

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14762-2015

Decided on 17.07.2023

Mange Ram

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. DS Patwalia, Sr.Advocate with
Mr. AS Chadha, Advocate for the petitioner

Mr. SS Mann, Addl. AG Haryana

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep Singh Wasu, Advocate for respondent No.2

Mr. Aditya Gautam, Advocate for respondent No.3

Mr. Sachin Gupta, Advocate for
Mr. Gaurav Mohunta, Advocate for respondent No.4

Sandeep Moudgil, J.

(1). In this case, the moot question which arises for consideration before this Court is as to whether respondent No.3-Commission was legally justified in denying appointment to the petitioner and reviving the application form of respondent No.4, after a period of 3 months and 14 days of the cut-off date, as the same stood rejected vide order dated 24.09.2012 due to non-submission of experience certificate with the application form?

(2). The petitioner has filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the recommendation letter dated 22.01.2013 (Annexure P7) issued by respondent No.3 i.e. Haryana Public Service Commission and the appointment of respondent No.4, who is ineligible on the date of application and on the date of interview and in fact whose candidature

was rejected by the Commission itself vide letter dated 24.09.2012 (Annexure P8). Further, a direction is sought to consider the candidature of the petitioner and appoint him to the post of Deputy General Manager (Plants) (Class-I) in Haryana State Cooperative Supply and Marketing Federation Ltd. (HAFED) under SC category.

(3). Respondent No.3 i.e. Haryana Public Service Commission vide Advertisement No.1 dated 08.06.2012 invited applications from eligible candidates to fill up various posts including the two posts (1 for General. and 1 for SC) of Deputy General Manager (Plants) (Class-I) in HAFED (Annexure P1). The cut-off date for application as per the advertisement was 09.07.2012. The essential qualification for the said post was Degree in Mechanical Engineering or a Degree in Production/Industrial Engineering or a Degree of B.Tech in Food Processing Technology Engineering with 3 years' experience in each/respective category.

(4). The petitioner belongs to Scheduled Caste category and holds the Degree of Bachelor of Engineering (Mechanical) from MDU, Rohtak. The petitioner had the requisite experience (Annexure P4).

(5). The petitioner was called for interview vide letter dated 08.10.2012 scheduled for 19.10.2012 (Annexure P5). Only the petitioner was present for interview under the reserved category as per attendance sheet (Annexure P6). However, the name of respondent No.4 was recommended for appointment to the said post of Deputy General Manager (Plants) (Annexure P7). It is alleged that the candidature of respondent No.4 Ashok Kumar, was rejected vide letter dated 24.09.2012 (Annexure P8) by the respondent No.3-Commission as he did not possess the required experience which is not in sync

with the instructions (Annexure P9) issued by the respondent No.3-Commission which states that *applications not accompanied by the prescribed certificates or accompanied by unattested certificates will be rejected and no correspondence will be entertained in this connection...*”.

(6). Learned counsel for the petitioner contended that once the application form of respondent No.4 was rejected being incomplete as he did not possess the required experience, there is no question to give him an opportunity for being interviewed that also after the interviews were held on 19.10.2012. The rejection of the application form of respondent No.4 was in conformity with the instructions (Annexure P9). It is further averred that the interviews were scheduled for 19.10.2012 on which date, the petitioner appeared. The application of respondent No.4 is dated 23.10.2012 and his interview letter is allegedly sent on 31.10.2012 calling him for interview on 08.11.2012. It is urged that till the date of interview on 19.10.2012, respondent No.4 was not eligible as he had no experience as on that date. The selection process as far as interviews were concerned culminated on 19.10.2012. Subsequently, respondent No.4 produces experience certificate on 23.10.2012 along with his representation which is considered and for him, special interview is held on 08.11.2012. This clearly established that respondent No.4 is a blue-eyed boy and as such, the official respondents have breached all rules and instructions thereby the candidature of the petitioner has been prejudiced.

(7). Mr. Patwalia, learned senior counsel further asserted that it is settled law that candidates, not more than 3 times the advertised posts, are required to be called for the interview. In the case at hands, one post under the SC category was advertised against which 3 candidates were called for

interview on 19.10.2012 itself. Out of the 3, only petitioner appeared and being eligible, in all respects, he ought to have been selected and appointed. But for extraneous reasons, respondent no.4 was called for interview later, in an arbitrary manner and was given appointment by the Commission, illegally.

