

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1516 of 2017 (O&M)

Reserved on: 23.02.2022

Pronounced on: 03.03.2022

Saket Sheoran

... Appellant

VS.

Haryana Public Service Commission & Anr.

... Respondents

Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao

Hon'ble Mr. Justice H.S. Madaan

Present: Mr. RK Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the appellant

Mr. Kanwal Goyal, Advocate for respondents

M.S. Ramachandra Rao, J.

In this Letter Patent Appeal, the appellant has challenged the order dt. 31.07.2017 in CWP-16750-2017 passed by the learned Single Judge of this Court.

The background facts

The Haryana State Public Service Commission (the first respondent) had issued on 17.11.2015 (i) advertisement for recruitment to the post of Assistant Executive Engineer (Civil and Mechanical) vide Advt.No.4/2015 and also (ii) advertisement for recruitment to the post of Assistant Engineer (Civil & Mechanical) in the Public Health Engineering Department, Haryana vide Advt. No.5/2015.

The appellant had obtained Bachelor of Technology in Civil Engineering from NIT, Kurukshetra and submitted *online* application form by depositing the requisite fee pursuant to both the advertisement well before the last date of submission of application form on 16.12.2015.

Both the said advertisements contained a specific clause that the *hard copy* of the application form along with documents should be submitted in the office of the first respondent by 04.01.2016.

The appellant claims that he was unaware of this fact and he did not submit the hard copy of the application by the said date; and when he came to know about it, he submitted such hard copies in the office of the second respondent on 18.04.2017.

An announcement was made by respondents on 07.07.2017 (P8) of list of rejected candidates mentioning the name of the appellant therein on the ground of non-submission of *hard copy* of his online application form. In the very same announcement, the respondents had invited representations from the candidates whose candidature has been rejected on various other grounds.

So the appellant made a detailed representation before the second respondent on 17.07.2017 (P9).

CWP-16750-2017

Since the appellant was not issued an admit card for screening test pursuant to the said advertisements and since no reply/communication in regard to his representation was also received by him, he filed 28.7.2017, CWP-16750-2017 for quashing of the impugned list of rejected candidates dt. 07.07.2017 in so far as he is concerned, and for a Writ of Mandamus directing the respondents to issue admit card pursuant to the said advertisement. He also sought a direction that he be allowed to sit in the screening test provisionally pursuant to the aforesaid advertisements during the pendency of the Writ Petition.

Order dt.31.7.2017 dismissing CWP-16750-2017

On 31.07.2017, a learned Single Judge of this Court dismissed the said Writ Petition after hearing counsel for the Writ petitioner as well as counsel for the respondents.

The learned Single Judge held that the announcement made by the respondents on 07.07.2017 was with regard to the candidates whose cases were rejected on the grounds such as forms submitted being incomplete, or those who had applied with less amount of fee, but not with regard to the candidates who submitted their application forms along with document after the prescribed date.

He held that it is settled principle that the terms of advertisement have to be strictly adhered to and there is sacrosanctity behind the cut-off date; if the appellant himself had not applied as per the terms of the advertisement and not submitted *printed/hard copy* of his application and submitted application *after* cut-off date way back in January, 2016, he cannot now turn around to say that his case may be considered for issuance of admit card for the screening test after a period of one year. He therefore, rejected the contention of the petitioner that the respondents had not acted upon the representation as per the announcement of 07.07.2017 and dismissed the Writ Petition.

The instant LPA

Challenging the said order, this appeal was filed.

Events after filing of the Writ Petition

While issuing notice of motion on 21.08.2017 in this appeal, the Division Bench permitted the appellant to appear provisionally in the

examination against advertisements No.4 & 5 only without conferring on him any equitable right.

The stand of the respondents

Subsequent thereto, reply was filed in the LPA by the respondents contending that the representation dt. 17.07.2017 said to have been given by the appellant was not found in spite of search in the office of the respondents; the conditions of the advertisement and consequent announcements are sacrosanct and in case these are not adhered to, it would lead to uncertainty and the selection process would be indefinitely delayed; the appellant cannot plead ignorance of the clause in the advertisement about furnishing of *hard copies* before 04.01.2016 since he was expected to read it and then take appropriate decision, and the said reason given is nothing but a lame excuse.

It is also contended that the appellant had kept quiet for more than 1 year and 4 months after the closing date for submission of hard copies on 04.01.2016; though the appellant had given a representation on 18.04.2017 with regard to the advertisement No.4 of 2015 for the post of Assistant Executive Engineer (Civil), the same had been declined on 30.06.2017; and since a large number of representations were received by the respondents, it was not possible to pass individual orders and so they were decided through an announcement.

