

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210-1

CWP No.26351 of 2019
Date of Decision: 01.04.2022

Rakesh Kumar and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

210-2

CWP No.30801 of 2019

Dharam Pal and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

210-3

CWP No.9556 of 2020(O&M)

Anil Kumar and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

210-4

CWP No.6570 of 2021

Rajesh Kumar and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

216-1

CWP No.24277 of 2021

Rakesh Kumar and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

(CWP No.26351 of 2019 with 5 other connected matters)

216-2

CWP No.9571 of 2021

Roshan Lal

....Petitioner

VERSUS

State of Haryana and others

....Respondents

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

Present:- Mr. Sajjan Singh, Advocate
for the petitioner in CWP-26351-2019, CWP-30801-2019,
CWP-24277-2021 and for the applicant(s)
in CM-8327-CWP-2021 in CWP-9556-2020.

Mr. Suresh Kumar Kaushik, Advocate
for the petitioner in CWP-9556-2020.

Ms. Mazlish Khan, Advocate
for the petitioners in CWP-6570-2021.

Mr. Ashok Bhardwaj, Advocate and
Mr. P.S. Miglani, Advocate for the petitioners
in CWP-9571-2021.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present set of Civil Writ Petitions filed under Article 226/227 of the Constitution of India, is to the decision of the Government dated 26.02.2021, wherein respondent No.3-Commission notified that online application forms, which were invited for 61 posts of Junior Lecture Assistant (J.L.A.), category No.4 of Higher Education Department Haryana, vide Advertisement No.11/2017 dated 19.12.2017 was being withdrawn. The challenge is primarily raised on the grounds that firstly, the order was without giving any reasons and secondly, on the principle of estoppel since candidates had applied and sat in the written test

held on 23.09.2018 in pursuance of the said advertisement. Their results had been declared on 02.08.2019 (Annexure P-5 in CWP-9571-2021) and thus, they were entitled for the benefit of appointment as such since the Commission had sent a recommendation list also to the concerned department for appointment on the said posts.

In another bunch of cases, which have been filed by the unsuccessful candidates, whose names did not find mention in the result, which was declared, the Rules have been challenged and quashing of the result is prayed for.

The factual matrix which requires consideration for adjudication of the dispute in question is that vide communication dated 06.07.2017 (Annexure P-2), Director General, Higher Education Haryana sent a requisition for the candidates, which were required to be appointed including *Tabla* Player, Junior Lecture Assistant and Laboratory Attendant in various Government Colleges of Haryana. As noticed, the present litigation only pertains to the posts of J.L.A., which were 61 in number. The requisition provided that academic qualification were to be read as under:-

14.	(a)	Qualifications required:- Academic. (If more than one qualifications are prescribed, it should be stated which is considered to be most important	(1) Matric with Science with 5 years' experience in College. (2) Knowledge of Hindi upto Matric standard.
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When the advertisement was published on 19.12.2017 (Annexure P-3), essential qualifications were mentioned as per the statutory Rules, which are mentioned in the Haryana Educational College Cadre (Group C) Service Rules, 1986. The said qualifications read as under:-

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|------------------------------|--|---------------------------------|
| 14. Junior Lecture Assistant | (i) Matric with Science with 5 years' experience in a College.
(ii) In case of appointment of Junior Lecture Assistant in Music BA Music from –
(a) Sangeet Pryag Samiti, Allahabad
(b) Bhatkhande University of Music, Lucknow or Madhay Sangeet Vidyalay, Gwalior
(c) Gandharav Mahavidyalaya Mandal, Bombay,
(d) Punjab or Kurukshetra University or any other University to which the Government Colleges in Haryana are affiliated
(iii) Knowledge of tuning
(iv) Knowledge of Hindi up to Matric Standard | Same as for direct recruitment. |
|------------------------------|--|---------------------------------|

On perusal of the above, it would be apparent that there are two sets of Junior Lecture Assistants, one qualified in the field of Music, who do not need the requirement for 5 years' experience in a college. The common factor inter se for both the Junior Lecture Assistants was knowledge of Hindi up to Matric Standard as per clause (iv). Apparently, while the advertisement was issued, the same was done as per the Rules and not as per the requisition, which has been noticed herein and which has led to the whole dispute arising pertaining to the present litigation.

Mr. Kaushik, Advocate has tried to convince us that even communication dated 02.01.2018 had been written by the Commission to the Director General, Higher Education Haryana that whether the advertisement of the advertised posts is correct according to the Departmental Service Rules/instructions issued or there was any error and a modification letter could have been issued. Reliance is placed upon the reply dated 16.01.2018 that the concerned department had written back that advertisement was correct according to the Departmental Service Rules/instructions issued. It is, thus, submitted that the final result had been declared on 02.08.2019 and the petitioners were successful in the same and thus, are entitled for appointment. It is accordingly contended that the result of written examination was declared on 19.11.2018 and candidates were called for

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scrutiny of documents on 28.11.2018. Representation dated 24.12.2018 had been filed that the experience of 5 years as Laboratory Attendant be considered for filling up the posts by the Laboratory Employees Association and that experience of no other posts be accepted. A reference is made to the letter dated 31.12.2018, whereby objection was raised that recruitment was being made on the posts of J.L.A. Music and requisition has been sent only to the post of J.L.A. and the requisite qualification was Matric with Science with 5 years' experience in a college and therefore, the proceedings in the matter be kept pending as per communication addressed to the Commission. It is accordingly submitted that vide a communication dated 04.01.2019, the department had acknowledged that the recruitment to the said posts of J.L.A. Music and the knowledge of tuning, mentioned at serial No.14 (iii) and applies to the posts of J.L.A. Music only and it has been wrongly depicted as (iii) but should have been (e), which shall be corrected by the department. It is accordingly contended that thus the petitioners, who had been successful, are entitled for the appointment.

State in its reply filed by way of affidavit of Gulzar Ahmed, Joint Director Administration, has held out that the qualification advertised by the Commission for the posts of J.L.A. was not in consonance with the qualifications mentioned in the department's requisition. It is further averred that candidates had applied as per the qualification published by the Commission and during scrutiny of the recommendations, it came to the notice that candidates, who were selected and recommended were having Music Degree, whereas the department required Junior Lecture Assistants (General) and not J.L.A. (Music). Thus, an anomaly had occurred without drawing distinction between the two qualifications as prescribed for the two posts. It is further averred that the prescribed qualification was Matric with

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Science with 5 years' experience and Hindi up to Matric level and the fact had been brought to the notice of the Commission on 18.12.2020 (Annexure R-2). The relevant part of the said communication which is addressed from the department to the Commission, reads as under:-

“Consequently, no recommended candidate to the department was given joining/appointment letter for the post of Junior Lecture Assistant for which prescribed qualification is Matric with Science with 5 years experience and Hindi upto Matric level.

5. The matter was brought to the notice of Hon'ble Chief Minister through competent authority with the proposal that '*the Recommendations of Junior Lecture Assistant (Music) received from HSSC be sent back to HSSC*':

Hon'ble CM has ordered vide note No. 32 dated 26.11.2020 that the Recommendation List be sent back to HSSC. (Annexure -V)

Therefore, the Recommendation List along with the application forms of the recommended candidates sent by you vide your Memo No. HSSC/Confid./Recomm/2019/526 dated 13.08.2019 is being returned herewith for necessary action.”

The additional affidavit of Dr. Archana Mishra, Joint Director, Colleges, Office of Director General High Education, Haryana has also been filed, in which it has been mentioned that there are 206 Laboratories in Government Colleges, where J.L.A. has to be provided on account of restructuring of the Education Department, which was held on 16.07.2003 and 19.09.2003 and posts of Senior Lecture Assistant were to be abolished. It was further averred that no J.L.A. was required for Music and petitioners are not entitled for the appointment and therefore, the requisition has rightly been returned vide letter dated 18.12.2020.

Vide order dated 05.01.2021, it was noticed by this Court that recommendation had been returned by the State Government and resultantly, counsel for the State had prayed for time to file an appropriate affidavit. The

requisite affidavit dated 16.03.2021 of Gulzar Ahmed again had been filed, wherein also, it has been categorically averred that the requirement was of J.L.A. (General) and not J.L.A. (Music). The relevant portion reads as under:-

“5. That it is submitted that during scrutiny of the recommendations and the application forms of the candidates, it came to the notice that all the candidates who were selected and recommended to this department were having Music degree whereas we required Junior Lecture Assistants (General) and not Junior Lecture Assistant (Music). On further scrutiny, it was established that the anomaly occurred due to the publication of the Qualifications by Commission as per the Rules of the Group 'C' posts rather than on the basis of our requisition Format whereas the Educational Qualifications in the advertisement should have been as per the format of our requisition.”

From the above sequence of events, it is, thus, clear that the discrepancy has occurred on account of mistake as such apparently in the Rules to the extent that the posts of J.L.A. (General) were required only with qualification of Matric Standard and there was no separate posts of J.L.A. (Music) for which no requisition had been sent. The petitioners, who have been duly selected and recommended by the Commission, belong to the field for which there was no requirement by the requisitioning department. In such circumstances, it cannot be said that the decision of the Government was arbitrary in any manner. The law is clear on this aspect and reliance can be placed upon the judgment in *Shankarsan Dash vs. Union of India* (1991) 3 SCC 47, wherein it has been held that when the action of the State Government is not arbitrary in any manner, the recommended person has no

right or claim of selection. The relevant observations in para 7 of the above judgment are reproduced as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha and others*, (1974) 1 SCR 165; *Miss Neelima Shangla v. State of Haryana and Others* (1986) 4 SCC 268 and *Jitendra Kumar and Others v. State of Punjab and Others*, (1985) 1 SCR 899.

The fault as such of course in the present case lies in the ambiguity in the Rules, which are not crystal clear to the extent that requirement of Matric Standard has been put on the bottom of the table could have been mentioned for both the posts separately and it would not led to the Commission as such reproducing the statutory Rules in the advertisement, which has led to the discrepancy resulting in candidates of

Music stream applying and being considered. The claim of the petitioners, who seek appointment, thus, is without any basis as they do not also have the requisite 5 years' experience in college, which is pre-requisite qualification also and no such averment had been made in this regard.

The Apex Court in *S.S. Balu & Anr. vs.State of Kerala & Ors.* (2009) 2 SCC 479, has held that it is for the employer to fill up the posts or not to fill up the same and in the absence of any discrimination or arbitrariness, the candidate will have no legal right for obtaining a writ of mandamus if his/her name appears in the select list. In such circumstances, the writ of mandamus as prayed for cannot be issued in the present facts and circumstances.

The reliance can also be placed on a recent judgment in *Commissioner of Police and Anr vs. Umesh Kumar* (2020) 10 SCC 448, wherein also the Apex Court while relying upon the judgment in *Punjab SEB v. Malkiat Singh* (2005) 9 SCC 22, held that mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Apex Court had reversed the judgment of the Delhi High Court in the said case by noticing that the select list has been revised on account of the change of the answer key and therefore, the earlier candidates had no absolute right.

In the present case also, valid reasons have been shown and therefore, the petitioners can no such grouse and grievance to the extent that they have an absolute right of appointment. It is for the department to take a decision and it is very categorical and clear in the present facts, the requisition was never published for J.L.A.(Music) and the candidates selected are of that category as is clear from the affidavit filed by the concerned officers.

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In such circumstances, the argument raised that the order was non-speaking is without any basis. Accordingly, there is no merit in the present writ petitions. The same are dismissed.

However, the State shall take appropriate steps for amending the Rules to rectify the anomaly, which has been noticed above.

Since the writ petitions have been dismissed, all the pending application(s) therein, if any, stand disposed of.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 01, 2022
Sachin M.

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