

The respondent - a deemed university, issued a recruitment notice on 20.07.2019 inviting the applications for the posts of Professors, Associate Professors and Assistant Professors. In the present case, we are concerned with 28 posts of Assistant Professors in the various branches/trades/departments. As per the recruitment notice, the applications could be submitted upto 30.08.2019. The Service Rule provides that a screening test for short listing of the candidates can be held. It was held on 10.11.2019. In the screening test all the 100 multiple choice questions(MCQs) for 100 marks were required to be attempted. For each question there were four optional answers. There was the provision for negative marking. For each wrong answer, ¼th mark was to be deducted. On

the same day i.e. on 10.11.2019, answer keys to the questions were uploaded inviting objections upto 11.11.2019 by 4.00 p.m. The objections submitted were considered by the External Experts (Question Paper Settler) and Internal Experts/Head of the Departments. Thereafter, revised answer keys were uploaded, on 21.11.2019. It was admitted that in the trade/branch of Computer Science & Engineering, 16 questions were wrong, whereas with respect to two questions more than one answer, from the options given, were correct. Similarly, in the trade/branch of Mechanical Engineering 9 questions were wrong, whereas in the department of Electronic & Communication Engineering, 8 questions were wrong, whereas with respect to one question, from the options given, more than one answer was correct. The Institute, decided to give the marks to all the candidates for the wrong questions and declared the result on 26.11.2019. On 5.12.2019 when the writ petition came up for hearing, the notice of motion and notice regarding stay was issued. The respondents have filed their reply affidavit. The respondents have also filed an application for vacation of stay and in response thereto, its reply has been filed.

This Court has heard learned counsel for the parties and with their able assistance, gone through the paper-book.

Since the hearing was held through video conference on account of the restricted function of the Court due to the spread of Novel corona virus, therefore, the learned counsel for the parties were permitted to file synopsis apart from the oral submissions made. The writ petitioners have filed their synopsis.

The learned counsel for the writ petitioners contended that

once it is admitted case that 20% of the questions in the written screening test held for short listing of the candidates were wrong, therefore, the same cannot be made basis of selection. He further submitted that the decision to give marks for the wrong questions is not appropriate and rather the screening test ought to have been scrapped and held afresh. He further contended that the candidates wasted a lot of time in solving the wrong questions and therefore, the decision of the respondent-Institute to award marks is wrong. He further contended that the criteria adopted by the respondent-Institute is not uniform and rather arbitrary. He contended that for the candidates having Ph.D. qualification, a provision has been made for award of 25 marks. They have also been exempted from appearing in the written test for screening. Therefore, the selection criteria is violative of Articles 14 and 16 of the Constitution of India being discriminatory on the basis of the qualifications.

On the other hand, learned senior counsel appearing for the respondents contended that the respondents have adopted a transparent method. He submitted that the answer keys were uploaded on the same day when the screening test was held. After going through the objections received, once it came to the notice of the Institute that certain questions are wrong, the remedial steps were immediately taken on the basis of opinion of the External and Internal Experts and it was decided that all the candidates, on the uniform basis, be awarded marks for wrong questions. He submitted that the writ petitioners have gained in that process because out of the six writ petitioners, five have now qualified the screening test. He submitted that the Institute wants to recruit regular faculty members as in the absence

thereof the Institute is unable to get the pre-qualified accreditation cleared from N.B.A. He further contended that the Ph.D. candidates have not been awarded 25 marks as is being contended. He pointed out that the Ph.D. holders have been granted ten marks for the Ph.D. Degree, whereas the rest of the marks would be awarded on the basis of publications of research papers/articles and National Institutional Ranking Framework ranking while short listing the candidates. He further drew attention of this Court to the fact that even the Ph.D. holders have been given an option to appear in the written screening test. He pointed out that the candidates having M.Tech. degree have got chance to compete with the Ph.D. holders by appearing in the written screening test. In the absence of the written test, they would not have got an opportunity to compete with the Ph.D. holders. He, hence, submitted that efforts have been made to give equal opportunity to the candidates with M.Tech. degree. He further submitted that the selection criteria which is based on the recruitment rules, provides for fair and transparent mode of recruitment and is not discriminatory. He further submitted that on the basis of higher qualification, certain advantages/preferences are required to be given to the candidates because the employer has a right to select the best faculty members.

At this stage, it will be noted that in the synopsis filed by the learned counsel for the writ petitioners, a new issue is sought to be canvassed which is neither a part of the pleading in the writ petition nor any argument thereon was addressed when oral arguments were heard. The new issue sought to be raised is with regard to the backlog vacancies. The respondents never got opportunity to respond. In these circumstances, this

Court is of the view that the new issue, which is sought to be raised for the first time in the written synopsis, cannot be permitted and hence, not required to be consequently examined by the court.

