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2023:PHHC:161589

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-12264-2022 (O&M)
DECIDED ON: 26th JULY, 2023

SANJAY GAUTAM

PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

RESPONDENTS

AND

CWP-12338-2022 (O&M)

ANKUR

.....PETITIONER

VERSUS

HARYANA STAFF SELECTION COMMISSION AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Jasbir Mor, Advocate
for the petitioner (in CWP-12264-2022).

Mr. Raman B. Garg, Advocate and
Ms. Gitanjali, Advocate
for the petitioner (in CWP-12338-2022).

Ms. Safia Gupta, AAG Haryana.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Jagbir Malik, Advocate
for respondent No.2 in both the petitions.

Mr. Ganesh Kumar Sharma, Advocate
for respondents No.6 & 7 (in CWP-12264-2022) and
for respondents No. 3 & 4 (in CWP-12338-2022).

SANDEEP MOUDGIL, J

1. Vide this common order, this Court intends to dispose of both the afore-said petitions together, as common question of law is involved in both the petitions.

2. To avoid any repetition the facts are being taken from CWP-12264-2022, titled **“Sanjay Gautam vs. State of Haryana and others”**.

3. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Certiorari* for quashing the impugned action of respondent-Commission for not considering the petitioner(s) eligible and declaring him ineligible orally for the post of Assistant Manager (Estate) against advertisement No. 14/2019 dated 26.08.2019, category-1 (Annexure P-1) being illegal with further prayer for issuance of a writ in the nature of *mandamus* directing the respondent-Commission to consider the petitioner (s) duly eligible and qualified for the post of Assistant Manager (Estate) by considering the two years experience of an Advocate as valid duly issued by the District Bar Association, Jind dated 30.09.2019 (Annexure P-3) practicing as an Advocate in terms of judgment dated 27.05.2011 (Annexure P-14) as well as written statement filed by respondent-Commission and HSIDC in CWP No. 12187-2009 and to place the petitioner(s) at appropriate in selection list/merit list of Assistance Manager (Estate) as he secured 60 marks which are more than last selected candidates of EWS category who has secured 48 marks, as well as more than the last selected candidates of General

category who has also secured 48 marks.

4. The factual matrix of the case are that vide Advertisement No. 14/2019, dated 26.08.2019 (Annexure P-1), eight posts of Assistant Manager (Estate) were advertised for HSIIDC and out of which 4 posts were meant for General Category, two posts for SC Category, 1 post for BCA Category and 1 post was meant for EWS Category. The essential qualification for the advertised post is reproduced here as under:-

- 1. Graduate in Arts, Science or Commerce with minimum 2nd Division and LLB having at least 2 years relevant post qualification experience.*
- 2. Hindi/Sanskrit as one of the subject in Matriculation or Higher.”*

5. The petitioner(s) being eligible for the post of Assistant Manager (Estate), applied for the same. The petitioner(s) has uploaded experience certificate dated 30.09.2019 (Annexure P-3) issued by District Bar Association, Jind whereby, it has been certified that he is practicing as an Advocate at District and Sessions Court, Jind since 30.01.2015 and is continuing as such. It has further been certified that petitioner is having an experience of more than 4 years and 8 months as an Advocate and during the above-said period he has not joined any private/public undertaking. The petitioner(s) was issued admit card dated 16.07.2021 (Annexure P-6), in pursuance of which he has appeared in the written examination held on 02.08.2021. On 26.09.2021, respondent-Commission has declared the result of written examination, which the petitioner has placed on record as Annexure P-7, in which the roll number of the petitioner was figured.

Through the result dated 26.09.2021, a notice was issued for scrutiny of

documents for the post of Assistant Manager (Estate) to be held on 11.10.2021 and all the candidates were required to fill scrutiny form online from 02.10.2021 to 09.10.2021 on the website of respondent-Commission.

