

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10619-2020 (O&M)

Date of decision: 13.01.2023

Sunil Kumar

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amrik Singh, Advocate for the petitioner

Mr. R.K. Kapoor, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The petitioner prays for issuance of a writ in the nature of Certiorari to question the general condition 8(vi) given in the advertisement dated 31st December, 2016. In essence, the candidature of the petitioner has been refused on the ground that he did not study and pass the Punjabi subject at the Matric level or any higher class other than Matriculation. The petitioner applied for the post of Demonstrator of Physical Education pursuant to the recruitment notice dated 31st December, 2016. On 27 July, 2000 one post of Demonstrator, Physical Education in the General category was kept reserved. The said order reads as under:-

“All the cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition the petitioner challenges the rejection of his candidature for the post of a Demonstrator of Physical Education (DPE) in the State of Punjab, on the ground disclosed to him that

he does not have sufficient qualification in the Punjabi language, with the examination of “Punjabi Praveshika” obtained from the Punjabi University, Patiala, not being sufficient qualification equivalent to passing Matriculation with Punjabi.

Learned counsel for the petitioner submits that though he has not been able to find any notification stating that the Punjabi Praveshika examination is equivalent having passed Matriculation with Punjabi, he also points to Rule 17 of the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994, to submit that the petitioner being the son of an ex defence personnel, he is required to be given an opportunity to pass the examination of Punjabi language equivalent to matriculation standard, or would have to qualify a test conducted by the language wing of the Department of Education, Punjab, within a period of two years from the date of his appointment.

Without making any comment on the merits of the case, notice of motion is issued to the respondent-State, with Ms.Lavanya Paul, Assistant Advocate General, Punjab, accepting notice at the asking of the court, with her already having received a copy of the petition.

Learned State counsel opposes the petition on the ground that other than the fact that the petitioner has not shown any equivalence of the aforesaid examination with Matriculation in Punjabi, but there exists a circular dated 06.06.2011, which states that recruitment is to be made on the basis of Punjabi passed in the Matriculation examination conducted by Punjab School Education Board.

Even having considered that contention, as to how a circular can over rule statutory rules, is something that is wholly un-understood.

Consequently, the Director Secondary Education, Punjab is directed to file his personal affidavit in reply to each and every paragraph of the petition, including as to how a circular can overrule statutory rules. If any citation of law is needed to aid the Director to understand the matter, judgment of Hon'ble Supreme Court in the case of “State of Haryana etc. vs. Shamsheer Jang Bahadur Shukla”, AIR 1972 SC 1546, may be cited, wherein it had been made very clear (almost five decades ago), that statutory rules cannot be overridden by government instructions.

It may be observed here that the said circular would not seem to be executive instructions

issued in terms of Article 162 of the Constitution of India.

In any case, the Director would also determine from the Punjabi University, Patiala, (which is a state established university), as to whether the 'Punjabi Praveshika' examination is equivalent to Punjabi qualified in the Matriculation examination, or not. Regardless of that, even if it is not, the Director will explain in his affidavit as to why the Common Cadre Rules have been wholly overlooked while rejecting the petitioner's candidature.

Adjourned to 27.08.2020.

In the meanwhile, one post of DPE in the General Category be not filled till further orders by this Court.”

2. The appointment of the candidates is governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. Rule 17 thereof reads as under:-

“17. Knowledge of Punjabi Language:

- 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.

Provided that where a person is appointed on compassionate grounds on priority basis under the instructions issued in this behalf by the government from time to time, the person so appointed shall have to pass an examination of Punjabi Language equivalent to matriculation standard or he shall have to qualify a test conducted by the Language Wing of Department of Education of Punjab "Government within a period of six months from the date of his appointment.

Provided further that where educational qualification for a post in any service are lower than the matriculation standard, then the person so appointed shall have to pass an examination of Punjabi Language equivalent to middle Standards.

Provided further that where 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, is appointed under the instructions issued in this behalf by the Government, the person so appointed will not be required to possess aforesaid knowledge of Punjabi Language.

Provided further that where a ward of Defence Service Personnel, who is a bona fide resident of Punjab State, is appointed by direct appointment, he shall have to pass an examination of Punjabi Language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of Punjab Government within a period of two years from the date of his appointment.”

3. While filing the reply, the respondents have claimed that the petitioner does not deserve consideration to the said post as he did not study and pass Punjabi subject in Matriculation or any class higher than the Matriculation level.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperwork.

