

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

**CWP-16298-2021 (O&M)
Date of decision : 15 .09.2022**

Dr. Sushma Garg

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Amit Jhanji, Senior Advocate,
with Abhishek K. Premi, Advocate,
for the petitioner.

Ms. Anu Chatrath, Addl.A.G., Punjab.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned notice dated 14.08.2021 (P-12), whereby, petitioner was declared 'not eligible' for the post of Member (Non-judicial), State Consumer Disputes Redressal Commission, Punjab (for short, 'the State Commission').

2. Facts are not in dispute.

3. Government of Punjab, Department of Food, Civil Supplies & Consumer Affairs (for short, 'the Department'), invited applications for filling up of 01 (one) post of Member in the State Commission vide public notice dated 14.02.2021, and relevant part of the same reads as under:-

“DETAILED NOTICE

Applications are invited from suitable candidates for appointment to one post of Member in State Consumer Disputes Redressal Commission, Punjab on whole time basis established under the Consumer Protection Act, 2019

Eligibility Criteria

As per rule 3(2) and 3(2b) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and Members of the State Commission and District Commission) Rules, 2020 which are made under the provisions of the Consumer Protection Act 2019, described as hereunder:-

3(2) "A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses;

(b) a bachelor's degree from a recognised University and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine."

Tenure

The appointment shall be on whole time basis for a period of 4 years or up to the age of 65 years, whichever is earlier.

Qualifications

- 1. The applicant must have passed Matriculation with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language.*

2. *The applicants are required to submit their applications in the prescribed form which is annexed, ensuring the following aspects:*

2.1 *In case of serving officials:-*

(i) *Applicant must submit 'No Objection Certificate' from his present employer..*

(ii) *In case any departmental or any other proceedings including criminal has been initiated, pending or decided in the past against the applicant under relevant Service Rules, details of the same may be furnished.*

2.2 *In case of retired officers, the date of superannuation and "No Inquiry Certificate" will be necessary from the last employer.*

2.3 *ACR dossiers with ACRs of last 10 years of applicant.*

3. *Selection of the Members of the State Commission will be made by the Selection Committee prescribed in the Rule 6 of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and Members of the State Commission and District Commission) Rules, 2020 which are made under the provisions of the Consumer Protection Act 2019.*

4. *Every appointment of a Member shall be subject to submission of a certificate of physical fitness signed by a Civil Surgeon or District Medical Officer to his medical fitness.*

5. *Before appointment, the selected candidate shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.*

6. ***Oaths of office and secrecy:-*** *Every person appointed to be a Member, before entering upon his office make and subscribe to an oath of office and secrecy in Forms I and II annexed.*

7. Declaration of Financial and other interest:- A Member, before his entering upon office, declare his assets, and his liabilities and other interests.

8. Disqualifications:-

A person shall be disqualified for appointment as a member of State Commission, if he:

- (1) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or
- (2) has been adjudged as an insolvent; or
- (3) is of unsound mind and stands so declared by a competent court; or
- (4) has been removed or dismissed from the service of the State Government or Central Government or A body Corporate owned or controlled by such Government; or
- (5) has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the Member.

All other terms and conditions of the appointment of Member shall be governed by the Consumer Protection Act, 2019 as well as the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020.

It is made clear only application filled online at link available at www.foodsuppb.gov.in till the cut off date i.e. 19.03.2021 till 05:00 PM and complete in all aspects with application fee of Rupees 2000/- (Rupees Two thousand only) paid online and with requisite documents attached shall be considered. Any application found incomplete in this regard, would be rejected in scrutiny and no intimation regarding the same shall be sent to applicant.

Principal Secretary to Govt of Punjab

Department of Food, Civil Supplies & Consumer Affair”

4. In response to aforesaid public notice, petitioner submitted her application within stipulated period. After scrutiny of applications, the Department uploaded a list of applicants who were found ‘not eligible’ vide impugned notice/announcement dated 14.08.2021 (P-12) and relevant portion of the same reads as under:-

“GOVERNMENT OF PUNJAB
DEPARTMENT OF FOOD, CIVIL SUPPLIES &
CONSUMER AFFAIRS
(CONSUMER PROTECTION ACT BRANCH)
NOTICE/ANNOUNCEMENT
APPLICANTS WHO ARE FOUND NOT ELIGIBLE
FOR THE POST OF NON JUDICIAL MEMBERS,
STATE CONSUMER DISPUTES REDRESSALS
COMMISSIONS, PUNJAB AS PER THE CONSUMER
ACT, 2019

SR NO.	Name of Candidate (Sh./Smt/Dr.)	Remarks
<i>1 to 4.</i>	<i>....</i>	<i>....</i>
5.	Sushma Garg W/o Sanjay Garg	• Experience not as per Act • In view of judgment of Hon’ble Apex Court in the case ‘Sheshrao Jangluji Bagde Vs. Bhaiyya, 1991 AIR 76 reported as: “The Experience should be taken as experience after acquiring minimum qualification for a post i.e. Bachelor degree as per CPA and the applicant has completed her Bachelor Degree in 2012. Hence the applicant has not completed 20 years experience as required.” • Unsigned and Unattested

		<i>affidavit is attached.</i>
6 11	to	

Hence, present writ petition.

5. Learned Senior counsel for the petitioner submitted that post of Member, State Commission, is governed by the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and members of the State Commission and District Commission) Rules, 2020 (for short, ‘the Rules of 2020’) and Rule 3 thereof provides that a Bachelor’s degree from a recognized University and 20 years’ experience in consumer affairs, law, public affairs, etc. is required for appointment to the post in question. The petitioner fulfills eligibility of 20 years as she is having experience of 18 years and 05 months as Homeopathic Physician and 02 years and 06 months experience as a Member, District Commission. Further submitted that respondents while declaring the petitioner ineligible vide order dated 14.08.2021 relied upon the judgment of Hon’ble Supreme Court titled as **Sheshrao Jangluji Bagde Vs. Bhaiyya, 1991 AIR (SC) 76** wherein it has been observed that *normally when we talk of experience unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualification required and therefore, necessarily will have to be posterior to the acquisition of the qualification.* However, the above mentioned judgment is not *per se* applicable to the present case as the post of Member, State Commission is governed by the Rules of 2020 and which do not provide that

experience gained before acquiring the academic qualification is not valid for the purpose of determining the eligibility. Besides this, as per the advertisement in Sheshrao's case (supra) the "*experience acquired after obtaining the prescribed qualification only will be taken into account.*"; which is not the condition in the present case. Therefore, the aforesaid judgment is not applicable. Also submitted that the Hon'ble Supreme Court in **Subhash Vs. State of Maharashtra and another, 1995 Supp (3) Supreme Court Cases 332**, has observed that experience prior to or after acquisition of qualification is a valid experience for the purpose of determining the eligibility criteria. In addition to above, learned Senior counsel for petitioner also relied upon the judgment of Division Bench of this Court passed in CWP-5202-2017 titled as **Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Gurvinder Singh and others** in which the judgment of Subhash (Supra) was relied upon. It was further argued that rejecting the case of petitioner on the ground of lack of experience is contrary to the earlier stand taken by the respondents in the year 2019, when applications were invited for appointment to the post of District Commission and she was found eligible on the basis of same experience. Also contended that impugned order dated 14.08.2021 has been passed arbitrarily, in contravention of the Rules of 2020 as the same do not stipulate that experience of 20 years be gathered after acquiring the minimum educational qualification.

Again argued that respondents in the year 2019 while making recruitment to post of Lady Member, District Consumer Disputes Redressal Commissions, Punjab, vide letter dated 06.09.2019,

afforded opportunity to the petitioner to submit “Punjabi Pass Certificate” till 12.09.2019. Meaning thereby, an opportunity was afforded to petitioner to rectify the application form after the last date of submission of the same, but no such opportunity has been afforded to petitioner during the present recruitment process for submitting the attested affidavit to that effect.

6. On the other hand, learned State counsel while referring to para 3 of reply specifically submitted that petitioner was found ineligible as she did not have the requisite experience as per the Consumer Protection Act, 2019 (for short, ‘the Act of 2019’) as well as the Rules of 2020 and moreover, she had submitted an unsigned & unattested affidavit along with application form submitted online. Further contended that rejection of application form of petitioner for the post in question was as per the Rules of 2020. Further submitted that petitioner was granted provisional opportunity to appear for interview; therefore, no *mala fide* can be alleged on the part of respondent-State. Lastly submitted that application form filled by petitioner was not as per the relevant provisions and hence, the same was rightly rejected.

