

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

CWP No. 6342 of 2019 (O & M)

Reserved on: 23.12.2021

Date of decision: 10.01.2022

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Susheel Kumar and others

....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Harkesh Manuja, Advocate,
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. Pankaj Gupta, Advocate,
for respondent No.5.

Mr. A.K. Ranolia, Advocate,
for respondent No.6.

G.S.SANDHAWALIA, J.

The present civil writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing orders dated 13.03.2018 (Annexure P-7) and 12.07.2014 (Annexure P-9). Similarly, prayer has also been made to quash condition of passing AUTO-CAD course from the authorized institute of software provider as per Appendix 'B' of Haryana Public Health Engineering Department, Draftsmen (Group C) Service Rules, 2011 (in short 'Service Rules'). Resultantly, the petitioners seek appointment to the post of Assistant Draftsman in the Public Health Engineering Department.

Respondent No.2, vide order dated 13.03.2018 (Annexure P-7), has

rejected the claim after considering the same in pursuance of the directions issued by this Court. The reason, as such, is that the petitioners are not qualified for the post as per the conditions/qualifications mentioned in the Service Rules as the candidates do not fulfill the qualifications of passing AUTO-CAD course from centre authorized by the software providers. Reference has also been made to the Government decision dated 25.08.2014 whereby, it had decided to file the matter after consideration. Similarly, the order dated 12.07.2014 (Annexure P-9) which is challenged is the noting portion in the relevant file wherein also, it was decided that the appointments could not be issued to the selected candidates against the provisions of the Service Rules and it was approved by the then Chief Minister.

Respondent no. 3-Haryana Staff Selection Commission (in short 'the Commission'), vide Advertisement No.2 of 2011 advertised 83 posts of Assistant Draftsmen (Civil) on 06.11.2011. The said advertisement also invited applications for other posts in separate departments and in the case of Haryana State Cooperative Supply and Marketing Federation Limited (HAFED) also, one post of Draftsman was advertised. Necessarily, the essential qualifications in the advertisement were as per the Service Rules, which read thus:-

“i) Passed a recognized certificate course in Civil Draftsman conducted by State Industrial Training and Vocational Department, Haryana or any other recognized Institute by the Haryana Government.

Or

Passed three years recognized National Certificate (Theoretical) course in Civil Engineering conducted by State Board of Technical Education, Haryana or any other recognized Institute by the Haryana Government.

ii) Certified courses in AUTO Computer Aided Design

(Civil), Water Computer Aided Design including 2 Dimensional and 3 Dimensional, AUTO Computer Aided Design Map 3 Dimensional /ARC INFO/ Structural Analysis and Design PRO from Authorized Training Centre of Application Software providers.

iii) Hindi/ Sanskrit upto Matric Standard or higher education.”

The closing date for receipt of applications in the Commission office was 07.01.2012 and the conditions prescribed in the said advertisement were that merely having the prescribed essential qualifications would not entitle the candidate to be called for interview and shortlisting may be done by holding written examination or on the basis of rational criteria to be adopted by the Commission. The decision of the Commission in the matter relating to rejection and acceptance of an application, eligibility/suitability of candidates etc. also was to be binding upon the candidates. Similarly, it is provided that an application form was to be summarily rejected in the event if the candidate did not possess the requisite academic qualification on the cut off date. The photocopies of all qualifications were to be attached with application forms and candidates applying for the posts were to ensure the eligibility conditions on the last date of the applications. On verification, if the eligibility condition was not fulfilled or the information furnished was false or incorrect, the candidature was liable to be cancelled. The petitioners had accordingly applied for the said posts, however, they had not passed the course in the AUTO-CAD at that point of time from the authorized training centre of the application software provider and had done the same from HARTRON (being the provider of all software to Government of Haryana including AUTO-CAD developed by AUTODESK) or some private institute.

On 09.06.2014 (Annexure P-4), the Commission declared the result

of the petitioners alongwith others on the basis of the interviews held in the months of October and December, 2013 for the said 83 posts. In pursuance of the said result, the Secretary of the Commission, vide communication dated 17.06.2014 (Annexure R-3), forwarded the names of the 81 candidates alongwith other candidates who were in the wait list totalling 96. However, a caveat was put in the same that the selection had been finalized on the basis of the interview but the documents pertaining to qualifications, experience, age and caste category were to be checked and verified from the issuing authorities before they were to be allowed to join their duties.