5. In fact the fourth proviso to the aforementioned Rule 17 has already been interpreted in **CWP-14383-2013** titled as ‘**Baljeet Kaur vs State of Punjab and others**’ decided on 10th November 2014. In that case also the candidate had applied under the General category. She was ward of a serving defence personnel. After analysing the fourth proviso, the Court held as under:-

“ The effect of Note: Bullet 4 appears to indicate that a ward of a defence service personnel who is a bona fide resident of Punjab State, shall have to pass an examination of Punjabi language equivalent to the matriculation standard within a period of two years from the date of appointment conducted by the language wing of the department of Education of Punjab Government without reference to passing of the subject of Punjabi language in the matriculation examination. Therefore, Punjabi language as a compulsory or elective subject in

matriculation examination has been conferred equivalence by the Govt. with the test conducted by the language wing of the Department of Education of Punjab Government. There is thus a shimmer of a dichotomy which emerges from a reading of Note: Bullet 4 supra which gives with one hand and takes away by the other. The proviso in Bullet 4 when read harmoniously with its substantive first part evidently suggests an exception carved out for "wards" [not "dependants"] of defence service personnel by postponing the removal of lack of proof of knowledge of Punjabi language as a barrier from the main gate of the last date of receiving application forms online to the drive-in porch of a test of proficiency in the Punjabi language to a future point in time after joining service on appointment to be conducted by the language wing of the Education Department, Punjab. When 'wards' of defence service personnel are given special rights by Bullet 4 itself then power to do so can only be traced to rule 17 of the 1994 Rules even though the provision may not be mentioned as the source of the concession in the advertisement. This is a concession given to wards of a special category of a class of persons by the general and common conditions of service rules which deserves to be read in all advertisements calling applications for public employment unless they are ousted by special rules of service framed for the department in question by the Governor of the State under proviso to Article 309 of the Constitution of India. No such special rule has been shown by the respondents for the court to discard the 1994 Rules as inapplicable or of no value to the facts of the present case in adjudicating the lis.

To examine the issue from a different stand point it can be legitimately argued that if the defence of the respondent State of passing Punjabi language as a compulsory/elective subject in matriculation before the last date of submission of application form is accepted, then it appears nebulous as to whether Punjabi language test was to be qualified on the cut off date of submission of the application form online from 27th July to 19th August 2011 or whether proof of knowledge of reading and writing Punjabi should not be accepted ex post facto when the petitioner de facto came to possess the qualification of Punjabi language in the matriculation examination to the standard demanded though the result of such test was declared later on 27th June, 2013 which result would relate back to the

date of the test. If the benefit of the fourth proviso to rule 17, which is in consonance with proviso to Bullet 4, is given to the petitioner then she would still have had sufficient time to pass the test to be conducted by the Department of Education, Punjab Government in the event appointment is offered to her.

It is also argued by the petitioner that the fourth proviso is meant for the “wards” of defence personnel and not for the “dependent” of exserviceman since the petitioner competed as a general category candidate and not as a dependant of ESM and in which competition she remained successful by qualifying for selection on merit as the result bears. The fourth proviso is a special proviso designed for wards of defence service personnel and not for the dependents of ex-serviceman. The former is a concession while the latter is a species of horizontal reservation. Between the two there is a vast difference in cause and effect. Quite apparently, the fourth proviso operates ex-post facto, that is, after the event when appointment is offered and accepted. The starting gun of the two year race in rule 17 starts from that tape. The rule is both creative of a right and declaratory in its nature. This leads to an irresistible conclusion that by not qualifying the Punjabi language subject in the matriculation examination at the time of submission of the application form is not determinative or conclusive of the issue when compliance stands postponed by rules of general and common conditions of service which the Govt. thought fit to incorporate as a substitute qualification achievable after direct appointment. Even assuming that there is an ambiguity in the advertisement and rule 17 of the 1994 rules, such an ambiguity deserves to be interpreted in favour of petitioner to secure her an appointment as she ranks higher in merit than a large number of selected candidates. I am not able to persuade myself, however hard I try, to ignore this crucial aspect of meritocracy that a supplicant to this Court should be left to sink in the quicksand of time unable to retrieve her Punjabinity even when she is a true blue.”

6. Similar is the case of the present petitioner. The attention of the Court has not been drawn to any interpretation to the contrary. Keeping in view the aforesaid facts, it is evident that the respondents have erred in rejecting the petitioner’s candidature for the post of

Demonstrator of Physical Education pursuant to the recruitment notice dated 31st December, 2016.

7. Hence, the writ petition is allowed. The respondents are directed to consider the petitioner’s candidature within a period of two months, from today.

8. All the pending miscellaneous applications, if any, are also disposed of.

13.01.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE