

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

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LPA-1035-2015

Date of decision : 27.04.2022

Manish Kumar and others

....Appellants

V/s

Haryana Staff Selection Commission and others

....Respondents

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

Present: Mr. Dilbagh Singh, Advocate for the appellants.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

Mr. Sunil Hooda, Advocate
for respondent Nos.4 to 8 and 10 to 25

G.S. SANDHAWALIA, J. (ORAL)

Present Letters Patent Appeal arises out of the judgment dated 13.05.2015 passed by the learned Single Judge in CWP-18723-2013 titled as *Manish Kumar and others and Haryana Staff Selection Commission, Panchkula and others.*

The learned Single Judge was dealing with the selection for the posts of Field Assistant, Economic and Statistical Analysis in the Department of Economic and Statistical Analysis, Haryana, result of which had been declared on 09.07.2013 and appointment letters had been issued on 30.07.2013, in pursuance of the advertisement No.3/2010, came to the conclusion that the challenge of the private respondents was that the candidates did not possess the requisite experience and was without verifying the documents from the concerned Department, but had been selected.

The reasoning given by the learned Single Judge for dismissing the writ petition was that the challenge was on the basis that the writ petitioners were more qualified and meritorious than the selected candidates, which were not

sufficient, since the marks were to be awarded to the candidates in the interview by the Committee. The job of the Selection Committee was to search out the best candidates available. The criteria which was adopted was that out of the total 75 marks, 50 marks had to be allocated for academic qualifications and 25 marks were fixed for viva voce. It was, accordingly, held that there was no illegality or patent material irregularity in constitution of the Committee. Therefore, the Committee had selected the candidates on the basis of their respective marks and experience. Only because the selection had been challenged on the ground that experience of the selected candidates was not as per the requirement of the advertisement, the same was not liable to be interfered with. The relevant portion of the observations of learned Single Judge reads as under:-

“The selection of private respondents has been challenged only on the ground that they do not possess the requisite experience and without verifying their documents from the concerned Department, they have been selected. The argument of learned counsel for the petitioners is also that one year experience in collection of statistical data in some Government Office is required, whereas, the private respondents were selected without verification of their experience certificates. The experience certificate which they were possessing could not be considered to be of collection of statistical data as all the departments where the private respondents were stated to be working are not having the job of collecting statistical data. Simply by stating that the petitioners are more qualified and meritorious viz-a-viz selected candidates is not sufficient. How many marks are to be awarded to the candidates in the interview is to be seen by the Interview Committee on the basis of performance of each of the candidate. The effort of the Selection Committee is to search out the best talented candidate after assessing the academic qualification and their performance in the interview. The criteria adopted by the Selection Committee cannot said to be illegal only on an averment that the petitioners are more meritorious than the selected candidates. Out of total 75 marks, 50 marks were for

academics and 25 marks were for viva voce. It has been settled in various judgments of this Court as well as of Hon'ble the Apex Court that it is for the Selection Committee to scrutinize the comparative merit of candidates and to see whether the candidates are fit for a particular post or not and the same is to be decided by the duly constituted Selection Committee consisting of experts on the subject. The decision of the Selection Committee can be interfered only in case there is some illegality or patent material irregularity in constitution of the Committee or its procedure vitiating the selection or the selection is proved to be mala fide affecting the selection of the candidates. In the present case, the respondent-Department has constituted the Committee consisting of experts and respective merit and experience of all the candidates including the petitioners has been considered. The experience of the selected candidates cannot be said to be contrary to the experience specified in the advertisement. The selection has been challenged only on the ground that experience of the selected candidates is not as per requirement of the advertisement.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is hereby dismissed.”

It is not disputed that as per the advertisement dated 15.09.2010 (Annexure P-1) against Cat. No.19, posts which were 33 in number of Field Assistant, were advertised. The last date for receipt of the application in the Commission's office was fixed as 14.10.2010. The essential qualification and requisite experience for the aforesaid post reads as under:-

“Cat. No. 19 33 posts of Field Assistant

(GEN=13, SC=6, BCA=1, BCB=1, ESM GEN=3, ESM SC=1, ESM BCB=1, OSP BCB=1, PHC Ortho=1)

- E.Q. i) Graduate with Economics or Mathematics or Agricultural Economics or Commerce or Statistics as one of the subjects
ii) Hindi/Sanskrit upto Matric Standard.

Experience: One year experience in collection of statistical data in some Government office.