5. In compliance of the above-said notice, the petitioner has submitted his application form in the prescribed format by giving full information regarding his qualification and experience and uploaded all the necessary documents on the website of the respondent-Commission. A copy of which is placed on record by the petitioner as Annexure P-8. The petitioner has appeared for document verification and was found duly qualified and eligible for the post of Assistant Manager (Estate) and at the time of document verification no deficiency was found or pointed out of the petitioner. The respondent-Commission has declared the final result on 10.05.2022 (Annexure P-9) for the advertised post of Assistant Manager (Estate), however, the name of petitioner was not figured therein and the petitioner was not shown selected for the said post. As per the final result the last selected candidate of General/EWS category has secured 48 marks whereas, the petitioner-Sanjay Gautam has secured 60 marks in total, out of which 55 marks in written examination and 5 marks for Socio Economic criteria. Thus, having secured more marks than the last selected candidate, the petitioner is entitled for selection for the post of Assistant Manager (Estate). In this view of the matter, the petitioner has approached the respondent-Commission by submitting a representation dated 19.05.2022 (Annexure P-11) and requested for his selection and recommendation for the post of Assistant Manager (Estate) being higher in merit than the last

selected candidate of General/EWS Category. The petitioner met personally to the officials and authority of respondent-Commission on 19.05.2022 has examined his request and informed him verbally that he is not eligible for the said post because he is having the experience of an Advocate issued by District Bar Association and not having the experience of the relevant post i.e. Assistant Manager (Estate). Hence, the present petitions.

6. Mr. Jasbir Mor, learned counsel for the petitioner-Sanjay Gautam and Mr. Raman B. Garg, learned counsel for the petitioner-Ankur have argued that the petitioners are having the required experience as prescribed in the advertisement (Annexure P-1). The experience of a Law Graduate of practise in a Court is sufficient for the advertised post and his candidature cannot be rejected on the ground that he is not having valid experience of the post of Assistant Manager (Estate). The issue is no longer *res-integra* and has been settled in CWP No. 12187 of 2009, titled as **“Lovekesh Kumar vs. Haryana State Industrial and Infrastructure Development Corporation and others”**; decided on 27.05.2011 by this Court and it has been held that for the post of Assistant Manager (Estate) the experience of a practicing Advocate is sufficient. The present case is squarely covered under the guidelines issued by this Court in **Lovekesh Kumar’s** case supra (Annexure P-14).

7. Mr. Baldev Raj Mahajan, Sr. Advocate assisted by Mr. Jagbir Malik, Advocate and Mr. Kapil Bansal, DAG, Haryana has argued that as per the Advertisement the required experience of two years is of the

relevant post and relevant post is the post of Assistant Manager (Estate) and the experience of practice in a Court cannot be considered as required experience as per advertisement No.14/2019 but could not controvert the law settled by this Court in **Lovekesh Kumar's** case supra.

8. No other argument has been raised by the parties.
9. Heard learned counsel for the respective parties.
10. The only question which needs to be considered by this Court in the present petitions is as to whether the petitioners having the experience of practice in Court can be considered eligible for the post of Assistant Manager (Estate) or for being eligible for the advertised post, they are required to have the experience of two years on the post of Assistant Manager (Estate). The issue is no longer *res-integra* and has been settled by this Court in **Lovekesh Kumar's** case supra. For reference the relevant part of the judgment in **Lovekesh Kumar's** case is reproduced here as under:

“The only question which needs to be considered in the present case is whether respondent no.3 was having requisite experience of two years at the time of his selection on the basis of his enrollment as an Advocate even when admittedly he was pursuing LL.M Course during the period of alleged practice.

Admittedly, respondent no.3 was enrolled as an Advocate by the Punjab & Haryana Bar Council in the year 2005. He produced the practice certificate from the President, Bar Association, Kaithal which has been taken into consideration to count his experience as an Advocate. It is also equally established that the respondent no.3 was

pursuing his LL.M. Course during the Session 2005-07 and the period of practice as also the study of LL.M. Course in fact is common. The contention of the petitioner is that since the respondent no.3 was pursuing LL.M. Course and there was a clear stipulation in the Information Brochure that the student who is admitted to LL.M. Course is required to surrender his Advocate's License; the experience claimed by the respondent no.3 for the said period should not be counted as respondent no.3 was not entitled to carry on practice during the said period.

