

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

CWP-3298 of 2023 (O&M)

Reserved on: 10.05.2023

Date of Order: 17.08.2023

Maninder Singh and another

.Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. D.S.Patwalia, Sr. Advocate, with
Mr. Kannan Malik, Advocate,
for the petitioners**

Mr. Vikas Arora, AAG, Punjab.

ANIL KSHETARPAL, J

1. While praying for the various reliefs including a writ of certiorari to quash the corrigendum issued on 22.06.2022, the merit list Annexure P-7 to the limited extent that respondent no.3 to 5 have been illegally declared eligible for appointment, the writ petition was filed.

2. The petitioners, have not been selected for the post of Senior Technical Assistants. They are aggrieved of their non-selection which has led to the filing of the writ petition.

3. In order to comprehend the issue involved in the present writ petition, relevant facts, in brief, are required to be noticed.

4. On 14.05.2022, applications were invited for 12 posts of Senior Technical Assistants, out of which 8 posts were in the stream of Geology. Out of the aforesaid 8 posts, one post was in the category of General, whereas one was for SC (Ramgarhia and others). Clause 10(1) provided that the candidate will have to pass the written examination with minimum 40%

marks. The petitioner no.1 applied under General Category, whereas petitioner no.2 applied under SC(RO), both in the stream of Geology. On 22.06.2022, a corrigendum was issued while removing the condition of minimum 40% qualifying marks from the selection criteria. The corrigendum enables the candidates to apply afresh while extending the last date for submission of the online applications upto 11.07.2022. Another extension in the last date for submission of the application was given upto 25.07.2022. The written examination was held. Petitioner no.1 is stated to have scored 75.25 marks, whereas petitioner no.2 scored 65.25 marks.

5. While contesting the writ petition, the respondents have categorically stated that in the rules governing the condition of service of Senior Technical Assistants, only educational qualification are mentioned and no mode of selection has been prescribed. The Head of Department is also holding the charge of the Subordinate Service Selection Board. A decision was taken to view the condition of minimum 40% qualifying marks in the selection criteria keeping in view the past experience and thereafter, given opportunity to fresh candidates to apply.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

7. Two separate written notes have been filed by the learned senior counsel representing the petitioners as well as the State of Punjab in support of their submissions. The relevant part of the written notes of the learned counsel representing the petitioner is extracted as under:-

“1. Corrigendum dated 22.06.2022 issued by respondent No.2 for deleting the Clause 10 (1) is illegal and arbitrarily as the same amounts to changing the rules of the game mid-way as it

was issued after the last date for submission of applications i.e., 15.06.2022.

2. Illegality in issuance of the corrigendum is also borne from the fact that by deletion of the clause 10(1) of the advertisement, the Respondents have completely violated Article 16 of the Constitution as well as the settled principle that merit is of paramount consideration for recruitment to technical posts. Due to deletion of Clause 10(1). With no minimum marks for qualifying the test, it granted unfair advantage to certain candidates, such as the Respondents No. 3-5 herein, as there was no competition or burden of securing minimum of the benchmark i.e. 40% marks

3. Senior Technical Assistant is a technical post and the job profile is highly technical in nature.

4. The plan of examination shows that 90 marks in the examination were purely and completely based on the subject opted, such as Geology in case of the present petitioners, meaning thereby, the candidates were liable to be thorough and well versed with the subject/stream in which they had applied, considering the minimum qualifications prescribed in the advertisement itself was a Master's Degree in the concerned subject. However, the Respondents No. 3-5 have failed to even score marks equal to the minimum threshold clearly showing the lack of in- depth knowledge of the subject.

5. Article 16 provides for equality of opportunity in public employment, upon lifting the veil it is evident that Respondents No. 3-5 had been selected by the respondent- Commission and declared eligible, despite the fact that they did not even meet the minimum threshold of 40% marks and neither faced any healthy competition in their category and got the benefit of the illegally issued Corrigendum dated 22.06.2022.

6. Petitioner No. 2 and Respondent No. 4 had applied under the SC (R&O) Category, however, despite Petitioner No. 2 being more meritorious, Respondent No. 4 was appointed against the

post reserved for SC(M&B) Category, ignoring the merit of petitioner no.2.”

8. On the other hand, the learned State counsel has submitted elaborate written arguments which is extracted as under:-

“1. That the answering respondent Board had issued the advertisement No. 10 of 2022 for the recruitment of 12 posts of Senior Technical Assistant in the department of Water Resource, Punjab. In the rules governing the condition of Services of the Senior Technical Assistants, only educational qualifications are mentioned and no mode of selection was mentioned therein, therefore, the Board has decided the criteria with 40% minimum qualifying marks just to short list the candidates. In view of the para 9 of the Guidelines on the Working of Subordinate Services Selection Board issued by the Government of Punjab on 19.02.1981. The section 9 of the Guidelines provides as under:-

"..... Where, however any specific mode of selection is not provided in the relevant service rules the Board shall determined a fair method to make selection in consultation with the department concerned....."

2. That, before the commencement of process of this recruitment, it was brought to the notice of the answering respondent Board that in the previously completed recruitments that despite the availability of candidates having educational qualification/technical qualification, the candidates of different categories could not get the employment due to the condition of 40 minimum marks in the written examination. Apart from this, due to this condition the loss of Government resources/ Financial

resources is caused and the candidates have to face hardship as the answering respondent Board has to issue advertisement again after the receipt of requisition of the remained vacant posts from the concerned departments. It was also noticed that as the candidates of the different reserved categories could not meet the condition of minimum 40% marks, the posts remained vacant of these categories have to be de-reserved, thereby forfeiting the aim behind grating of reservation to the candidates of reserved categories

3. That, since the Head of the Department is also holding the charge of Chairman of the Subordinate Services Selection Board, Punjab, it is decided to remove the condition of minimum 40% qualifying marks in the selection criteria. The removal of the condition of minimum 40% qualifying marks from the selection Criteria is not changing the game of rules in mid stream as the Board has taken the conscious decision and fresh corrigendum dated 22.06.2022 was issued to enabling the fresh candidates to apply for the post, the last date for submission of online application was extended from 22.06.2022 to 11.07.2022 and again a corrigendum dated 18.07.2022 was issued with the extension in last date for submission of application by the fresh candidates from 19.07.2022 to 25.07.2022. During the extended period 74 fresh candidates had applied. The requirements of section 9 are fulfilled at the time of fixing of 40% condition of minimum qualifying marks and removal of this condition as the Principal Secretary of the Department of Water Resources, Punjab also holds the additional charge of Chairman of Subordinate Services Selection Board, Punjab. Therefore, no hitch is in removing the condition of minimum 40% qualifying marks in the selection criteria. The bona fide decision of the Board is supported

by the Judgments passed by the Hon'ble Jammu and Kashmir High Court SWP No3085 of 2010, titled as Afaq Mirza Versus State of Jammu and Kashmir and other connected cases judgment para 8 and 9 as under:-

“.....8. The petitioners' first plea that in terms of the provisions of Rule 15 of the Subordinate Services Recruitment Rules, the Board was required to consult the General Administration Department, before fixing the Criteria for Selection, other than the one, it had adopted for such posts in earlier Selections is found without merit, for, the requirement of sending copies of all proceedings of the Board to the Administrative Department, in terms of Rule 15(2), referred to by the petitioners' learned counsel to support his submissions, does not, in my view, restrict, in any manner whatsoever, the exclusive power and authority that Rule 10 vests in the Board to prescribe such tests or examinations as it may consider necessary so to hold, to finalise Selections, in case of those posts Recruitment Rules wherefor, do not prescribe mode and manner of Selection.

9. This apart, the power of superintendence and control that Rule 15 vests in the General Administration Department of the State Government, over the Board, is no different from the power that every Administrative Department exercises on the functionaries and authorities under its control. The power of superintendence and control cannot be construed as creating additional obligations on the Board to seek Confirmation of its every action from the Administrative Department, which, in terms of the Rules, it is, otherwise empowered and authorized, so to do, independently.