The first contention of the learned counsel for the petitioners, with regard to 20% of the questions in the Screening Test were wrong, is not factually correct. In the question paper with respect to trade of Computer Science & Engineering, out of 100 MCQs, 18 were wrong, whereas in the departments of Mechanical and Electronics & Communication Engineering, 9 questions each were wrong. It is not in dispute that all candidates in one trade/department were given same question paper. Thus, all the candidates, who had appeared in the Screening Test for post of Assistant Professor in a particular trade/branch were required to attempt the same question paper. To err is human. Although, it is true that due care should be taken not to permit such errors to creep in. However, the question is whether the decision of the employer to award marks to all the candidates on uniform basis is correct or not. It will be noted here that this Court while exercising the power of judicial review has limited jurisdiction. If the decision taken by the respondents has rationale and is not patently arbitrary or is vitiated due to malafides, the Court while exercising the power of judicial review should not interfere. The Court has no role in determining the methodology for recruitment or in laying down the criteria for selection.

Keeping in view the aforesaid broad principles, this Court has come to the conclusion that in the facts and circumstances of the case, the respondents have taken a decision which can not said to be patently arbitrary or vitiated due to malafides. It has been explained that the questions were

based on the Graduate Aptitude Test in Engineering (GATE) Examination. It has also been explained that for each trade, a lot of applicants applied. Therefore, a decision was taken to shortlist the candidates. It has been pointed out that in each trade, the candidates with Ph.D. qualification are more than the posts advertised. In order to give a chance to non-Ph.D. holders to compete, a written screening test was held. In these circumstances, once the marks have been given to each candidate equivalent to the number of wrong questions, hence, all the candidates of same branch have been given similar treatment across the board. Hence, the grievance of the writ petitioners is found without substance. Further five out of six writ petitioners because of the marks awarded, have qualified in the screening test held for short listing.

The next argument of learned counsel for the writ petitioners is that because of the award of the marks, true merit of the candidates cannot be judged. It will be noted here that the screening test was held only for short listing the candidates. Once the marks have been given on uniform basis to all the candidates, the merit of the candidates has been determined on the basis of remaining questions which were attempted by the candidates. This Court does not find that the methodology adopted by the respondents is arbitrary.

The next argument of learned counsel for the writ petitioners that the candidates wasted a lot of time in solving the wrong questions is also applicable to all the candidates who wrote the test. It is not the case of the writ petitioners that they could not attempt all the questions because of that fact. In the absence thereof, there is no substance in contention of the

writ petitioners,

The next argument of learned counsel for the writ petitioners is that the criteria adopted is not uniform. He highlighted that 25 marks have been additionally given to the Ph.D. holders and they have also been exempted from appearing in the written test held for short listing. The Ph.D. holders constitute a separate category. They are certainly better qualified as compared to the writ petitioners, who hold M.Tech degree. The writ petitioners have been given an opportunity to compete with the candidates who hold Ph.D. Degree by making a provision for the written screening test. Even the Ph.D. holders have been given an option to appear in the screening test. Still further, the learned counsel for the writ petitioners is not correct in asserting that all the candidates who hold Ph.D. have been given 25 marks. As per the reply filed, the candidates having Ph.D. degree have been given additional 10 marks for Ph.D. whereas the rest of the marks depend upon publication of their research work/articles/papers and National Institutional Ranking Framework ranking. In these circumstances, the criteria adopted by the respondents cannot be said to be arbitrary.

The last argument of learned counsel for the writ petitioners that the selection criteria is violative of Articles 14 and 16 of the Constitution of India is just to be noticed and rejected because it is well settled that the persons holding the higher qualifications are normally given certain advantages or preference. Every employer has a right to make an effort to select the best faculty for its students. One of the criteria for judging suitability is the qualification of the candidates. Apart from the minimum qualification, it is permissible to the employer to give certain preferences to

the persons possessing higher qualification. In the present case, the respondent-Institute invited applications for the appointment of faculty members who would, after their selection and appointment would be teaching and guiding the students. In these circumstances, this Court does not find that the selection criteria adopted by the respondent is discriminatory.

Learned counsel for the writ petitioners has relied upon a judgment passed by the Madras High Court in ***J.Antony Clara and Another v. State of Tamil Nadu 2014 (1) CWC 423***. This Court has carefully read the aforementioned judgment. In that case, the written test for the screening of the candidates was held and keeping in view their large number, the candidates were divided in four groups, A, B, C, & D. There were four sets of question papers. Hence, members of each group were given one set of question papers, whereas candidates belonging to separate groups were given different set of question papers. There were total 32000 candidates who had appeared in the screening test. The errors were found only in the question paper of Series B, which was attempted by 8000 candidates. The Court on facts, found that there was error in the 40 questions. The Court, after examining the various possibilities, found that in the facts of the case, it would be more appropriate to scrap the written screening test. In the present case, the aforesaid case has no application because the screening test was common for all the candidates appearing in the test for a particular trade/branch and all the candidates have been granted universally the same marks. Hence, the aforesaid judgment does not help the writ petitioners.

On the other hand, learned counsel appearing for the

respondents has relied upon the judgment in *Rishal v. State of Rajasthan (2018) 8 SCC 81*. In this judgment, Supreme Court held that once after inviting the objections, the answer keys have been revised and pursuant thereto the result has also been revised, thereafter, there was no ground to interfere. The Hon'ble Supreme Court also noticed that the Court has a limited power while exercising the power of judicial review.

Keeping in view the aforesaid facts, there is no substance in the writ petition and hence, dismissed.

(Anil Kshetarpal)
Judge

September 08, 2020

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No