

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

CWP-17436-2013 (O&M)

Reserved on: 14.02.2023

Date of decision: 03.07.2023

Harvinder Singh

....Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr.D.S.Patwalia, Sr. Advocate with
Mr. A.S.Chadha, Advocate for the petitioner

Mr. D.K.Singal, Addl. AG, Punjab

Mr. Gurnam Singh, Advocate for respondent no.5 to 7

ANIL KSHETARPAL, J

1. The experience during the last five months after having been assigned the roster of the Punjab Govt. Service shows more often than not the Punjab Public Service Commission, Punjab Subordinate Service Selection Board and the Departmental Selection Committees constituted by the Government or the Public Sector undertaking to take liberties to infringe the well settled legal position resulting in over burdening the dockets of the Courts. Driven by a painful experience of facing this situation on every Court working day this observation is being made. It is expected that the competent authorities at the highest level will take note of these observations in order to implement the steps to avoid chances of such occurrences at regular intervals.

2. Back to the facts. The petitioner while filing the writ of Certiorari to quash the selection and appointment of respondent no. 5 to 7 as the Assistant Directors in the Department of Sports, prays for issuance of a writ in the nature of Mandamus directing the respondent to consider him for the appointment.

3. The relevant facts, in brief, are required to be noticed in order to grasp the pivotal issue which requires adjudication. The recruitment notice to invite applications from the eligible candidates for recruitment to 13 posts of the Assistant Directors in the Department of Sport and Youth Services, Punjab, was issued on 09.04.2013. Clause (3), (5) and clause (e) of the Important Note reads as under:-

“3. Essential Qualifications

a) For candidates belonging to General category:

i) Should be M.A Second Division from a recognized University.

ii) Should be a Graduate of a recognized university with Social Science as one of the subjects. Provided that preference will be given to M.A in any subject of social sciences.

iii) Should have an experience of National Service Scheme or National Cadet Corps for a minimum period of two years.

Note: *Preference will be given to those who have worked in the student's welfare, sports and cultural organization and youth welfare activities.*

b) For Ex-Serviceman:-

i) Should be Graduate of a recognized University.

ii) Should have held a post not below the rank of Lieutenant in the Armed Forces of the Union and should have served as Commissioned Officer, for a minimum period of five years.

Provided that preference will be given to those persons who have served as an National Cadet Corps Officer for a minimum period of two years or National Service Scheme.

c) Punjabi of Matric or its equivalent standard.

Qualification of Punjabi is essential for these posts relaxable for Sikh Migrants upto the extent that they will have to acquire such qualification within two years after joining the service failing which their services shall liable to be terminated). For this purpose a Matriculation or its equivalent certificate for having passed Punjabi will be necessary.

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5. Submission of Application Form:

*Candidates **May Download** the Application Form from the website www.ppsc.gov.in OR obtain the Application Form from the office of Punjab Public Service Commission, Baradari Gardens, Patiala w.e.f **12/04/2012** and submit to the Secretary, Punjab Public Service Commission, Baradari Gardens, Patiala.*

Application form must reach the office of Secretary, Punjab Public Service Commission, Patiala, latest by 5:00 pm on or before 14/05/2012 alongwith prescribed fee and documents. Responsibility for any postal delay will be that of the candidate.

Application forms that are wrongly filled or incomplete or received late, or not accompanied by the requisite fee and attested copies of certificates regarding Date of Birth, Degree, Matriculation Certificate, Experience other requisite certificates and three identical recent passport size photographs shall be summarily rejected. The Commission's decision in this regard will be final.

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(e) APPLICANTS MUST POSSESS THE REQUISITE QUALIFICATIONS & EXPERIENCE BY THE LAST DATE FOR THE RECEIPT OF APPLICATION I.E 14/05/2012.”

4. The candidature of the petitioner was rejected on the ground that he is not eligible. On the one hand, the petitioner claims that he has the requisite experience of NSS/NCC of two years before the cut off date whereas the stand of the Punjab Public Service Commission, the State Government as well as the private respondents is that the petitioner does not possess the requisite experience. It is the stand of the petitioner that he, while doing his Graduation, has been attending NSS/NCC programs and hence, such experience is sufficient. Whereas the private respondents possess the necessary experience as NSS program officers.

5. It is evident that the recruitment notice does not throw sufficient light on this aspect of the matter. It is not provided that the candidate was required to have experience of working as Program Officer. However, one thing is clear that during his study the petitioner has been attending camps organized by the NCC which may not be sufficient experience for the post of the Assistant Director. However, there is lack of clarity in the recruitment notice. The constitutional authority is expected to issue recruitment notice with sufficient clarity in order to avoid any scope for entertaining reasonable doubt. Be that as it may. In view of the aforesaid stand of the respondents, rejection of the candidature of the petitioner does not require interference by this Court.

6. Learned senior counsel representing the petitioner while drawing the attention of the Court to a tabulated information compiled in para 11 of the writ petition, which is extracted as under, submits that the Punjab Public Service Commission was not justified in permitting the

private respondents to submit their experience certificates, which were issued after the cut off date:-

Name	Date of issuance of NSS/NCC certificate	Annexures
Preet	11.10.2012	Annex P-9
Malkit Singh	08.10.2012	Annex P-10
Raghvir Singh	17.10.2012	Annex P-11
Jaspal Singh	13.10.2012	Annex P-12

7. He relies upon a judgment passed in '**Bedanga Talukdar vs. Saifudaullah Khan and others**' (2011) 12 SCC 85 and the judgment of the Full Bench in **Indu Gupta vs. Director, Sports Punjab and others** AIR 1999 (P&H) 319.