The Board was therefore, competent to devise such Criteria as it considered necessary to finalise Selection and there is no requirement of seeking confirmation

thereof from the Administrative Department

And in LPA (SW) No 145 of 2006, titled as State of Jammu and Kashmir and others Versus Rekha Sharma, judgment para 19 as under-

“.....MsSurrinder Kour, counsel for the respondent made a last minute plea to suggest that the criteria was to be recast by the Government and not the SSRB as was mandated by the Division Bench judgment in Balwinder Kour's case. She invited our attention to para 22 of the judgment which reads:

"This can indeed be achieved if we have trained teachersThis is the object which is foremost. It is because of this the State is advised to recast its selection policy in the matter of appointing teachers."..

4. That, the allegations of the petitioner regarding shifting of the posts to the other categories is baseless as:-

(a) The petitioner No1 obtained 76.25 marks in the written examination and was placed at serial No. 4 in the combined merit list (b) The petitioner No2 has obtained 64.25 marks and placed at serial No. 2 in SC (R&O) category wherein, one post was reserved for this category for which candidate namely Gurvinder Singh was already recommended with 68.75 marks

(c) ShGurwinder Singh Abhypal of BC Category, who was at serial No. 2 in the written examination was recommended in the open category against the one post of General Category (Geology) as the candidate at serial No. 1 in the written examination was not found eligible.

(d) The respondent No3 Guriqbal Singh of Ex Serviceman General (Dependant) was recommended against the post of Ex Serviceman General (Dependant) Female (Geology) with marks 45.75 marks and Karanveer of BC category was recommended against the post of BC Female Category with marks 65.25 as per the

section 5(3) of Notification dated 21.10.2020 of reservation for women issued by the Department of Social Security Women and Child Development Punjab. The section 5(3) provides as under:-

“.....If the posts remain unfilled due to lack of sufficient number of eligible women candidates, then the unfilled posts shall not be carried forward to subsequent years and such post shall be filled from the other candidates of the respective vertical categories...”

(e) One post was reserved for SC M&B (Female) category in the Subject of Geology. The respondent no. 4 Priyanka of SC R&O (Female) category was recommended against the one post of SC M&B (Female) category (Geology) with marks 42.75 marks as per the provision of section 4(5) of the Punjab Schedule Caste and Backward Classes (Reservation in Services) Act, 2006. The section 5(3) provides as under:-

“.....Fifty per cent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes.....”

(f) The respondent No. 5 Gaganjeet Singh (subject Chemistry) of SC (M&B) category was recommended in his own category with marks 28.75. .”

9. This court has considered the submissions while analyzing the arguments of the learned counsel.

10. With reference to the first argument, it may be noted that there is no change of rules of the game midway as admittedly an opportunity has been given vide corrigendum dated 22.06.2002 to enable the fresh candidates to apply for the post. Moreover, the decision of the competent

authority to delete the clause 10(1) is not alleged to be in the infringement of the rules.

11. The second argument of the learned counsel that the deletion of Clause 10(1) results in violation of Article 16 of the Constitution of India is also without substance because Article 16(1) no doubt, provides that there shall be equality of opportunity for all citizens in the matter relating into employment or appointment to any office under the State. However, Article 16(4) enables the competent authority to make provisions for reservation of appointment of posts in favour of any backward class of citizens. Article 16(1) cannot be read in isolation. Moreover, the Clause 10(1) has been deleted not only across the Board and it is applicable uniformly to all the candidates.

12. Hence, there is no force in the second submission.

13. With reference to argument no.3, it is the prerogative of Government and this court is not expected to substitute its opinion over and above the opinion of the experts.

14. As regards argument no.4, it may be noted that once the candidates applied under a particular stream, they are expected to be knowledgeable in the aforesaid field. Once there was no minimum marks laid down for threshold, the learned counsel is not correct in contending that respondents no.3 to 5 failed to even score minimum marks.

15. With reference to argument no.5, it may be noted that it is repetition of argument no.1 which has already been dealt with.

16. As regards argument no.6, it may be noted that petitioner no.2 applied under SC (RO) category, as he obtained 64.25 marks. Whereas, Gurvinder Singh with 68.75 marks has been recommended for appointment.

17. Keeping in view the aforesaid facts, no ground to issue the writ as prayed for is made out.
18. Dismissed.
19. All the pending miscellaneous applications, if any, are also disposed of.

17th August, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO