

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

**CWP No. 3256 of 2018 (O&M)
Reserved on: November 11, 2022
Pronounced: December 5, 2022**

Dr. Shruti Chopra

...Petitioner

Versus

**Guru Angand Dev Veterinary & Animal Sciences University, Ludhiana and
others**

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Birinder Singh Kherar, Advocate,
for respondent Nos. 1 to 3.

None for respondent No. 4.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari to set aside letter Annexure P/7, vide which appointment has been offered to respondent No. 4, besides a writ in the nature of Mandamus directing respondent No.1/University to offer appointment to the petitioner being fully eligible.

2. In brief, the facts as stated are that the petitioner applied for the post of Assistant Professor in the respondent No.1—University pursuant to an Advertisement No. 1/2017 dated 20.08.2017 for various teaching and non-teaching posts including that of Assistant Professor (Livestock Economics). The petitioner did her Ph.D. in the said discipline and is Doctorate of Philosophy in Agricultural Economics. Apart from the said doctorate, the petitioner also possesses award of honour and certificates of merit. After the documents were

scrutinized, the petitioner was brought in the merit list of 6 candidates and she was called to appear for an interview to be held on 13.10.2017. The petitioner appeared for the said interview along with all her original documents, degrees, testimonials and publications. She claims that being 2nd highest in merit with 71 marks, she ought to have been appointed in place of respondent No. 4, who held merit at No. 5. The petitioner sought information under the Right to Information Act and was informed that she did not have enough marks in the interview and, therefore, was not appointed. Aggrieved the instant writ petition has been filed

3. The stand of respondent No.1—University in the reply is that although the petitioner was higher in merit, but she was unable to secure the minimum requirement of 50% marks in interview and hence, respondent No. 4 having fulfilled the said criteria has been rightly appointed. It is argued that the Academic Council of the University in its meeting held on 20.8.2015 decided that a candidate for direct recruitment for the post of Associate Professor and Professor must obtain 50% marks in the interview.

4. Learned counsel for the petitioner would argue that the selection ought to have been made in line with the specifications laid down in the advertisement and the condition of scoring a minimum of 50% marks in interview was not specified in the advertisement, therefore, the merit ought to be calculated on overall score. He placed reliance upon Annexure P/5 which is the *‘Score card for evaluating the candidates for the direct recruitment to the post of Assistant Professor, Associate Professor, Professor and equivalent’* in which there is no mention of obtaining minimum 50% marks in the interview.

5. Respondent No.4 has not contested the writ petition despite being served. His selection was made subject to the final disposal of the instant writ petition vide order dated 14.2.2018.

6. I have heard learned counsel for the contesting parties and have also perused the pleadings of the case.

7. Respondent No. 1 Guru Angad Dev Veterinary and Animal Sciences University, Ludhiana, invited applications for 14 posts, one of them being Assistant Professor (Livestock Economics). The pay scales were provided in the advertisement, and it was specified that *‘NET essentiality for recruitment to the post of Assistant Professor and equivalent in the disciplines in which NET conducted, for the candidates registered for Ph.D prior to July 11, 2009 shall be exempted , subject to the conditions that:*

- a) *Ph.D. degree of the candidate awarded in regular mode only;*
- b) *Evaluation of the Ph.D. thesis by at least 2 external examiner;*
- c) *Open Ph.D. viva voce of the candidate had been conducted;*
- d) *Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in referred journals;*
- e) *Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work. ”*

The detailed qualifications, experience, requirements were also specified therein.

8. The petitioner having the necessary qualifications applied for the post of Assistant Professor (Livestock Economics) and obtained 65 marks out of 85 marks for her educational qualifications, publications etc. She was called for interview and obtained 6 marks taking her total to be 71 marks. The person who scored the highest marks with a total of 74.5 marks could not join as he was unable to produce the NET certificate in original. Mr. Mohammed Hussein Malik had a grand total of 74 marks out of which 61 marks were for his educational qualifications along with publications and other experience and 13 marks were for interview. However, he refused to join as he wanted to go abroad

after completing his Ph.D. Respondent No. 4 had obtained a total of 55.14 marks for his educational qualifications and publication along with experience and got 10 marks in the interview taking his grand total to be 65.4 marks and he came to be appointed even though the petitioner had higher marks at 71. The reason given is that the petitioner did not secure 50% marks out of 15 marks kept for the interview, as was done by respondent No. 4. The detail of the tabulated marks given, is reproduced below, from Annexure R-2

Sr. No.	Name	Graduation	Master's Degree	Ph.D.	Publications	Peer Recognition	Experience	Total	Interview Marks	Grand Total	NET
	Dr./Mr./Mrs.	(10)	(45)	(5)	(10)	(10)	(5)	(85)	(15)	(100)	
1.	Anurag Chaudhary	6	41	-	7.5	1	2.5	58	7.0*	65.0*	Yes
2.	Krishnadas M.	8	45	3	8	3	1.5	68.5	6.0*	74.5*	Yes
3.	Mohd. Hussain Malik	7	43	-	7	1.5	2.5	61	13.0	74.0	Yes (I)
4.	Rishi Pal	6	41	-	3.2	-	-	50.2	10.0	60.2	Yes
5.	Shruti Chopra	7	41	5	7	4	1	65	6.0*	71.0*	Yes
6.	Wakchaure Nitin Sudhakar	7	45	-	2.14	1	-	55.14	10.0	65.4	Yes-(II)

9. The argument as raised by the counsel for the petitioner that there was no information or intimation that a person had to obtain 50% marks in the interview has merit. A perusal of the advertisement, as annexed with the writ petition as Annexure P-1, is silent to the effect that an interview will be held, apart from scrutiny of testimonials. The advertisement only invites applications for the post as advertised. The essential qualifications are detailed in the said advertisement along with details of the reservation and age relaxation to be given to the candidates. Even in Annexure P-2, which is the details of qualifications, experience, requirements and other relevant information for the posts advertised, there is no mention that an interview will be held. A further perusal of Annexure

P-5, which is the score card for evaluating the candidates for the direct recruitment to the post of Assistant Professor, Associate Professor, Professor and Equivalent, there is no mention that a candidate must obtain 50% marks in the interview. In fact there is a stipulation that *‘Minimum marks for a candidate to be eligible and called for interview is 15% out of 85 i.e. 42.50 marks out of 85 for direct recruitment to the post of Assistant Professor, Associate Professor and Professor and equivalent.’* This document has been issued by the Registrar of the University, therefore, the said document cannot be denied. In fact, Annexure P-5 has been stated to be “a matter of record” as can be borne out from the written statement.

10. The Supreme Court in ***K. Manjusree vs. State of A.P. & Anr. 2008 (2) S.C.T. 6*** has held that introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible.

11. The law is well settled that there can be no deviation from the terms and conditions as specified after an advertisement has been issued inviting applications to fill up posts. The same would amount to changing the rules of the game. In ***Hemani Malhotra vs. High Court at Delhi (2008) 7 SCC 711***, the Supreme Court, while dealing with the selection process as initiated under the Delhi Higher Judicial Services Examination, where the advertisement had not stipulated the minimum cut off marks in viva voce, as the same was introduced on the basis of a Full Court resolution, it was held *“There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection*

process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal.”

12. Therefore, once there is no mention in the advertisement that there will be an interview and a candidate must obtain minimum 50% marks in it to qualify, the University cannot turn around and rely upon an agenda item of the University wherein it is specified that a candidate seeking direct recruitment has to obtain 50% marks in the interview. The said clause finds no mention in the advertisement or even in Annexure P-2, which is a document detailing qualifications; experience, requirements and other relevant information for the post advertised vide Advertisement no 1/2017. It would also be pertinent to mention that the agenda item as relied upon does not find mention in the written statement and has been relied upon in court itself. Therefore, it is concluded that the candidates were unaware of the requirement of obtaining minimum 50% marks in the interview and introduction of obtaining minimum 50% marks in the interview, is illegal in the face of well settled law. It is the aggregate score that will count towards the final merit.

13. As per the final result prepared, the petitioner secured an aggregate of 71 marks. In the merit list, two other persons namely, Krishnadas M. and Mohd Hussain Malik had secured more marks than her with 74.5 and 74 marks respectively. Sh. Krishnadas M. was not able to produce his original document pertaining to NET and Sh. Mohd Hussain Malik did not join. Consequently, the petitioner who had higher marks with an aggregate of 71 marks, than respondent

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No. 4, who had only 65.4 marks, should have been offered appointment instead of being ignored, for not having obtained 50% marks in the interview.

14. For the reasons afore-stated, the writ petition is allowed and the University—respondent No.1 is directed to offer letter of appointment to the petitioner within a period of one month from receipt of copy of this order.

December 5, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No