

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

CWP-27548-2015 (O&M)

Date of decision: May 18, 2022

Vikas and others

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manoj Chahal, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Inter alia issuance of an appropriate writ is sought directing the respondents to appoint the petitioners against the posts they were selected, especially when selectee at No.2 has been given appointment by ignoring petitioner No.1 who is selectee at No.1 as per merit list.

2. Vide an order dated 25.01.2018, at the request of learned counsel for the petitioners, petition *qua* petitioners No.2 and 3 was dismissed as withdrawn, claim of only the sole petitioner thus survives for adjudication before this Court.

3. Pursuant to advertisement No.2/2010, petitioner No.1 applied for the post of Assistant Archaeologist, claiming to be fully eligible. Following were the requisite qualifications:-

“(i) 2nd Division in Master's degree of a recognized university with at least 50% marks in Ancient Indian History with Culture or Archaeology or in Medieval Indian History.

Or

2nd Division Masters degree with 50% marks in Sanskrit Arabic Parsian Pali or Prakrit with a subject in Medieval Indian History in B.A. level and Post Graduate Diploma in

- Archaeology from the School of Archaeology, Archaeological Survey of Indian Govt. of India.*
- (ii) *Post graduate diploma in Archaeology from the school of Archaeology, Archaeology Survey of India, Govt. of India.*
Or
Master in Philosophy in Ancient Indian History or Medieval Indian History.
- (iii) *Hindi up to Matric Standard.”*

4. Final result (Annexure P-1) was declared on 22.01.2013. Petitioner No.1 was selected as Assistant Archaeologist at serial No.1, while petitioners No.2 & 3 were selected as Technical Assistants at serial Nos.1 & 2, respectively against two posts. Respondent No.5-Haryana Staff Selection Commission recommended the names of the petitioners for being appointed.

5. However, on 26.03.2013, respondent No.2-Principal Secretary to Government of Haryana, Archaeology and Museum Department forwarded the name of one Saroj Bala d/o Arjun Dass, selectee No.2 as Assistant Archaeologist for approval to respondent No.3 ignoring petitioner No.1 being selectee at No.1 on the ground of not fulfilling the requisite qualification, and sought fresh recommendation from respondent No.5 from amongst the waiting list candidates for appointment on the said post.

6. Respondent No.5 again sent the same list including the name of petitioner No.1 against the post of Assistant Archaeologist having the requisite qualification. A proposal dated 27.06.2013 (Annexure P-6) was prepared to seek permission for appointment by respondent No.4-Director, Archaeology and Museum, Haryana. Respondent No.2, instead of appointing petitioner No.1, sought necessary advice from respondent No.1-Chief Secretary to Government of Haryana vide letter dated 29.06.2013 (Annexure P-7). Respondent No.1 sought clarification regarding the qualification of the petitioners and the

requisite qualification from M.D.U. Rohtak and Kurukshetra University Kurukshetra.

7. The two said Universities gave clarifications that both the qualifications, i.e. M.A. History and M.A. Ancient Indian History with Culture & Archaeology are equal to each other. Relying upon letter dated 16.02.2006 (Annexure P-10) written by Kurukshetra University to the Higher Education Commission on the issue, respondent No.1 sent the recommendation to the Department holding both the qualifications, i.e. requisite qualification and qualification possessed by the petitioner No.1 equal to each other and advised to take action accordingly.

8. Notwithstanding, respondent No.2 still sought opinion of Legal Remembrancer, who in turn returned it to the Department stating that no law point is involved in the matter. The issue should be decided by the Department on its own level. Respondent No.2 remained adamant and further sought advice from the office of Advocate General, Haryana. Learned Additional AG from office of Advocate General, Haryana also opined that petitioner is entitled for appointment vide an opinion dated 04.02.2014 (Annexure P-14). Still the petitioners were have not been given appointment. Hence, the petition in hand.

9. I have heard learned counsel for the parties and perused the record.

10. Perusal of the office notings and the records including the administrative approvals sought from the Worthy Chief Secretary reflects that all throughout petitioners' case was favourably recommended. And yet, they were not accorded benefit thereof. For ready, reference, opinion and administrative decision of the Worthy Chief Secretary dated 30.10.2013 (Annexure P-11) is extracted herein below:-

“This matter has been examined by Chief Secretary, Haryana (in General Services-I Branch) in consultation with Kurukshetra University Kurukshetra and Maharishi Dayanand University, Rohtak.

2. As clarified by the Maharishi Dayanand University, Rohtak and Kurukshetra University, Kurukshetra, MA (History) degree of M.D. University is equivalent to MA Ancient Indian History Cultural and Archaeology. Further Kurukshetra University, Kurukshetra has also recommended to the Higher Education Commission, Haryana that the candidates holding the degree of MA of Ancient Indian History, Cultural & Archaeology of KUK/MDU may be considered for teaching posting where MA History is the prescribed qualifications and vice-versa. AD is advised to take action accordingly.

3. Files of AD are returned herewith.”

11. Perusal of the above shows that the Chief Secretary had recommended the case favourably, but the Administrative Secretary instead of complying with the same, still referred the matter to the Legal Remembrancer, Haryana stating that since in some other pending proceedings before this Court, an affidavit had been filed by the Director, Archeology & Museums, Government of Haryana stating that M.A.(History) cannot be deemed to be equivalent to M.A.in Ancient History, Culture and Archaeology, and therefore, legal opinion was sought.

12. What seems to have been given a complete short shrift is the enquiry made by the Chief Secretary *qua* the specific course contents of petitioner No.1 having done M.A. from Maharishi Dayanand University, Rohtak *vis-à-vis* the course contents of the same degree from Kurukshetra University, which concededly is admissible as per the eligibility conditions stating that though the contents of both the degrees by the two different Universities are same, but for some reasons, recital of degrees is different, i.e. while in Maharishi Dayanand University it is M.A. (History), and on the other, in Kurukshetra University it is M.A. of Ancient Indian History, Culture &

Archaeology. Therefore, it was in this background that the Chief Secretary had recommended the case after making enquiry.

13. I have already opined that Administrative Secretary completely ignored the enquiry conducted by the Chief Secretary and to say the least, he unfairly and unethically transgressed the administrative propriety apart from otherwise being unjust and illogical. That too, merely on the basis of an affidavit filed by the Director, Archeology & Museums, who appears not to have gone into the notings, as noted by the Chief Secretary.

14. As an upshot of the above discussion, writ petition is allowed. Respondents are directed to process the case of petitioner No.1 for considering him eligible keeping in view the advice/instructions dated 30.10.2013 (Annexure P-11) of the Chief Secretary, and subject to availability of post as on today, petitioner No.1 may be offered appointment since it is conceded that he was at number one in the merit list.

15. It is made clear that petitioner No.1 shall be entitled to seniority w.e.f. the date others were appointed, but will not be entitled to monetary benefits on the principle of 'No Work No Pay'. In case, there is no vacancy available, he shall be accommodated for the next future vacancy when it becomes available.

(ARUN MONGA)
JUDGE

May 18, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No