

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

**CWP No.1792 of 2021 (O&M)
Date of decision : February 25, 2021**

Jagjeet Singh and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Jagram Singh Cooner, Advocate for the petitioners.
Mr. Ayush Sarna, AAG, Punjab.
Mr. Gulam Nabi Malik, Advocate for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

Petitioner is seeking quashing of the result dated 05.01.2021 and 06.01.2021 qua selection for the posts advertised by the respondents vide Advertisement No.3(207)/Estab. III dated 30.08.2020 (Annexure P-1).

Brief facts, as involved in the present petition are that vide the abovesaid advertisement, respondent No.2 had advertised several categories of posts; including the 10 posts of Section Officers/Estate Officers/Executive Offices, 79 posts of Rent Collector/Assistant EOs/Clerks and 17 posts of Senior Assistants. Although there were other categories of posts in the same advertisement, however, these three categories of posts were mentioned at Sr. No.2, 3 and 5 in the list of categories of posts in the said advertisement. Qua these three categories of posts, it was provided in the advertisement that the candidates can apply through a single application.

Still further, the advertisement prescribed that the selection shall be made through a written test of 400 marks comprising of four sections, including one section for Urdu language paper. It was further prescribed in the advertisement that the marks obtained in Urdu will be only qualifying marks and would not be counted towards final merit. The advertisement further prescribed that the candidates will be required to secure 40% marks in each of the sections of the examination, with a further stipulation that in case sufficient number of qualified candidates is not available then qualifying marks in Urdu can be reduced to 35%. The advertisement also prescribed that the candidates three times of the number of advertised posts would be called for interview.

After conducting the written exam according to the abovesaid advertisement, the respondent No.2 had declared the results mentioned herein above. Petitioners have not found place in the list of qualified candidates. Hence feeling aggrieved against the result as such, the present petition has been preferred by the petitioners.

Arguing the case, learned counsel for the petitioners has submitted that total number of posts advertised in the abovesaid three categories was 106, therefore, respondent No.2 was required to call 318 candidates for interview to comply with the conditions prescribed under the advertisement. However, respondent No.2 called only 242 candidates for the purpose of the interview. Hence, respondent No.2 has not complied with the conditions of the advertisement. More number of candidates is required to be called for interview. It is further submitted that calling lesser number of candidates for interview shows that a sufficient number of qualified

candidates was not available. Therefore, respondent No.2 should have relaxed the conditions of qualifying marks in Urdu in terms of the stipulation contained in the advertisement. The petitioners have been deprived of participation in interview only on account of their lesser marks in the subject of Urdu. Otherwise, all the petitioners have more than 40% marks in all other sections. The petitioners have secured even more marks than the persons who have been called for interview by respondent No.2. Therefore, the respondent No.2 deserves a direction to exercise its discretion, as provided under the advertisement so as to reduce qualifying marks in the subject of Urdu; so that petitioners could be granted an opportunity to compete for the selection in question. It is further submitted that respondent No.2 itself has relaxed the condition of qualifying marks in the subject of Urdu qua other posts advertised through the same advertisement. However, respondent No.2 has not relaxed the same qua the abovementioned three categories of posts; for which the petitioners have applied. Hence the action of respondent No.2 suffers from discrimination as well. It is further submitted that the candidates also got confused in examination because respondent No.2 had changed the font of printing in the subject of Urdu than the one mentioned in the advertisement.