Age 17-40 years

Pay scale Rs. 9300-34800+3200/- Grade Pay”

The instructions as per the Commission, was that the short listing was to be done by holding a written examination or on the basis of a rationale criterion to be adopted by the Commission. The same reads as under:-

“SPECIAL INSTRUCTIONS:

The prescribed essential qualification does not entitle a candidate to be called for interview. The Commission may short list the candidates for interview by holding a written examination or on the basis of a rationale criterion to be adopted by the Commission. The decision of the Commission in all matters relating to acceptance or rejection of an application, eligibility/suitability of the candidates, mode of, and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard.”

The criteria, which had been noticed by the learned Single Judge, was adopted by the Commission as per the decision dated 14.10.2010, Annexure R 1/1, whereby 10 marks were to be given for the basic qualifications, for essential qualifications 40 marks were to be awarded and for the interview 25 marks were to be awarded, thus, making it a total of 75 marks. In view of the law laid down by Apex Court in *State of Himachal Pradesh vs. Amar Nath Sharma and others*, 1994(Sup2) SCC 532, it has been held as under:-

9. The High Court, in our view, was not justified in quashing the selection procedure. The High Court has acted merely on surmises and conjectures. We have not been able to find any material illegality in the conduct of interviews. Simply because a candidate obtained less marks for educational qualifications and more marks in the interview, it is no ground to reach the conclusion that the candidate was favoured. The special selection committees at various district levels adopted their own procedure to hold the interviews. At some places lump sum marks were awarded in respect of general knowledge and personality whereas at other places 20 marks were divided into general knowledge and personality separately. We see no illegality in the

manner of holding the interviews. We, therefore, set aside the findings of the High Court and hold that the interviews were held properly.”

It is not disputed that the interview was held in the month of December, 2012; January and April, 2013 in pursuance of the said criteria. The writ-petitioners as such appeared in the interview and having taken a chance in the selection process, waited for the result which was finally declared on 09.07.2013 (Annexure P-4). Thus, as per the settled principle of law, once the petitioners had taken a part in the selection process, they cannot turn around and challenge the criteria which they themselves had accepted once and gone for the interview. At no point of time earlier, they had challenge the selection of private respondents on the ground that they were not having the requisite experience. Only after they participated in the selection process and remained unsuccessful, a challenge has been raised. It is, thus apparent that in view of the settled principle of law laid down in *Ashok Kumar and another vs. State of Bihar and others* (2017) 4 SCC 357, they are estopped from taking such stand and challenging the selection on this ground.

Another ground on which the appellants are also liable to be non-suited is that the Selection Committee or the members of the Selection Committee have not been arrayed as a party. Neither any mala fide had been levelled nor any instance had been given in the writ petition regarding the fact that certain selected candidates were given the benefit of marks or their experience certificates which were not verified, had wrongly taken into consideration. In the absence of the same, we are of the considered opinion that in view of law laid down in *Ramjit Singh Kardam & others Vs. Sanjeev Kumar & others*, 2020 (2) SCT 491, challenge cannot be raised in the absence of necessary purpose and since no mala fide has been levelled, the learned Single Judge had rightly come to the conclusion

that the Selection Committee had only to take into consideration the documents which were to be verified only for the purpose of assessing the suitability of the candidates. It is not the job of the Selection Committee at that point of time to verify the genuineness of the documents. It is only at the time of final order of appointment was issued, the procedure was followed to verify the experience certificates in the present case as noticed above.

It is pointed out that one of the selected candidate namely Vishnu (respondent No.4 herein) has been found to be not possessing the genuine certificate of experience. The same would be clear from the affidavit dated 26.10.2017 filed by Director Secondary Education, Haryana wherein enquiry conducted by Joint Director, Elementary Education Department has come forth. It was stated in the affidavit that the said candidate had been issued show cause notice on account of the said fact. The findings of the enquiry officer read as under:-

“That Sh. Vishnu S/o Sh. Chand Ram Village Khidwali Tehsil and Distt. Rohtak has never worked on any post in the O/o DEO Sonipat and neither he has received any salary. Hence, it this experience certificate is false. Sh. Rakesh Kumar, Clerk, has issued a letter to the genuineness of this certificate vide letter No.Sports-14/1561-63 ddated 16.01.2014 in reply to RTI. This letter is prepared on false documents and regarding its genuineness no record is available in the office. Sh. Rakesh Kumar Clerk, seems to be at fault and regarding its truth he may be asked under whom pressure reply of RTI has been issued.”

In such circumstances, we are of the considered opinion that no fault can be found in the order passed by the learned Single Judge. The appellants are estopped from challenging the selection process as they themselves had participated in the selection process and remained unsuccessful and in the absence of any mala fide against the members of the Selection Committee.

However, the State shall take action in accordance with law against one of the selected candidate (respondent No.4 herein), in view of the factual matrix that his experience certificate was forged.

Accordingly, in view of above, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURJ)
JUDGE

April 27, 2022
Ajay

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