

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

Date of Decision: 07.02.2023

1. CWP No. 1378 of 2020

Nirdosh Kumar and anrPetitioners

Vs

Punjab and Haryana High Court Chd. & AnrRespondents

2. CWP No. 1999 of 2020

Poonam and othersPetitioners

Vs

Punjab and Haryana High Court Chd. & AnrRespondents

3. CWP No. 2387 of 2020

Jaspreet KaurPetitioner

Vs

Punjab and Haryana High Court Chd. & AnrRespondents

4. CWP No. 2669 of 2020

Amit KumarPetitioner

Vs

Punjab and Haryana High Court Chd. & OrsRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr.Rohit Nagpal, Advocate
Mr.Sushant Kareer, Advocate and
Mr.Akhilesh Barak, Advocate
for the petitioners in CWP-1378-2020
Ms.Sudeepti Sharma, Advocate with
Ms.Mehak Kanwar, Advocate
for the petitioner in CWP-2387-2020
Mr.B.S.Tewatia, Advocate
for the petitioners in CWP-1999-2020
Mr.Hitesh Sood, Advocate
for the petitioners in CWP-2669-2020

Mr.Vikas Chatrath, Advocate
Mr.Abhishek Singla, Advocate
Mr.Bhanu Partap, Advocate and
Mr.Ujjwal Sharma, Advocate
for respondents No.1 and 2.

Mr.Daanish Mahajan, Advocate with
Ms.Saloni Sharma, Advocate for
Mr.Prateek Mahajan, Advocate
for respondent No.3 in CWP-2669-2020

Mr.Kanwal Goyal, Advocate
Mr.Govind Tanwar, Advocate
for respondent-High Court.

RAJ MOHAN SINGH, J.(Oral)

Vide this common order, CWP Nos. 1378, 1999, 2669
and 2387 of 2020 are being disposed of. Since the common

questions of law and facts are involved, therefore, the facts are being culled out from CWP No. 1378 of 2020.

Petitioners have assailed the list dated 30.07.2018 issued by the respondent No.2, whereby candidatures of the petitioners have been rejected on the ground of non submission of date of birth/ proof in the application forms. Further a writ in the nature of mandamus is being sought directing the respondents to consider the candidatures of the petitioners in the selection process for the posts of Senior Scale Stenographers by direct recruitment.

The petitioners have alleged that an advertisement bearing No. HCRB-SSS-5/17 for filling up 33 vacant posts of Senior Scale Stenographers on the establishment of the Punjab and Haryana High Court was issued on 19.05.2017. In the aforesaid advertisement, the candidates were required to submit their application forms through online mechanism. The petitioners had submitted their application forms and those were verified at different stages. After about one year and two months of the issuance of the aforesaid advertisement, the respondent No.2 circulated the rejection list on 31.07.2018, thereby rejecting the candidatures of the petitioners (in all the aforesaid cases) on the ground of non submission of matriculation certificate, date of birth and non signing of application form etc. After perusal of the said list, the petitioners herein came to know that their candidatures have been rejected on the solitary ground of non submission of date of birth certificate. Thereafter, the petitioners filed the representation before Hon'ble

the Chief Justice for consideration. The petitioners have alleged that despite moving the representation, no communication has been received till date. However, on 07.01.2020, a notice for examination was issued and that prompted the petitioners to file the present writ petition(s).

Perusal of the advertisement in question would show that the same was issued for filling up 33 vacant posts of Senior Scale Stenographers on the establishment of Punjab and Haryana High Court. Out of the aforesaid posts, 27 posts were of general category, 3 posts for SC/ST/BC category and 2 posts were for ex-servicemen and 1 post was reserved for person with disabilities (PH). It was also recited that the vacancies may be increased or decreased without any prior notice. As per the prescribed qualification, no candidate shall be eligible to apply for the post of Senior Scale Stenographer unless he/she holds a degree of Bachelor of Arts or Bachelor of Science or equivalent degree of a recognized university and has proficiency in operation of computer (Word Processing and Spreadsheet). It was recited that merely satisfying the criteria would not entitle the candidates to be called for test. The candidates must possess requisite qualifications as on the cut off date i.e. 27.06.2017. The age criteria was that no person shall be eligible for recruitment to the service if he/ she is less than 21 years or more than 30 years of age as on 27.06.2017. However, the age was relaxable for Physically Handicapped, Ex Servicemen and Government Employee categories. The admission

of the candidates at all stages of the recruitment processes was purely provisional and subject to satisfaction of all the prescribed eligibility conditions by way of furnishing documentary evidence in support thereof. If on verification at any time during, before or after the recruitment process, it was found that any candidate was not fulfilling any of the eligibility conditions, his/her candidature was to be cancelled without any notice. The candidates were required to produce all the documents in support of the particulars given in the application form and not vice-versa. The information given in the application form was to be treated as final and binding so far as candidates were concerned. No document subsequently submitted was to be considered. The candidates were required to ensure that they fulfil all the eligibility conditions for admission to the examination as on the last date of submission of the application.

As per the application form to be filled by the candidate, date of birth was to be submitted. The relevant column No.5 was to be filled with necessary particulars as entered in the matriculation or equivalent examination. Photocopy of the certificate as a proof was required to be attached. The age was to be disclosed as on 27.06.2017. Similarly, educational qualification was to be filled in Column No.7 with necessary particulars. The application form was to be accompanied by different annexures requiring the candidates to fill the same with correct information.

Learned senior counsel for the petitioners submitted that vide order dated 22.01.2020, interim direction was issued to the

respondents to provisionally permit the petitioners to appear in the examination scheduled to be held on 01.02.2020 and 02.02.2020 for selection to the posts of Senior Scale Stenographers on the ground that the petitioners are in service candidates and the only ground on which their applications were rejected was that the proof of their date of birth was not produced. Since the petitioners are in service candidates, therefore, such proof should be available with the respondents as their service registers would have been opened and maintained since the time of their initial appointments. In any case, the failure to produce such proof was prima facie observed to be curable defect and cannot be held against the petitioners to the extent of denying them an opportunity to participate in the examination.

Learned senior counsel for the petitioners has placed reliance upon **Food Corporation of India vs. Rimjhim 2019 (5) SCC 793** and contended that admittedly, the petitioners fulfilled the age criteria and were less than 30 years of age as on the date of advertisement in accordance with its Clause No.5. In the merit list, the petitioner No.1 was at Sr.No.14 and had 10 marks in the computer proficiency test. Their applications cannot be rejected on the ground of inadvertent omission to produce the proof of date of birth along with the application form, which could be submitted at any stage before the final selection.

Learned senior counsel for the petitioners further submitted that the respondent No.2 in its reply has admitted that in

the present selection, the candidates were granted an opportunity to file certain documents subsequently. Once such an opportunity was being granted, there was no impediment in issuing similar intimations to the petitioners as well. The application form stipulated in fine print for submitting the date of birth certificate. Thereafter, no intimation was issued and therefore, it amounted to create a class within a class and is violative of doctrine of reasonable classification. Reference has been made to Para No. 2 of the preliminary submissions in the written statement filed on behalf of the respondent No.2, wherein it has been mentioned that with reference to Column No.7, it was decided by the Committee that such candidates may be allowed to submit the photocopy of the graduation certificate/ DMC, who were not allowed to submit the documents after the submission of the application form in respect of educational qualifications. In the advertisement, the factum of attaching photocopy of the graduation certificate/DMC was not mentioned in Column No.7. Consequently, it was decided by the Committee that such candidates may be allowed to submit the photocopy of the graduation certificate/DMC.

According to the stand taken by the respondent No.2, the circumstances of both the set of applicants are distinct and no parity can be drawn by the petitioners as the same is misplaced because in Column No.5, there is a clear recital regarding submission of photocopy of matriculation or equivalent qualification as a proof. Even though the same is stipulated in fine print.

Learned senior counsel for the petitioners further submitted that in similar advertisement No.HCRB-ST- 12/2019 dated 11.12.2019 for the posts of steno typists, the respondents had published a list of applicants indicating deficiencies in their application forms and had given them an opportunity to remove the defects. These included the submission of date of birth certificate as well. In the application form for the said post also contained the same fine print and therefore, the impugned action of rejection of the candidatures of the petitioners is violative of Article 14 of the Constitution of India.

Learned senior counsel for the petitioners further submitted that the respondents have ignored that the petitioners have been working as Steno Typists in the High Court since long and all the relevant record/ proof were already available with them since the time of their appointments. The application forms were submitted through proper channel and were submitted with the permission of the authority after due verification of the facts. There was no occasion for the respondent No.2 to reject the candidatures of the petitioners on this ground. The merit cannot be made subservient to procedure and technicality and the petitioners are entitled for the appointment from the date when other candidates from the same selection were appointed.

Learned senior counsel for the petitioners with reference to **Dolly Chhanda vs. Chairman, JEE 2004 (4) SCT 546,** submitted that acceptance of correct certificate after due date and

during the counselling can be made as it is within the domain of the procedure. Procedural provisions can be relaxed in a given case. Every infraction of the Rule relating to submission of proof need not necessarily result in rejection of candidature.