On the other hand, counsel for respondent No.2 has submitted that respondent No.2 has not violated any condition as prescribed in the advertisement. Out of three categories of posts mentioned above, there were 10 posts of Section Officers; and against those 10 posts 30 candidates were called for interview. There were 79 posts of Rent Collectors; and against these posts 237 candidates were called for interview. Likewise, in case of

posts of Senior Assistants; against 17 vacancies, 51 candidates were called for interview. Hence for each of the above-mentioned three categories, candidates three times of the advertised posts have been called for interview. The absolute number of 318 against 106 posts were not required to be called because there were certain common candidates, who had obtained higher merit and who had applied for all the three posts. Hence such candidates had to be considered against each of the three categories of posts by calling them for interview. Hence although total number of 318 candidates have not been called for interview, but, for every post in the above three categories three candidates have been duly called for interview. There was nothing wrong with the same. It is further submitted by the counsel that the petitioners were informed well in advance that they will have to qualify the examination in the subject of Urdu as well. However, none of the petitioners have obtained the requisite 40% marks in the subject of Urdu. Therefore, none of them have qualified the written exam as per stipulation contained in the advertisement. Hence petitioners were rightly not called for interview because of their failure to pass the qualifying examination in the subject of Urdu. Qua relaxation of qualifying marks in the subject of Urdu for the post of other categories under the same advertisement, it is submitted by the counsel for respondent No.2 that respondent No.2 had not found three times of the number of posts as qualifying candidates, hence only in accordance with the stipulation contained in the advertisement, qua those posts only relaxation was granted in qualifying marks for the subject of Urdu. Respondent No.2 has not relaxed the qualifying marks for examination in Urdu for any post where

three times of number of advertised posts the qualifying candidates were available. Still further, it is submitted by the counsel for the petitioners that now respondent No.2 has reduced the number of posts in the abovesaid three categories. In case of Section Officers, the number of posts which were advertised as 10 have now been reduced to 7. In case of posts of Rent Collector, 79 advertised posts have now been reduced to 55; and the posts of Senior Assistants have been reduced from 17 to 12. Hence, at this stage of recruitment; the respondent No.2 is making recruitment only for 74 posts against which respondent No.2 was required to call 222 candidates as three time of number of posts. However, since some candidates have got the same marks at the same slot, therefore, the number of candidates, who have been called for interview now has been inflated to 242, which, in any case, is more than three time of number of posts. Regarding the change of font, counsel for respondent No.2 has submitted that the change of font is totally immaterial. The candidates were required to be tested for the subject of Urdu. They were supposed to know how to read and write Urdu. Once a person can understand language in one font then he can also read the same in the other font. Hence, the petitioners are raising irrelevant argument. Moreover, the examination was in the nature of objective type multiple choices questions; where the candidates was only required to tick mark the correct answer and not to write any lengthy answer. Furthermore, there is not even any change of font in printing the question papers. It was in the same font as was mentioned in the advertisement.

Having heard the counsel for the parties and having perused the record, this Court does not find any force in the argument of counsel for the

petitioners. The posts in question were advertised vide the abovesaid advertisement. The advertisement categorically prescribed 40% marks as qualifying marks for each section of the written examination. Accordingly, the candidates were required to obtain 40% marks in the subject of Urdu language as well. Since, none of the petitioners secured 40% marks in the subject of Urdu in the said written exam, therefore, none of them qualified the written exam as per the terms and conditions of the advertisement. Hence none of the petitioners have got a right to be called for interview; as such. Although, counsel for petitioners has submitted that as per the stipulation in the advertisement, respondent No.2 was required to call the candidates three times of the number of advertised posts for interview; and accordingly; he was supposed to call 318 candidates against 106 posts in the abovesaid three categories jointly, whereas, he has called for interview only 242 candidates, which is not three times of number of posts, however, this argument of counsel for the petitioner is fallacious. The advertisement itself makes it clear that the candidates can apply for three posts in a single application form. Therefore, every candidate who qualified the exam; was required to be considered for selection for the posts in each of the abovesaid three categories. Hence while counting three times number, each of such qualified candidate was required to be included in the qualified candidates against each category. Therefore, three times of number of advertised posts; was to be seen for each category separately. It is not even the case of the petitioners that for each category three times of number of posts have not been called for interview. Their only grievance is that the absolute number of candidates which have been called for interview does not make a total of

