

126+127+294

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CWP No. 14533-2022
Date of Decision: 22.08.2022

Sandeep Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

127

CWP No. 15846-2022

Amit Kumar

...Petitioner

vs.

Haryana Staff Selection Commission and another

....Respondents

294

CWP No. 7260-2022

Amit Kumar and another

...Petitioner

vs.

State of Haryana and others

...Respondents

294-1

CWP No. 13656-2022

Ramniwas

...Petitioner

vs.

State of Haryana and others

....Respondents

294-2

CWP No. 13273-2022

Pardeep

...Petitioner

vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ishaan Bhardwaj, Advocate,
for the petitioners
(in CWP Nos. 14533, 15846 and 7260 of 2022).

Mr. Jasbir Mor, Advocate,
for the petitioners
(in CWP No. 13656 and 13273 of 2022).

Mr. Harish Nain, A.A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, 05 writ petitions are being disposed of, the details of which have been given in the headnote of the order as all the petitions involve same questions of law on similar facts. The facts are being extracted from CWP No. 14533 of 2022.

In the said petition, the prayer of the petitioner is that the petitioner is eligible for appointment in respect of the post mentioned under category 10, 11, 12, 21, 26, 50, 74, 80 and 83 as advertised by advertisement number 12/2019, dated 20.07.2019, but the petitioner has been declared ineligible for competing against the same despite the fact that the petitioner has cleared the written examination.

As per the facts, mentioned in the petition, the respondent issued an advertisement on 20.07.2019 for appointment to various posts, which were advertised category wise.

The petitioner had applied in respect of the post advertised under category nos. 10, 11, 12, 21, 26, 50, 74, 80 and 83 in the reserve category of Economically Weaker Section.

The petitioner was allowed to appear in the written test which was held in the month of March 20/September 2021. After the petitioner was declared successful in the written examination, he was asked to upload his documents for online scrutiny.

As per the advertisement, a candidate was required to have teaching/practicing experience in order to become eligible and the petitioner, in order to fulfill the said condition, uploaded his pay slip to contend that the petitioner had the requisite experience for being considered against a particular post.

I have heard the learned counsel for the petitioner and have gone through the pleadings.

The said pay slip has not been accepted by the respondents as a proof of valid experience, which action of the respondents is under challenge in the present petition.

In order to appreciate, whether, the pay slip attached by the petitioner can be treated as a valid experience certificate, the requirement of the advertisement needs to be noticed.

It is a conceded position that as per the essential qualification, required for posts for which the petitioner is completing two years' practical/teaching experience was required.

It is also a conceded position that after prescribing the essential qualification in the advertisement, there is a note that the experience should be in the concerned trade/field in an industrial establishment covered under the Apprenticeship Act or in a recognized technical institution.

The relevant note is reproduced as under:-

XXXX

XXXXX

XXXXX

“(b) Experience should be in the concerned trade/field in an Industrial establishment covered under Apprenticeship Act or in a recognized technical institution”

XXXX

XXXXX

XXXX

XXXX

A bare perusal of the above requirement will show that there has to be a certificate given by the industrial establishment of a recognized institution certifying that the candidate was working in a particular trade, describing the nature of duties being performed as well as stating a particular number of years of experience the candidate has to his/her credit so as to qualify as valid experience certificate.

In the present case, the petitioner concededly, does not have the experience certificate from the employer. He only uploaded the pay slip which he was receiving from his employer every month and the said slip has been appended by the petitioner at page no. 250 of the paper book.

The only factual position which emerges from the said pay slip is that the petitioner is working as Executive Engineer with the Jindal Stainless (Hisar) Ltd. since 01.11.2015. Though the said salary slip mentions that the petitioner was working in another sister concern of the above mentioned business concern from 25.06.2009.

No description of work being executed by the petitioner is clear from the said pay slip, also whether, the Jindal Stainless (Hisar) Ltd. satisfies clause (b) of the advertisement or not, cannot be ascertained from the said pay slip. It is also not clear from the said pay slip as to whether petitioner is

continuously working with the said institution and has a working experience of two years or not as only date of initial joining has been mentioned but without further facts to whether is a break in service or not.

It is also not clear whether the said business concern is covered under the Apprenticeship Act, from the said pay slip so as to qualify the requirement of advertisement.

Further, the performa for experience certificate has been given in the advertisement as Annexure D-1 which the candidates have been asked to refer to while uploading the experience certificate. Relevant part of the said advertisement is reproduced as under:-

“2.4 Regulatory Framework

1. *Certificate for an applicant whose father has died issued by Tehsildar/Naib Tehsildar: Refer Annexure A1, All*
2. *Widow Certificate issued by Tehsildar. Refer Annexure B1, BII*
3. *Vimuktjati and Tapriwasjati Certificate issued by Tehsildar Refer Saralharyana.gov.in or Antyodaya Saral Centers at distt. Level or Tehsildar office.*
4. *Experience Certificate issued by the concerned Appointing Authority: Refer Annexure DI.*
5. *Affidavit attested by Executive Magistrate in prescribed format regard point: Refer Annexure E-1 to be uploaded application form and brought at the time of Scrutiny.*

Note:-

1. *Performa/Formats for certificates are available as Annexures- A1, A-II, B-1, BII, D-I, EI to this advertisement.”*

Therefore, it can be very well said that the pay slip which has been attached by the petitioner along with the application is not as per the required performa in which the employer has to certify the experience of the candidate.

While considering the claim of the candidate for appointment to a particular post, the nature of job done by a candidate previously must be before the prospective employer so as to ascertain whether, the employee has the required experience, which is needed so as to treat the said candidate eligible for appointment or not. Mere pay slip, cannot be treated as a substitute to an experience certificate.

Further, it is a settled principle of law that the requirement of the advertisement are to be fulfilled by a candidate.

Learned counsel for the petitioner has conceded that as per the advertisement the requirement is that of an 'experience certificate' and not a pay slip and no equivalent document has been made eligible in the advertisement.

The Hon'ble Supreme Court in the case of **CA No. 4807 of 2022**, titled as **Union of India and others** vs. **Mahendra Singh**, decided on 25.07.2022, has held that where a procedure is present, other method of doing the same thing is necessarily forbidden:-

The relevant part of the said judgment is as under:-

“14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form

alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the [Nazir Ahmad v. King-Emperor](#), 1936 SCC Online PC 41, wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

Further a coordinate Bench of this court in case of [Balwinder Kaur](#) vs. [State of Punjab](#) (CWP 3863 of 2013, decided on 17.11.2017) has held that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from.

That being so, the prayer of the petitioner that the pay slip should be treated as equivalent to the experience certificate cannot be accepted.

In view of the above, no ground is made out to entertain these petitions, as the action of the respondents cannot be termed as arbitrary or illegal or contrary to the advertisement.

Consequently, these petitions are dismissed.

A photocopy of this order be placed on the file of the other connected cases.

August 22, 2022
nitin

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No