*This contention of the petitioner is contested on behalf of the respondents placing reliance upon Division Bench judgements of this Court. In a case reported as **1997 (5) SLR 580 titled as Davinder Singh and others Vs. State of Haryana**, a similar question arose whether a practicing Advocate while pursuing his LL.M. Course is required to suspend his license before he joined LL.M. Course as a regular student. The Hon'ble Division Bench considered this question and held that an Advocate is not required to suspend his license before he joins the LL.M. Course as a regular student and to arrive at this conclusion the Hon'ble Division Bench has relied upon a letter issued by the Bar Council of India which permits practicing Advocates joining the LL.M. Course as a regular student without suspending practice.*

*A similar view has been held by another Division Bench of this Court in a case reported as **1996 (3) PLR 403 titled as Karan Jagdish Kaur Vs. The Punjab School Education Board, S.A.S Nagar (Mohali) and others** which is as under:-*

“ The next ground on which the appointment of respondent no.3 was challenged is that she was not eligible in terms of the qualifications prescribed in the advertisement. It is submitted that she did not possess

three years experience as an Advocate on the last date of receipt of applications. The argument is that respondent no.3 who was enrolled as an Advocate in March, 1992 joined the L.L.M Part-I course in Panjabi University, Patiala as a regular student and therefore she did not practice thereafter and for this reason it is contended that she did not possess three years experience. On the other hand, what is urged by the respondents is that in terms of the instructions issued by the Bar Council of India practicing Advocates can join the L.L.M. Course without having to suspend their practice and this decision is being followed by the Bar Council of Punjab and Haryana. In our opinion, the argument of the learned counsel for the petitioner deserves to be rejected. When a practicing Advocate joins the L.L.M. Course as a regular student, he is not required to suspend his practice and can simultaneously continue with the same. Practice does not mean appearing in Courts only. One can even practice by making himself available for consultation and by giving legal opinion so long as he/she remains on the rolls as an Advocate.”

*In Davinder Singh's case (supra) the Hon'ble Division Bench has placed reliance upon the observations made by Hon'ble Supreme Court in case of **Madan Lal and Others Vs. State of Jammu & Kashmir reported as 1995 (3) SCC 486.** The relevant observations of the Hon'ble Supreme Court are contained in para 20 which reads as under:-*

“20. It was next vehemently contended by the petitioners that actual practice would mean that the concerned candidates should have appeared before courts and conducted cases during these two years. It is

difficult to accept this contention. A member of the Bar can be said to be in actual practice for 2 years and more if he is enrolled as an Advocate by the concerned Bar Council since 2 years and more and has attended law courts during that period. Once the Presiding Officer of the District Court has given him such a certificate, it cannot be said that only because as an advocate he has put in less number of appearances in courts and has kept himself busy while attending the courts regularly by being in the law library or in the bar room, he is not a member of the profession or if not in actual practice for that period.”

In view of the above legal position, it cannot be said that respondent no.3 was not possessing the requisite experience of actual practice merely because he was pursuing LL.M. Course. Certificate issued by the Bar President has not been challenged in any manner. Enrollment of the respondent no.3 since 2005 is also not disputed. Admittedly, he had more than two years enrollment at the time of applying for the post in question. As regards the condition in the brochure for admission to LL.M. Course, which inter alia requires suspension of license is concerned, it may be an irregularity for pursuing the LL.M. Course but contravention of such a condition by respondent no.3 cannot be construed to make him ineligible for want of experience.

*It is contended on behalf of the petitioner that respondent no.3 did not attach the experience certificate along with the application form as he was not possessed of the experience certificate till the last date of making application, hence, his application was liable to be rejected. In support of his contention, petitioner has relied upon a Full Bench judgement of this Court reported as **1997 (3) SCT 526**. The*

Hon'ble Full Bench of this Court while considering the question of enforcement of conditions of Information Brochure/Advertisement/Prospectus held that Information Brochure/Prospectus has the force of law and its conditions are to be strictly adhered to. The Hon'ble Full Bench has further observed in respect to the sanctity of date and time for receipt of application. The relevant observations are as under:-

“18. In view of what has been stated above, we hold that the date and time for the receipt of the application forms by the Co-ordinator, CET 1997, is fixed in the Information Brochure. It is not to be altered by this Court in exercise of the powers under Article 226 of the Constitution of India.”

Thus, it is argued that since the respondent no.3 had not annexed the experience certificate along with the application form, his application form was liable to be rejected. It is further contended that last date for receipt of the application form was 8.12.2007, whereas the experience certificate produced by respondent no.3 is dated 11.4.2008 (Annexure P-14) i.e after the last date of receipt of application form, the certificate cannot be relied upon to count his experience.