Vide order dated 17.08.2021, the respondent No.2 was directed to file a fresh affidavit giving the details as to which of the petitioners would make merit since the result of only 21 candidates has been declared. The Affidavit would also give the details as to how many out of the said 21 persons joined on the said post and how many posts were thus still vacant. The said exercise would be necessary as it would facilitate as to which of the petitioners would still be liable for consideration against the vacancies.

In compliance of the said order, affidavit has been furnished, thereby giving details to the effect that the Departmental Promotion and Recruitment Committee (High Court) was directed to de-seal the compiled result of 23 candidates to determine as to how many petitioners fall within the selection against the advertised vacancies in their respective categories. As per the Advertisement , there were 33 posts of Senior Scale Stenographers with the reservation pattern as indicated in the advertisement. There were 03 posts reserved for SC/ST/BC category, 02 posts were reserved for Ex-Servicemen category and 01 post was reserved for person with disability category, which were lying vacant since no candidate in the said category could qualify the examination.

The test for filling up 33 posts of Senior Scale Stenographers under direct quota posts was conducted on 01.02.2020 and 02.02.2020. Total 1445 applicants appeared in the aforesaid test. As per the criteria for evaluation, there were 82 candidates, who had committed mistakes more than the double than the permissible mistakes i.e. 40 mistakes in the prescribed test. 21 candidates were recommended for appointment, who had cleared the type test. Further result of 23 candidates from Roll Nos. 3714 to 3736 was withheld by the Departmental Promotion and Recruitment Committee (High Court) in its meeting held on 15.10.2020. The said decision was approved by Hon'ble the Chief Justice. 23 candidates were provisionally permitted to appear in the examination in terms of the interim orders passed in the present writ petition and other writ petitions. Six candidates bearing Roll Nos. 3714, 3715, 3719, 3731, 3726 and 3720 fall in the merit list. The candidatures of the petitioners with Roll Nos. 3715 and 3714 were rejected on account of incomplete application forms showing that the date of birth proof was not attached. Similarly, qua the other four Roll Numbers, the candidatures were rejected on the similar ground of non production of date of birth proof and for want of graduation final semester result as the same was declared after the due date. 21 selected candidates were offered appointments to the posts of Senior Scale Stenographers. Out of 21 candidates, initially two candidates did not join, thereafter, one Priyanka Thakur submitted a representation to allow her to join and the Departmental

Promotion and Recruitment Committee (High Court) in its meeting dated 25.08.2021 allowed her to join, which was approved by Hon'ble the Chief Justice. As of now, one post out of 21 posts is lying vacant.

Per contra, learned counsel for the respondent No.2 vehemently opposed the petition. Learned counsel for the respondent No.2 submitted that the controversy is purely legal in character and the same can be appreciated in the light of **Ashok Kumar Sonkar vs. Union of India and others, 2007 (2) SCT 19(SC); Rahul Prabhakar vs. Punjab Technical University, Jalandhar, 1997 (3) SCT 526 (FB); Gurpal Singh vs. Punjab State Electricity Board, 2014 (3) SCT 809; Indu Gupta vs. Director of Sports, Punjab, 1994 (4) SCT 113(FB); Tata Chemicals Ltd. vs. Commissioner of Customs (Preventive) Jamnagar, 2015 (5) JT 554(SC); Devender Singh Sihmar vs. Haryana Public Service Commission, CWP No. 8264 of 2005 decided on 24.05.2005 and State of Bihar and others vs. Madhu Kant Ranjan and another 2022 (1) Apex Court Judgments (SC) 470**

With reference to the aforesaid precedents, learned counsel for the respondent No.2 submitted that in the information brochure, it has been provided that if on verification at any time during, before or after the recruitment process, it is found that any candidate does not fulfil any of the eligibility conditions then the candidature of such candidate shall stand cancelled without any

notice. The candidates shall produce all the documents in support of the particulars given in the application form and not vice versa. The information given in the application form shall be treated to be final and binding so far as the candidates are concerned. No document subsequently submitted will be considered and the candidates should ensure that they fulfill all the eligibility conditions for admission to the examination as on the last date of submission of the application.

Evidently, it has been provided that incomplete applications shall not be entertained under any circumstance. The respondent No.2 has adopted negative prohibitory words to bring home imperative nature of the provision. Use of these words are indicative of the fact that the nature of provision is prohibitory and imperative. With reference to the judgment of the Hon'ble Apex Court in **Lachmi Narain etc. vs. Union of India and ors, 1976 AIR 714**, learned counsel for the respondent No.2 submitted that if the provision is couched in prohibitive/ negative language, the same is not directory. The use of peremptory language in a negative form is per se indicative of the intent that the provision is to be considered as mandatory and the words used in the information brochure go to establish the mandatory nature of the provision.

Learned counsel for the respondent No.2 also referred to **Mannalal Khetan and others vs. Kedar Nath Khetan and others, 1977 AIR 536** and explained the mandatory character of the requirement of the application brochure. The conditions

incorporated in the application form bind all the candidates. In the event of non compliance, the candidate has to meet the consequences. No question of arbitrariness or unfairness can be used by a person, who fails to satisfy the requirements mentioned in the information brochure.

Learned counsel for the respondent No.2 further submitted that in the event of failure on behalf of the candidate, the candidate has to be made liable for rejection of the candidature at any stage of the selection. The peremptory language cannot be held to be merely declaratory, rather the same has to be treated as mandatory. The compliance would be essential otherwise basic principle of fairness in such highly competitive examination would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the application form would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the application form, more particularly, where the cut off date itself has been provided in the application form. The brochure/ application form has the force of law and the submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application. The eligibility has to be considered directly in relation to the cut off date prescribed in the application form/ brochure.

Commenting upon the nature of such clauses or provisions and holding them to be mandatory in its spirit and substance has been held in **Lachmi Narain's case (supra)**. Strict adherence to the terms and conditions of the application form/ brochure is of paramount consideration and the terms and conditions including the cut off date cannot be relaxed unless such power is specifically provided to a given authority by use of unambiguous language. Concededly, there is no power of relaxation given to any authority in respect of specific adherence to the column No.5 as regards mentioning of date of birth with reference to an appropriate certificate.

Learned counsel for the respondent No.2 further submitted that it is a settled principle of law that if the law requires that something be done in a particular manner, it must be done in that manner and if not done in that manner has no existence in the eyes of law at all. With reference to the latest law i.e. **State of Bihar vs. Madhu Kant Ranjan's case (supra)**, learned counsel for the respondent No.2 submitted that as of now it is a settled propositions of law that a candidate has to comply with all the 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 required to be submitted as per the advertisement have to be considered. Therefore, when the petitioners did not produce the relevant certificate along with the

application form, the same cannot be considered and the petitioners are not entitled for any indulgence thereafter.

Having considered the submissions made by both the sides, I am of the view that the conditions as stipulated in the advertisement/ application form are mandatory in nature. The advertisement also prescribes that no document subsequently submitted will be considered and the same is in the nature of negative prohibitory words, which will bring home the imperative nature of the provision and the same is indicative of the prohibitory and imperative nature of the provision/ requirement. The requirement/ provision has been couched in a prohibitive /negative language and the same cannot be directory in nature, rather use of peremptory language in a negative form is per-se indicative of the intent that the provision is mandatory in nature and the same cannot be diluted subsequently. No question of arbitrariness or unfairness can be urged by the candidate, who fails to satisfy the requirement mentioned in the advertisement/ brochure. The conditions incorporated in the advertisement/ brochure bind all the candidates and in the event of non compliance, the candidate has to meet the consequences.

The legal position has already been settled in the judgments cited by learned counsel for the respondent No.2. The conditions of brochure/ advertisement have force of law and strict adherence to its terms and conditions is of paramount considerations. The terms and conditions including the cut off date

cannot be relaxed unless such power is specifically provided to a given authority by means of an unambiguous language. Nothing of this type is available on record to consider that the requirement can be relaxed on the basis of such past practice or in view of ambiguity shown in Column No.7 of the advertisement, wherein educational qualification in terms of submission of documents was relaxed.

Since in Column No.7, there was no such recital to attach the documents of educational qualification, but in Column No.5, there was a specific recital that the date of birth as entered in the matriculation or equivalent examination has to be mentioned with reference to photocopy of certificate as proof thereof.

In view of the aforesaid, it can safely be concluded that there is no scope for any such consideration of the candidatures of the petitioners because the cumulative effect of the facts and circumstances of the case and enumerated principles of law is that the terms and conditions of the advertisement/ brochure where they used peremptory language cannot be held to be merely directory, rather the same has to be treated as mandatory and the compliance thereof would be essential otherwise the basic principle of fairness in such highly competitive examinations would stand frustrated. Vesting of discretion in an individual in such matters to waive or dilute the stipulated conditions of brochure/ application form/ advertisement would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms and conditions of the application form/

advertisement would decimate the very intent behind the terms and conditions of the advertisement/ application form/ brochure, more particularly when the cut off date itself has been provided in the application form/ advertisement.

For the reasons recorded herein above, I do not find any force in this petition and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

February 07, 2023

anita

whether speaking/non speaking	yes/no
whether reportable/non reportable	yes/no