One of the candidates namely Ashwani Kumar approached this Court in **CWP No. 1893 of 2015, Ashwani Kumar vs. State of Haryana and others** praying for issuance of appointment letter on the basis of the result, which was dismissed on 06.02.2015 on the ground that a person has no vested right for appointment. The relevant portion reads thus:-

“1. The writ petition is not maintainable, for, a person who is considered for appointment has no vested right to be appointed. The issue is not res integra and is set down in the decisions in Shankarsan Dash Vs. Union of India 1991(3) SCC 47 and State of U.P. Vs. Bibhakar Dwivedi 2003(12) SCC 62. So long as there is no case made that any person in the particular category in which the petitioner had applied has been issued with orders of appointment, the petitioner cannot say for the mere fact that he was considered fit for selection as affording to him right of appointment.

2. The writ petition is not maintainable and it is dismissed.”

The petitioners and others had also filed **CWP No. 25212 of 2014, Sandeep Kumar and others vs. State of Haryana and others** alongwith other connected matters seeking directions for consideration of their cases for

appointment, which was disposed of on 11.05.2017 on the ground that the demand or representation having not been made, the writ petition was not maintainable. Further, it was noted that if a demand or representation is made, the same would be considered by the competent authority within a reasonable period. The order dated 11.05.2017 reads thus:-

“In the present writ petition, the petitioners have sought for quashing the impugned action of the respondents in not giving appointment letters to the petitioners. In the absence of demand before the competent authority, petitioners' are not entitled for mandamus. Therefore, the present writ petition is not maintainable.

Accordingly, CWP stands rejected reserving liberty to the petitioners to make necessary demand or representation or application before the competent authority. If such demand or representation or application is submitted, the same shall be considered by the competent authority within reasonable period.

With the above observation petition stands disposed of.”

Resultantly, the impugned order dated 13.03.2018 (Annexure P-7) has been passed.

The claim of counsel for the petitioners is that the condition as such of having done AUTO-CAD from the authorized training centre of the application software provider is not justified. The petitioners have done the same from other providers including HARTRON and they have also done the said course thereafter from AUTO-DESK, the authorized training centre of the application software service provider. It is accordingly contended that a writ of mandamus should be issued in the peculiar facts and circumstances to give appointments on the said posts on the ground that HARTRON being declared as a Nodal Agency for development of computer jobs in the State of Haryana.

Reliance has been placed upon the notification dated 03.09.1985 (Annexure R-1) in this regard. It is accordingly contended that there are only two centres of AUTO-DESK in the region, one in Chandigarh/Mohali and the other one in Faridabad. Reliance is placed upon the list given while filing an affidavit in other case namely ***CWP No. 22981 of 2014, Jiten and others vs. State of Haryana*** by the State (Annexure P-20) wherein, the list of the authorized centres was enclosed as Annexure R-1. It is accordingly pointed out that the action of the State as such is not justified. Mr. Manuja further contends that not even a single post has been filled up against the said advertisement for the last decade and accordingly prays for appointment on this ground also.

Ms. Shruti Jain Goyal, DAG, Haryana, in response, has submitted that the candidates who had applied were not having the essential qualifications and, therefore, have no right of consideration. On an earlier occasion, the writ petition had been dismissed and, therefore, the order passed by respondent No.3 is well justified. It is submitted that the candidates have taken a chance being not eligible and only had a right of consideration and cannot be permitted at this stage to say that the Rules are bad. It is for the State to see what qualifications are to be prescribed and it is not for the candidates to contend to the contrary. It is accordingly submitted that the advertisement is of the year 2011 and the decision was taken to reject their case and return the forms on 26.06.2014 and the Commission was duly intimated on 27.08.2014 regarding the said aspect after the Government took the decision on 25.08.2014. Merely because direction had been issued in the year 2014 to decide the issue, the appointments were not liable to be given at this stage.

After hearing counsel for the parties, we are of the considered opinion that there is no merit in the writ petition. It is not disputed that the

petitioners were to have requisite eligibility on the cut off date which, in the present case, was 07.01.2012. The Rules were not challenged at that point of time and the petitioners took a chance to apply for the said posts though they did not have the requisite qualification of having passing AUTO-CAD course from authorized institute of the software provider as per the Rules. In pursuance of the criteria which the Commission had formulated for selecting the candidates on the basis of interview, only their names were sent for consideration by the Commission on 17.06.2014 with the caveat that their qualifications were to be checked and verified by the issuing authorities. The relevant clause read thus:-

“4. The selected candidates have not been medically examined and no special enquiry into their antecedents has been made. The documents pertaining to their qualifications, experience, age and caste/category, as claimed by them in the application form may please be got checked/verified from the issuing authorities, before they are allowed to join their duties. A copy of the appointment letter issued to the candidates may also be endorsed to the Commission.”

Rather, the Commission had erred in sending the names since they did not have the requisite qualifications as per the Rules. The State, on considering the issue in detail, had also constituted a Committee of three Officers and during checking, it was found that not even a single candidate had been recommended to undergo the said course from the authorized centers of the software provider. In the absence of the candidates not having the qualifications, the matter was sent to the Public Health Minister/Chief Minister for information and was accordingly considered at the highest level. Accordingly, a categorical decision was taken on 12.07.2014 that the appointment cannot be issued against the provisions of the Service Rules and the matter was then considered upto the level of the then Chief Minister.

Accordingly on account of candidates having not qualified the certified course from the centre of the application software provider as per the Service Rules, the decision has been taken to file the matter after consideration on 25.08.2014 (Annexure R-5). The Commission had also been intimated on 27.08.2014 (Annexure R-6) regarding the said form wherein, 96 application forms were returned to the Commission.

The principle of estoppel, as such, would thus apply to the petitioners who have taken a chance and being not qualified and/or then having the requisite eligibility criteria, now they cannot turn around at this stage to say that their case should be favourably considered on the strength that they have acquired eligibility qualifications after the cut off date from the said service provider. The sacrosanctity of the cut off date would, thus, stare them on their face. They had only a right of consideration as per the settled principle and no absolute right of appointment specially once they were not having the requisite eligibility qualifications at the time of submission of applications.

The issue of estoppel has been dealt with in ***Ashok Kumar and another vs. State of Haryana and others, (2017) 4 SCC 357*** and followed up in ***Nitesh Kumar Pandey vs. The State of Madhya Pradesh, (2020) 4 SCC 70*** wherein, it has been held as under:-

“14. Having taken note of the decisions cited, we have no doubt in our mind that the well accepted position in law is that the person who has acceded to a position and participated in the process cannot be permitted to approbate and reprobate. It is a norm that if a person/candidate having taken note of a requirement in the notification and even if it is objectionable does not challenge the same but despite having knowledge of the same participates in the said process and takes a chance, on failing in the process such person/candidate cannot turn around and assail the same.”

Merely because the posts have not been filled would not as such give them a carte blanche for appointment. Their right to challenge the Rules as such also on the grounds raised that are in the writ petition as such also are not liable to be taken up in the peculiar facts and circumstances. The said challenge should have been raised at the appropriate time before applying on the ground that the advantage had been provided as such to a foreign company namely AUTODESK ASIA PVT. LTD.. It has been time and again held by the Apex Court that it is not for the Court to substitute its opinion and to suggest the manner the employer should structure or restructure the Rules in the case for the functioning of its administration. Merely because another department as such had not provided the provision, the condition as such of the requirement of passing AUTO-CAD course from the authorized institute of software provider would not as such give a right to the candidates to contend to the contrary at this stage. Reliance can be placed upon the judgment of the Apex Court in ***Ashok Kumar Yadav vs. State of Haryana, (1985) 4 SCC 417*** that the Court should not venture into the thicket of experts and the matter should be left to their wisdom. It is for the Engineering Department as such to see what are the qualifications that the Assistant Draftsman should possess and the benefits of the same as per the candidates who had passed the said course from the said service provider. The relevant portion reads thus:-

“This Court speaking through Chinnappa Reddy, J. pointed out in Liladhar v. State of Rajasthan that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost

universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters and not any courts. The experts bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test."

Keeping in view the above background, this Court is of the considered opinion that the petitioners, as such, cannot now claim striking down to the said Rule to that extent since similarly situated candidates who had also not passed their AUTO-CAD course from the software provider would not have applied as such in pursuance to the said advertisement being well aware of their handicap of not having the essential qualifications. The petitioners, as such, thus cannot be placed on a better pedestal on account of merely having gambled

and taken a chance and thereafter by seeking a seal of approval from this Court, cannot further seek any right of appointment. The law is crystal clear regarding this aspect that candidates have to be eligible on the cut off date and the qualification acquired after the cut off date would not give them a right of consideration as such.

Resultantly, in the present facts and circumstances, the writ petition stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

10.01.2022
shivani

(VIKAS SURI)
JUDGE

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

