

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8293-2018
Reserved on: 02.12.2022
Date of decision: 22.12.2022

SURESH KUMAR

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Amit Rana, Advocate for
Mr. G. S. Nahel, Advocate
for respondents No.3 to 7.

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 mandamus, directing the official respondents to consider the petitioner herein for appointment to the post of Sub-Fire Officer, being successful in the written examination and physical test and shown at serial No.1 in the merit list and further to issue him appointment letter from the date of appointment of respondents No.3 to 6, who have been appointed against the same advertisement.

2. In brief, the facts as stated are that respondent No.1 issued advertisement No.DLG/RC/2015/1 dated 01.07.2015 (Annexure P-1), inviting

applications for various posts, out of which 23 posts were kept reserved for Sub-Fire Officer in the Municipal Corporations Cadre and 23 posts of Sub-Fire Officer in Municipal Councils and Nagar Panchayats Cadre. The petitioner herein applied under the general category for the post of Sub-Fire Officer in both Municipal Corporations Cadre and Municipal Councils and Nagar Panchayats Cadre, for which a common test was held on 14.11.2015. The petitioner successfully qualified the said written test. Thereafter, the petitioner passed Punjabi language matriculation exam in January, 2016, which was essential requirement as per the general instructions in the aforesaid advertisement. After being successful in the written examination, the petitioner along with other candidates was called for the physical test vide letter dated 17.11.2016 (Annexure P-7).

3. The petitioner appeared for the physical test and also qualified the same and was declared successful. Thereafter, the list of 15 candidates, who had qualified the physical test was prepared and the name of the petitioner was reflected at serial No.1 in the said list. The selected candidates were then asked to appear before the Selection Committee for checking/scrutiny of their educational qualifications certificates and other documents etc. vide notice dated 03.01.2018 (Annexure P-9). After scrutiny of the documents, the final result for the post of Sub-Fire Officer in Municipal Corporations Cadre and Municipal Councils and Nagar Panchayats Cadre was declared and the name of the petitioner did not find mention in the final result. In the Municipal Corporations Cadre only one candidate i.e. respondent No.7 was selected under the SC category and in the Municipal Councils and Nagar Panchayats Cadre only four candidates i.e. respondents No.3 to 6 were selected in the general category. The petitioner was shocked to see the final result as his name was not

mentioned therein and submitted a representation to respondent No.2 dated 16.03.2018 (Annexure P-11), but to no avail. The petitioner was informed that since he does not had the requisite qualification as mentioned in the advertisement dated 01.07.2015 i.e. the qualification of Punjabi upto matric, he has been disqualified. Aggrieved against the action of the respondents, the instant writ petition has been filed.

4. Learned Senior Advocate appearing on behalf of the petitioner would contend that the petitioner herein had qualified the examination of Punjabi in matriculation and at the time of scrutiny of documents held on 18.01.2018, the petitioner had shown his matriculation certificate in Punjabi language to the Selection Committee, but still his candidature has been cancelled. It is submitted that under the Punjab Municipal Services (Recruitment and Conditions of Service) (Third Amendment) Rules, 2015 and also as per Punjab Municipal Corporation Services (Recruitment and Conditions of Service) (Second Amendment) Rules, 2016, Punjabi language is not mandatory for the post of Sub-Fire Officer. It is further submitted that the petitioner passed the Punjabi language matriculation exam in January, 2016, which was the essential requirement as per the general instructions of the advertisement dated 01.07.2015 and the petitioner has duly fulfilled the said requirement. He would argue that by virtue of provisions of Rule 17 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, the certificate regarding Punjabi can be obtained till the time of appointment and the petitioner herein having acquired the same before the date of interview is to be treated as eligible and the petitioner ought to be given appointment on the said post. He would rely upon the judgments rendered by this Court in CWP No.3651 of 2012, titled as Minni Grover versus State of

Punjab and another, decided on 11.08.2015; CWP No.13327 of 2012, titled as *Akshay Dhawan versus State of Punjab and another*, decided on 18.01.2016 and CWP No.18714 of 1998, titled as *Dr. (Capt.) Navjot Singh Khurana versus State of Punjab and another*, decided on 09.12.1998, in support of his arguments.

5. Learned State counsel appearing on behalf of the respondents-State would submit that the recruitment and conditions of service of Sub-Fire Officers are governed under Punjab Municipal Corporation Service (Recruitment and Conditions of Service) Rules, 1978 and Punjab Municipal Service (Recruitment and Conditions Service) Rules, 1975 as amended from time to time. Apart from the above, there are specific physical standards prescribed for all the Fire Brigade Staff in the Standing Order, 2004 approved by the Government of India, Ministry of Home Affairs, Directorate General Civil Defence, New Delhi. She would submit that Rule 17 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as relied upon by the petitioner, nowhere stand in favour of the petitioner herein as the said rule has given relaxation only to the compassionate appointees. As per the criteria, eligibility was to be seen on the last date of applying for the said post and on the last date of submitting of the application, petitioner was not eligible for appointment on the said post. It is further submitted that the Selection Committee has decided to select the candidates for the post of Sub-Fire Officer as per educational qualification prescribed in the advertisement as on the last date for submission of application i.e. 04.08.2015 and the petitioner herein has passed his Punjabi exam in January, 2016 and, therefore, he was not recommended for selection to the post of Sub-Fire Officer.

6. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case as well as case laws cited.

7. The facts as stated above are not in dispute. Admittedly, the essential qualification/experience, as specified in the advertisement issued for appointment of Sub-Fire Officer in Municipal Corporations Cadre in the pay scale of Rs.10300-34800+4200 grade pay, required a candidate to be a Graduate, preferably in Science subjects, from a recognized University or Institution and should have passed Sub-Officer course from the National Fire Service College, Nagpur. The physical fitness as per the fixed standard norms was also detailed i.e. minimum height 5 feet 5 inches; chest 33.5 inches unexpanded with 1.5 inch expansion; eye sight 6/6 both eyes without glasses; running a distance of 100 yards, with a weight of 60 kilograms stones, in one minute; lifting the hook ladder to a vertical position from 3rd and 6th round and climbing a rope or a vertical pipe to a height of 8-10 feet from the ground. This essential qualification was also applicable for appointment as Sub-Fire Officer in Municipal Councils and Nagar Panchayats Cadre. The said advertisement was issued on 01.07.2015 and the petitioner herein applied under the same. The online application forms were to be filled in by 04.08.2015 and last date of deposit of fees was 07.08.2015. The written test was to be conducted within second and third week of September, 2015 and the display of merit list was to be within 15 days of the exam.

8. The petitioner herein has been denied appointment despite being at serial No.1 in the merit list only on the ground that he did not had qualification of having studied Punjabi upto matric on the date he filled in his online application form for the post of Sub-Fire Officer.

9. The appointment to the post of Sub-Fire Officer is regulated by the rules called the Punjab Municipal Services (Recruitment and Conditions of Service) (Third Amendment) Rules, 2015, which rules were promulgated by a notification issued on 26.10.2015. As per the rules itself, the qualification for direct recruitment to the post of Sub-Fire Officer has been specified in Appendix A of the said Rule amended at serial No.15-A. A perusal of the said qualification therein required for a candidate to be eligible for appointment is same as was specified in the advertisement. However, a reading of the same does not reflect that a candidate applying for the post of Sub-Fire Officer should also have passed the Punjabi language examination up till matric. It is only in the rules that are called the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, which are applicable to Group A, Group B and Group C services in connection with affairs of the State of Punjab that there is a requirement for knowledge of Punjabi language as specified in Rule 17. A reading of Rule 17 establishes that *“no person shall be appointed to any post in any service by direct appointment unless he has passed Matriculation Examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time with further provisos that when a person is appointed on compassionate grounds, the person so appointed shall have to pass the examination of Punjabi language equivalent to matriculation standard within a period of six months from the date of his appointment with an exception that any appointment being offered to a War hero, who has been discharged from defence services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, if appointed, will not be required to possess aforesaid knowledge of Punjabi*

language”.

10. The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, only talk of a candidate having knowledge of Punjabi language before appointment is offered. The eligibility clause for being appointed as a Sub-Fire Officer has no requirement of knowledge of Punjabi language. The condition for having knowledge of Punjabi language upto matriculation is beyond the qualifications as prescribed under the Punjab Municipal Services (Recruitment and Conditions of Service) (Third Amendment) Rules, 2015.

11. It is only on account of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, that stipulation has been put in of possessing the knowledge of Punjabi language upto matric. It is, therefore, Rule 17 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, that has to be interpreted, which clearly states that no appointment can be offered to a person, who has not done Punjabi upto the matric standard. In the opinion of the Court, the emphasis would be that “no appointment can be offered”, meaning thereby, that on the date when appointment is to be offered, the candidate must have knowledge/qualification of Punjabi language in matric examination and there would be no necessity in having the said qualification at the time of filling in the online application form. This view is being formed keeping in view the qualifications, as prescribed under serial No.15-A of the Punjab Municipal Services (Recruitment and Conditions of Service) (Third Amendment) Rules, 2015, which does not mention that Punjabi is an essential qualification for a candidate to be eligible. As long as the candidate has the necessary qualification on the date when appointment is to be offered, he cannot be declared as ineligible on this ground as has been done in the instant case.

12. In the present case, the petitioner herein took the Punjabi language examination much before the select list was prepared and he had the necessary qualification of matric. Moreover, at the time when the petitioner was called for scrutiny of documents by the Selection Committee, he already had the relevant matriculation certificate in Punjabi language, which he showed to the said Selection Committee and the same should not have been discarded. Similar views have been taken by this Court in *Minni Grover's case* and *Akshay Dhawan's case (supra)*.

13. Consequently, the petitioner herein is declared eligible for consideration for the post of Sub-Fire Officer. Official respondents are directed to consider the case of the petitioner herein for appointment to the post of Sub-Fire Officer and issue him appointment letter, if all other necessary conditions are satisfied. In the event of appointment, the seniority of the petitioner will relate back from the date similarly situated persons had been granted appointment but he will not be entitled to any monetary benefits. Let an entire exercise be done, within a period of two months from the date of receipt of certified copy of this order.

14. The instant writ petition stands allowed in the above terms.

22.12.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No