8. On the other hand, the learned State counsel submits that State Service Commission uniformly permitted all the candidates to submit their documents at the time of interview. It is submitted that experience/eligibility was counted only upto the cut off date i.e 14.05.2012.

9. Learned counsel representing the selected candidates while referring to the judgments in **Charles K Skaria and others vs. Dr. C.Mathew and others** (1980) 2 SCC 752, **Seema Kumar Sharma vs. State of Himachal Pradesh** 1998(9) SCC 128 and **Dolly Chhanda vs. Chairman, JEE 2005 (9)SCC 779** to contend that such cut off date is though sacrosent, however, the requirement of the requisite documents before the cut off date is only directory.

10. This Court has considered the submissions. The observations made by this Court in the opening part of the judgment were necessary in view of the conflicting situation. It is evident that the recruitment notice specifically provides that a candidate must annex all the necessary documents alongwith the application before the cut off date including the experience certificate. Admittedly, no public notice was given by the Punjab Public Service Commission to permit the applicants to submit the additional documents, after the cut off date. On 09.02.2023, after hearing learned counsel representing the parties at some length, the following order was passed:-

“Heard the learned counsel representing the parties at some length.

Learned senior counsel representing the petitioner, while drawing the attention of the Court to a recruitment notice dated 09.04.2012 (Annexure P-1) submits that there was no provision in the said notice for submitting the additional documents including the certificate of experience after the cut off date. He submits that as per clause (e) of the important note, the application was required to be submitted, complete in all respects, by the last date of the receipt of application i.e 14.05.2012, whereas the certificate issued in favour of the selected candidates i.e respondent no.4 to 7 are dated 11.10.2012, 08.10.2012, 17.10.2012 and 13.10.2012, respectively.

Learned counsel representing the State submits that since the applications of the selected candidates were found without the requisite experience certificate, hence, in the facts of the case, they were permitted to submit the experience certificate at the time of the scrutiny of the documents.

On a Court question, “As to whether such opportunity was given to all the candidates or not?” the learned State counsel prays for a short adjournment.

List on 14.02.2023, in the urgent list.

No further request for an adjournment shall be entertained.”

11. In compliance to the aforesaid order, an additional affidavit of the Secretary, Punjab Service Commission has been filed to contend that on 05.10.2012, the names of the provisionally eligible candidates as well as the names of the ineligible candidates alongwith remarks giving reasons for their ineligibility were uploaded on the Commission's website. Thereafter, respondent no.4 and 5 submitted their representation with experience certificate on 10th and 11th October, 2012, respectively. Thereafter, many of the ineligible candidates also represented and submitted documents to remove their shortcomings as mentioned in the list on the Commission's website. All the candidates were represented equally.

12. On a careful reading of the judgment passed by the Full Bench in **Indu Gupta's case (supra)**, it is evident that while answering the first question, the Court declared that a candidate in view of the terms and conditions of the brochure is obliged to submit all the certificates required to annex alongwith the application and submit the same complete in all the aspects before the cut off date. In default thereto, no obligation is imposed upon the authorities concerned to entertain such application or grant seat to that candidate. On a careful reading of the judgment in **Charles K Skaria's case (supra)**, it becomes evident that it relates to admission in courses in higher professional education. That the Special Secretary to the Government issued a communication to the selection Committee after noticing that the students of College, Trivandaram are placed at a disadvantage on account of delay in

declaration of result, ordered entertainment of the diploma certificate before finalization of the selection in the Post Graduate Course. In that context, the Supreme Court held that the requirement of attaching diploma with application is directory. Similarly, the order in Seema Kumar Sharma's case (*supra*) is a short order in the peculiar facts of the case. The Court, on examination of the record, found that the certificate as claimed by the appellant was part of the record. Hence, such judgment does not as a ratio decidendi lay down that the necessary requisite documents can be entertained even after the cut off date.

13 In **Dolly Chhanda's case (*supra*)**, the Court held that the acceptance of the correct certificate after the due date and during the last counseling is within the domain of procedure which can be relaxed in the given case. Hence, the aforesaid judgment also does not as a ratio decidendi lay down that the cut off date is only directory. In fact, once, a Full Bench of this Court declared more than 24 years back that it is obligatory on the part of the candidates to annex all requisite certificates alongwith an application prior to the last date of submission of that application then any deviation therefrom unless it is provided in the Rules or in the recruitment notice is not appropriate. As noticed by the Supreme Court, such procedural provision can be relaxed. However, before granting such relaxation a public notice is required to be issued to enable all candidates to avail that benefit. However, at the most this is an irregularity.

14. The private respondents are already in service for the last more than 10 years. Keeping in view the peculiar facts of the case, this

Court does not find it appropriate to set aside the selection of the private respondents on account of the aforesaid irregularity, however, at the same time, this Court, at the cost of repetition, directs the State to take a policy decision while giving due publicity in the newspapers as well as by circulation to all the recruiting agencies to uniformly and strictly adhere to the same.

15. With the aforesaid observations, the writ petition is disposed of.
16. All the pending miscellaneous applications, if any, are also disposed of.

03.07.2023
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE