

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

CWP No. 22221 of 2022
Date of Decision: 11.10.2022

Baljinder Virk

.....Petitioner(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. B.S. Bairagi, Advocate,
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks amendment of sub-Rule 5 of Rule 8 of the Punjab District Sainik Welfare Officers (State Service Class I), Rules, 1986 qua the qualifications to the post of Director (Annexure P-9) under a petition filed under Articles 226 and 227 of the Constitution of India.

A perusal of the amendment made in the Punjab Defence Services Welfare (Group-A) First Amendment Rules, 2006 would go on to show that consideration of the names of officers to be included in the panel drawn in consultation with the Director General Resettlement was to be from retired Brigadiers or of equivalent ranks of Navy and Air Force for appointment to the post of Director, which is for a period of two years extendable by another two years.

The petitioner is stated to have joined in Indian Navy in the year 1988 and served for more than 23 years and retired on 23.01.2012 and was appointed to the post of the District Defence Services Welfare Officer in July

and allowances as per the said Rules and the amendments made in the year 2002 and on 09.06.2006. At present, he is stated to be having additional charge of Deputy Director as per the order dated 31.05.2016 (Annexure P-4) and 30.12.2016. It is not disputed that the Rules, even at the time of his initial appointment as amended in the year 2002, had already provided that retired Brigadier or equivalent rank officers were to be considered for the post of Director and in case no suitable persons are available, the officers of the rank of Colonel or equivalent could be considered. Thereafter, the amendment was made on 09.04.2006 which restricted the appointment to the post of Director from the retired officers holding the post of Brigadier or equivalent ranks.

Counsel for the State had argued that since the petitioner has retired as a Wing Commander from the Naval Forces, which is equivalent to the post of a Colonel, he is not liable to be considered.

It is not disputed and it is a settled legal principle that it is for the employer to prescribe the qualifications for a candidate to possess according to the needs and nature of the work. Reliance can be placed upon the judgment of the Apex Court in ***Maharashtra Public Service Commission through its Secretary vs. Sandeep Shriram Warade and others, 2019 (3)SCT 18*** wherein, it was held as under:-

“10. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less

can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

Thus, in our considered opinion, firstly, the writ petition itself is not maintainable as no mandate as such can be issued under Articles 226 and 227 of the Constitution of India to amend the Rule as per the need or desire of a litigant. The principle regarding issuance of a writ in the nature of mandamus and the enforceability of a claim has to be based on a statutory right or a public duty, which could not be demonstrated by counsel for the petitioner.

Reliance upon the judgment as such in ***Dr. MS. O.Z. Hussain vs. UOI and others, AIR 1990 SC 311***, wherein a three-Judge Bench as such had issued directions to frame a set of appropriate Rules, would not be applicable since it was a petition filed under Article 32 of the Constitution of India and not a petition filed under Articles 226 and 227 of the Constitution of India. In the absence of any legal right or statutory mandate, it is not for this Court to legislate or direct the State to provide for a Rule and for a requisite qualification. It is for the employer to see as to what is the rank of the

officers it so desires to be appointed to the post of a Director. Thus, claim as such to quash the advertisement dated 02.09.2022 (Annexure P-13) issued by respondent No.3 is unwarranted for and it can be said that the writ petition is not maintainable.

Accordingly, we are of the considered opinion that there is no merit in the writ petition seeking the said relief and the present petition is liable to be dismissed.

Ordered accordingly.

(G.S.SANDHAWALIA)
JUDGE

11.10.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No