three times of number of posts advertised for the abovesaid three categories seen jointly. However, as has been clarified by the counsel for respondent No.2, there were certain candidates, who had applied for all the three categories of posts and therefore, they were required to be considered and to be called for interview for the post of each category. Hence, although the absolute number of candidates called for interview was reduced to less than three times of total number of posts advertised in these three categories, however, the number of candidates called for interview for each category was definitely three times of the number of advertised posts. Hence there is no violation of any stipulation contained in the advertisement. Otherwise also, now respondent No.2 has reduced the number of posts to be filled up through this process of selection. The posts which are required to be filled up now has been reduced to 74 in aggregate for all the categories. Against these posts, 222 candidates were required to be called for interview in terms of absolute numbers. Respondent No.2 has called 242 candidates for interview. Hence the condition of calling candidates for interview three times of number of posts advertised; in absolute numbers also; stand complied with. This fact totally demolishes the claim of the petitioners on all counts. Although, counsel for the petitioners has resisted this decrease in number of posts by asserting that respondent No.2 is deliberately reducing the number of posts so that more candidates may not be required to be called for interview, however, this argument hardly has any legal significance. Once the number of posts to be filled up through the advertisement has been reduced; then there cannot be any allegation of any motivated action on the part of respondent No.2 or any allegation of

malafide. Needless to say that advertisement itself contained a stipulation that number of posts can be increased or decreased at any time. Even if, respondent No.2 could not increase the number of posts, by all means; the respondent No.2 could have decreased the number of posts to any extent. Hence, no fault can be found with the action of respondent No.2 even on this count.

Although counsel for the petitioners has submitted that the examination in the subject of Urdu language was only qualifying in nature and not for determination of merit, therefore, respondent No.2 could have very well reduced the qualifying marks in the subject of Urdu; as has been done in case of other categories of posts, however, this argument of counsel for the petitioners is liable to be noted only to be rejected. The advertisement itself prescribed that the qualifying the examination in the subject of Urdu shall be mandatory in nature. Once the petitioners have not fulfilled the conditions of qualifying the examination in Urdu as per standard prescribed in the advertisement, they cannot claim any right to participate in the process of selection any further. Although, respondent No.2 has not disputed the fact that the qualifying marks in the subject of Urdu has been reduced qua the posts in some other categories, however, this reduction in qualifying marks had become necessary because of non-availability of sufficient number of qualified candidates for those categories of posts. Hence, it is only as per the stipulation contained in the advertisement that the qualifying marks in the subject of Urdu has been reduced qua certain categories of posts advertised vide the same advertisement. In the case of the abovesaid three categories of posts, as

mentioned above, candidates more than three times of the number of advertised posts have already been called for interview. Hence no relaxation in qualifying marks in the subject of Urdu is called for. Rather, reducing the qualifying marks in the subject of Urdu; despite the availability of sufficient number of qualified candidates; would be in violation of the stipulation contained in the advertisement. Hence, respondent No.2 cannot be directed to reduce the qualifying marks in the subject of Urdu, only to facilitate the participation of the petitioners in the process of interview.

Although, counsel for the petitioners have also raised the issue of change of font of printing of the question paper in the subject of Urdu, however, this Court finds substance in the argument of counsel for respondent No.2 in this regard as well. Since the paper was in the printed form and the same can be very easily read by any person knowing how to read and write Urdu, therefore, whether the paper is printed in one font or the other font is totally irrelevant. This is only finding a fault with the tools by the mechanic, nothing else. Otherwise also, counsel for respondent No.2 has pointed out that respondent No.2 had used the same font in the printing of the question paper which was mentioned in the advertisement.

In view of the above, finding no merits in the present petition, the same is dismissed.

Since the main petition has been dismissed, therefore, the accompanying applications have been rendered infructuous and are disposed of as such.

February 25, 2021

sarita

Whether speaking / reasoned

Whether Reportable:

Yes / No

Yes / No

(RAJBIR SEHRAWAT)
JUDGE