To the contrary, it is contended on behalf of the respondents that the experience certificate clearly indicates that the petitioner was enrolled as a practicing Advocate in District Courts since 25.10.2005 which clearly establishes that his experience starts from the date of his enrollment and had completed more than two years of practice as on the last date of receipt of application i.e. 8.12.2007.

Even though, certificate was produced later but the same cannot be ignored particularly when its genuineness is not in dispute. It is also argued on behalf of the respondents

that Information Brochure/Prospectus no doubt has the force of law, however, the Prospectus/Advertisement contained certain conditions which are mandatory to be observed and certain conditions are directory in nature, non-observance thereof can only be construed as an irregularity which is curable in nature.

In a case reported as 2005 (9) SCC 779 titled as Dolly Chhanda Vs. Chairman, JEE, Hon'ble Supreme Court has held as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. In the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principles as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

In the present case, no doubt the requisite certificate had not been attached with the application

form, though, respondent no.3 had specifically mentioned against column no.12 that he had two years and five days experience. It was only a question of furnishing the documentary proof relating to the experience. Respondent no.3 has also placed on record copy of a letter dated 31.3.2008 (Annexure R-3/1) issued from the Haryana Staff Selection Commission to the petitioner communicating him the deficiency of experience and respondent no.3 was asked to furnish the requisite documents in support of his claim of eligibility. The relevant extract of the aforesaid communication is reproduced hereunder:- “Note:- Your attention is invited to the observation/shortcomings indicated above.

If you wish to say anything in support of your claim of eligibility for the said post, you are requested to personally contact this office along with all original documents and Photostat copies during office hours within seven days from the date of receipt of this letter. It is further intimated that no correspondence will be entertained in this regard.

*Sd/-
Superintendent Scrutiny,
for Secretary Haryana Staff Selection
Commission, Panchkula.”*

It is in response to this letter that the respondent no.3 seems to have secured the certificate dated 11.4.2008 from the President, District Bar Association and furnished the same to the respondent no.2. Thus, irregularity, if, any stands cured by rectifying the deficiency. Even though, no documentary proof was attached with the application form, however, the subsequent certificate, wherein the President, District Bar Association certified the enrollment of respondent no.3 as an Advocate with the Bar Council of India. Respondent no.3 had

practice of more than 2 years on the last date of submission of the application form. At the first place the petitioner has not placed on record the complete advertisement nor reproduced any condition contained therein which inter alia required the applicant to attach all the certificates along with the application form and non-observance of this condition is shown to be fatal.

Assuming that there is such condition, the same cannot be construed to be mandatory in nature in view of the observations of the Hon'ble Supreme Court in case of Dolly Chhanda, referred to above.

The deficiency cannot be said to be fatal and sufficient for the rejection of the candidature of respondent no.3. It was only a curable irregularity which has been cured before the completion of the selection process. Challenge to the selection/appointment of respondent no.3 on this count also fails.

In the totality of the circumstances, this petition is dismissed, however, with no order as to costs.”

11. In the present petitions the petitioners have produced the experience certificates by respective Bar Associations where the petitioners are practicing as Advocates and as per settled proposition of law, I am of the considered view that the petitioners are having the required experience for the post of Assistant Manager (Estate) and rejection of their candidature on the ground of not having requisite experience is misplaced. The petitioners are fully eligible for the post of Assistant Manager (Estate) and the respondent-Commission should not have rejected their candidature for the advertised post.

12. In view of the foregoing reasons, both the writ petitions are

allowed and respondent-Commission is directed to consider the petitioners eligible for the post of Assistant Manager (Estate) and to consider their candidature for the same. Respondent-Commission is further directed that in case the petitioners are otherwise eligible and secured more marks than the last selected candidate of their respective categories, recommend their names for appointment to the post of Assistant Manager (Estate) in HSIIDC. It is further clarified that the Seniority of the petitioners would be fixed strictly in accordance with the merit list prepared by the respondent-Commission.

- 13. Ordered accordingly.
- 14. A copy of this order be placed on the file of another connected petition.

(SANDEEP MOUDGIL)
JUDGE

26th JULY, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No