7. Heard learned counsel for the parties and perused the records.

8. Section 43 of the Act of 2019, provides that Central Government may make rules regarding the qualification for appointment or method of recruitment etc. for the post in question and which is reproduced as under:-

43. Qualifications, etc., of President and members of State Commission.- *The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.*

9. In terms of above provisions, the Central Government framed Rules of 2020 and Rule 3 thereof reads as under:-

3. Qualifications for appointment of President and members of the State Commission. – *(1) A person shall not be qualified for appointment as President, unless he is, or has been, a Judge of the High Court;*

(2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses-

(a) an experience of at least ten years as presiding officer of a district court or of any tribunal at equivalent level or combined service as such in the district court and tribunal:

Provided that no more than fifty percent of such members shall be appointed; or

(b) a bachelor's degree from a recognized university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine:

(3) *At least one member or the President of the State Commission shall be a woman.”*

10. Apart that, public notice specifically provides the qualifications prescribed in Rule 3 (ibid) under the heading of **Eligibility Criteria**. Besides this, it is specifically mentioned in the advertisement that any application found incomplete in this regard, would be rejected in scrutiny and no intimation regarding the same shall be sent to the applicant.

11. Petitioner in the present case claimed that she fulfills the eligibility of 20 years’ experience as the Hon’ble Supreme Court in Subhash (Supra) has held that experience prior to or after acquisition of qualification is valid for the purpose of determining the eligibility. It is also argued by petitioner that judgment of Sheshrao’s case (supra) is not applicable to the present controversy. As per Rule 3(2)(b), a person shall not be qualified for appointment as a Member unless he is of not less than 40 years of age and possesses (i) Bachelor’s degree from a recognized University; (ii) is a person of ability etc.; and (iii) professional experience of not less than 20 years in Consumer Affairs etc. Petitioner is claiming experience as reflected in para 6 of the petition which is recapitulated as under:-

Sr. No.	Position held	Organization Name and Address	Period (In Months)
1.	Homoeopathic physician	Private Practice	18 Years 5 Months
2.	Homoeopathic Physician Part Time	Shri N C Mittal Memorial Homoeopathic Dispensary	2 Years 11 Months

3.	Lecturer Part Time	GTB Medical Institution And Hospital of Electropat	1 Years 9 Months
4.	Member	Distt Consumer Disputes Redressal Commission Pkl.	2 Years 6 Months
5.	Member	Rogi Kalyaan Samiti, Ferozepur, Pb	1 Years 0 Months
6.	Doctor	Rotary International Club Bhawanigarh	10 Years 0 Months
7.	Guide	The Bharat Scouts and Guides	5 Years 0 Months
8.	Member	District Consumer Disputes Redressal Commission	2 Years 6 Months

As per Rule 3(2)(b), the condition of Graduation is mandatory and which cannot be read in isolation from the requirement of experience; rather both are to be read conjointly. In other words, the experience gained after Graduation is to be counted for the purposes of requirement under the aforesaid Rule. Concededly, petitioner completed her Bachelor of Homoeopathic Medicine and Surgery (BHMS) in the year 2012; therefore, by no stretch of imagination, it can be construed that petitioner was having an experience of 20 years on the date of application. In support of the above conclusion, reference can be made to the judgment of Hon'ble Supreme Court in **Indian Airlines Ltd. & others Vs. S. Gopalkrishnan, (2001) 2 Supreme Court Cases 362**, and relevant part of the same reads as under:-

“5. When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification.....”

Thus, the plea raised by petitioner is not acceptable and hence, the same is rejected.

12. The next contention raised by petitioner that no opportunity was afforded to petitioner to submit the signed & attested affidavit after the last date of filling up of application form like earlier selection, is not helpful on the premise that in the present advertisement itself, it was specifically mentioned that if any application form was incomplete as per the conditions mentioned therein, the same would be liable to be rejected in scrutiny. Therefore, this argument has no force in the eyes of law.

13. In view of the above discussion, this Court does not find any merit in the present writ petition and the same is hereby dismissed.

15.09.2022
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No