It is pointed out that in the representations dt. 18.04.2017/19.04.2017 given by the appellant, he had wrongly mentioned his registration No.2015212718, which was for the post of Assistant Engineer (Civil) in the Irrigation Department, Haryana (for which also he had applied) but he should have mentioned the registration

No.2015202322 which was the registration No. issued to him regarding the post of Assistant Engineer (Civil) in the Public Health Engineering Department, Haryana notified vide advt. No.5/2015 and so his representation could not be considered.

On 06.09.2017, the appellant's representation dt. 19.04.2017 with regard to the post of Assistant Engineer (Civil) in the Public Health Engineering Department, Haryana was also specifically rejected and copy of the same is filed as Annexure R1 by the respondents.

Other events

It is not in dispute that the results were announced on 01.02.2021 by the respondents specifically mentioning that one post was kept vacant in lieu of LPA No.1516 of 2017 in CWP No.16750 of 2017.

Contentions of Counsel for the Appellant and consideration of the same

It is the contention of the appellant that this indicates that the appellant had secured better marks than those who have been selected than the last person who has been selected and that was why one post was kept vacant.

Counsel for the appellant contended that no prejudice has been caused to the respondents since they had already received the *online* applications within time and the respondents ought to have permitted him to appear in the examination.

According to him, the appellant had any way appeared in the examination pursuant to the interim order granted by this Court on 07.09.2017 and he is now shown to have qualified therein, but no appointment letter has been issued to him; and so, the respondents be

of Assistant Engineer (Civil) in the Public Health Engineering Department, Haryana notified vide advt. No.5/2015 on 17.07.2015 since one post had been kept vacant awaiting the decision in this appeal.

Counsel for the appellant firstly relied upon the decision dt. 06.04.2017 in **LPA No.209 of 2017 (Rekha Jangra vs. State of Haryana & Ors.)** rendered by the Division Bench of this Court where a similar issue arose for consideration. In that case, the appellant was a candidate for the post of Assistant Professor (College cadre) in the subject of Botany and was required to submit *hard copy* of her application also along with the *online copy* of her application. It was the contention of the appellant that the appellant could not submit the hard copy for reasons beyond her control. But her candidature was cancelled for the said post. This Court held that though the requirement that a candidate should submit hard copy of the application form as prescribed in the instructions mentioned in the advertisement should be followed, however, in the peculiar facts and circumstances of the said case, it directed the respondents to consider and grant one time concession to the appellant “*which shall not be taken as a precedent in future*”. The HPSC was directed to consider the case of the appellant therein, interview her and to determine her merit along with other candidates.

As can be seen from this decision, the Bench in that case did not wish to make the said decision a precedent. Also no decision of any High Court or Supreme Court was cited in support of the relief granted. No reliance can thus be placed on the said decision by the counsel for the appellant.

Counsel for the appellant then relied upon decision of the learned Single Judge of this Court in CWP-27864-2017 & CWP-17255-2018 (Narender Singh vs. State of Haryana & Ors.) decided on 06.11.2019. In CWP-27864-2017, the issue was with regard to the submission of a 'no objection certificate' by the petitioner therein to enable him to appear in the interview for the post of Assistant Professor in the subject of History and in CWP-17255-2018, the question was whether the petitioner therein can be held to be eligible for appointment to the said post in view of NOC having been issued by the respondents to him and after the last date for production of NOC.

Learned Single Judge dismissed the Writ Petitions and the same was also confirmed in LPA No.902 of 2021 on 28.09.2021. However, the party then approached the Supreme Court in Civil Appeal No.321 of 2022 which was allowed on 18.01.2022 observing that there was no lapse or delay on the part of the appellant in applying for the NOC and there was also no fault on his part in not producing the said document on the relevant time. The Supreme Court also held that when it was produced immediately on receipt of the same and that too before the appointments were made, and when it was found that the last candidate who was appointed i.e. respondent No.4 therein was having less marks than the appellant and thus the appellant was a more meritorious candidate than the last candidate appointed, to deny him the appointment is not justifiable at all and he cannot be punished for no fault of his.

We are of the opinion that the said decision also does not come to the aid of the appellant herein for the reason that in the above-referred case, the relief was granted to the appellant therein by the

Supreme court since there was no fault on his part as the issuance of NOC was by the employer of the appellant therein and the said aspect was beyond the control of the appellant before the Supreme Court.

In the instant case, the advertisements in question specifically mentioned about the submission of the *hard copy* of the application along with documents before 06.01.2015. The appellant herein was supposed to read the advertisement and submit hard copies within the said time. His pleading that he was unaware of the said condition cannot be countenanced.

Since the fault in the instant case is with the appellant and he had not submitted the hard copy before 06.01.2015 as stipulated in the advertisement, he is not entitled to any relief and the above decision of the Supreme Court in Civil Appeal No.321 of 2022 cannot be of any assistance to him.

The Full Bench decision in Rahul Prabhakar

We are fortified in our view by the decision of this Court in **Rahul Prabhakar vs. Punjab Technical University, Jalandhar 1998 AIR (Punjab) 18**, cited by the counsel for the respondents and other decisions referred to below.

In **Rahul Prabhakar**, a Full Bench had to consider the question whether the application received by the Punjab Technical University after the expiry of the time fixed for filing of the same as provided in the Prospectus is to be taken into consideration if the student had posted the same sufficiently early and delay was solely caused by the postal authorities.

The Full Bench held that as per the Information Brochure, application of a candidate should reach the Coordinator before 5 P.M. on 21-3-1997 and any application received thereafter was only to be summarily rejected. It had held that the applications received after the cut-off date are not applications as contemplated in the Information Brochure, and candidates whose applications reached the Coordinator within time stand on a different ground vis-à-vis those whose applications did not reach before the cut-off date and the latter cannot claim any discrimination because they are not the persons who can be said to have applied for the examination since their applications did not reach before the cut-off date.

The Full Bench also held that the validity or otherwise of the Information Brochure and its binding nature has to be examined by the generality of the cases it covers and not by the inconvenience or resultant prejudice that may be caused to the persons who could not strictly adhere to its terms. It held that the date and time fixed for the receipt of the application form by the Coordinator of CET 1997 was fixed in the Information Brochure and it could not be altered by the High Court in exercise of powers under Article 226 of the Constitution of India.

The decision in Bedanga Talukdar

In **Bedanga Talukdar vs. Saifudaullah Khan & Ors. Air 2012 SC 1803**, the Supreme Court again considered the question whether the disability certificate which was to be submitted as per the terms of the advertisement by a particular date can be submitted later by giving relaxation to the applicant for selection to certain posts which were advertised by the Assam Public Service Commission.

The Supreme Court held that selection process has to be conducted in accordance with the stipulated selection process, and when a particular schedule is mentioned in the advertisement, the same has to be scrupulously maintained and there cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved in the relevant Statutory Rules. It observed that even if the power of relaxation is provided in the Rules, it must still be mentioned in the advertisement; in the absence of such power in the Rules, it could still be provided in the advertisement; but the power of relaxation, if exercised, has to be given due publicity and this would ensure that those candidates who became eligible due to the relaxation, are afforded an equal opportunity to apply and to compete. It held that relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India; further when the advertisement did not indicate any power of relaxation, the High Court cannot direct that there should be relaxation granted to any particular candidate and permit him to submit the disability certificate beyond the cut-off date.

The decision in Madhu Kant Ranjan

This principle was also reiterated recently in **State of Bihar & Ors. vs. Madhu Kant Ranjan & Anr. (2021) SCC online 1262.**

In that case, a candidate for selection to the post of Constable in Bihar Police Force, if he had submitted NCC 'B' certificate, was to be given 5 additional marks and a candidate who had NCC 'C' certificate was to be awarded additional 10 marks pursuant to the advertisement issued on 08.02.2004. Some persons did not submit the

NCC certificates either with the application form or subsequent thereto. The Writ Petition was dismissed by the Patna High Court and a Division Bench of the said High Court allowed the appeal against the said order and directed the appointing authority to appoint the original writ petitioners as Constable by awarding 5 additional marks for NCC 'B' certificate though he had not submitted it along with his original application form. In an appeal, the Supreme Court set aside the Division Bench judgment of the High Court and held as under:-

“9. As per the settled proposition of law, a candidate/applicant has to comply with all the conditions/eligibility criteria as per the advertisement before the cut-off date mentioned therein unless extended by the recruiting authority. Also, only those documents, which are submitted alongwith the application form, which are required to be submitted as per the advertisement have to be considered. Therefore, when the respondent No.1 – original writ petitioner did not produce the photocopy of the NCC 'B' certificate alongwith the original application as per the advertisement and the same was submitted after a period of three years from the cut-off date and that too after the physical test, he was not entitled to the additional five marks of the NCC 'B' certificate. In these circumstances, the Division Bench of the High Court has erred in directing the appellants to appoint the respondent No.1 – original writ petitioner on the post of Constable considering the select list dated 08.09.2007 and allotting five additional marks of NCC 'B' certificate.”

Conclusion

In view of the decisions cited above, we are of the opinion that the appellant cannot be granted any relief in this LPA since the appellant had not submitted hard copy of his application to the

respondents before the cut-off date as prescribed in the advertisement, and since such cut-off date has to be scrupulously adhered to. Also no power of relaxation is shown to be vested with the respondents to relax the same and such power of relaxation has not even been indicated in the advertisement concerned.

We accordingly find no merit in the Appeal and the same is accordingly dismissed. No costs.

(M.S. Ramachandra Rao)
Judge

03.03.2022
Vvishal

(H.S. Madaan)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No