(8). It is further vehemently contended as per the information sought by the petitioner under RTI Act, 2005 (Annexure P-11), the respondent No.3-Commission has refused to give a copy of the interview letter issued to respondent No.4 stating that only one copy of the same is prepared. The respondent No.3-Commission wrongly considered the representation given by respondent No.4 and surreptitiously gave appointment to him ignoring the candidature of the petitioner. In fact, a perusal of the rejection letter specifically states that any representation has to be within 15 days and the said period of 15 days expired on 09.10.2012 and the representation of respondent no.4 is dated 23.10.2012 i.e. after one month. Furthermore, he submitted that it cannot be lost sight of the fact that the experience certificate of respondent No.4 is dated 20.10.2012 i.e. much after the advertisement was issued on 08.06.2012 and as such, respondent no.4 did not possess the experience on the cut-off date.

(9). It is worthwhile to mention here that the petitioner had earlier approached this Court by way of CWP-15811-2013 with similar prayer and similar contention, on the basis of which, the Coordinate Bench issued notice of motion in the said writ petition with an observation that in case the allegation of the petitioner that respondent No.4 was appointed without being interviewed on the 19.10.2012, cost will be imposed upon the petitioner. The said writ petition was later on admitted. However, on the application moved by the petitioner,

the writ petition was dismissed as withdrawn with liberty to file a fresh one on the same cause of action.

(10). Notice of motion in this case was issued on 23.07.2015 and pursuant thereto, replies have been filed by all the respondents.

(11). Respondent No.2-HAFED has filed written statement dated 05.08.2016 stating therein that it is respondent No.3 who was to select the candidates and HAFED has absolutely no role to play in the entire selection process.

(12). Written statement has been filed by Mukesh Kumar Ahuja, Secretary, Haryana Public Service Commission on behalf of respondent No.3 wherein it has been averred that while scrutinizing the application form submitted by respondent No.4, the Commission was of the view that the respondent No.4 did not possess the prescribed qualifications/experience and accordingly, vide letter dated 24.09.2012 (Annexure P8), it was conveyed to him that since he did not possess the requisite experience, he could not be called for interview and if he had any objection against the decision of the Commission he could file a representation with documentary proof in support of his claim to the Commission within 15 days from the date of issue of this letter as mentioned therein. A representation was moved by respondent No.4 appending therewith experience certificates. The Commission after duly considering the representation and the experience certificate attached with it found that Respondent No.4 was eligible to be considered for the aforesaid post and ordered that the Respondent No.4 be called for interview.

(13). It is further averred that interviews for the aforesaid posts of Deputy General (Plants) were held on different dates. Total 20 candidates were

called for interview out of which 10 candidates of General Category and 3 candidates of Scheduled Caste category were called for interview on 19.10.2012. Out of them, two candidates of General Category and two candidates of Scheduled Caste category were absent on 19.10.2012. Petitioner was called for interview on 19.10.2012 as per list attached (Annexure R-2).

(14). Mr. Aditya Gautam, Advocate appearing on behalf of the respondent No.3-Commission further submitted that five candidates of General and one candidate of Scheduled Caste category (Respondent No.4) were called for interview on 08.11.2012. Out of the candidate of General Category, two candidates including one Amit Khatri were absent. On the representation of Amit Khatri he was called for interview for 06.12.2012. Two candidates of General Category including aforesaid Amit Khatri were called for interview for 06.12.2012. The result of the aforesaid selection was declared on 09.01.2013 (Annexure R-5). The Commission called 20 candidates for interview for the aforesaid two posts including respondent No.4 and as such vide letter dated 22.01.2013 (Annexure P7), the names of the two selected candidates including that of respondent No.4 were recommended for appointment.

(15). Learned counsel also emphasized that the selection has been made on merit and merit alone on the basis of performance of the candidates at the time of interview as per the criteria evolved by the Commission. On the basis of averments made in the written statement, learned counsel for respondent No.3 asserted that the application form of the respondent No.4 cannot be said to be incomplete or wrongly filled etc. It is only an opportunity given by the respondent No.3 to respondent No.4 to submit his objection for rejection of his application form. It is also averred that respondent No.4 possessed the requisite

3 years' experience of mechanical line before the cut-off date of the receipt of the application viz. 09.07.2012 and as such there is no illegality or infirmity in the selection.

(16). Further, it is the stand taken by the respondent No.3 that the experience certificate submitted by respondent No.4 might be 20.10.2012 but the requirement of possessing 3 years' experience was upto the cut-off date which was 09.07.2012. The respondent No.3 have admitted that the petitioner has got more than three years experience in mechanical line upto the cut off date viz. 09.07.2012 and therefore eligible and considered for the post.

(17). Written reply has been filed on behalf of respondent No.4 – Ashok Kumar stating therein that the factum of filing of earlier writ petition by the petitioner has been highlighted. It is also submitted that notice of motion in CWP-15811-2013 was issued only on the point that respondent No.4 was not called for interview. However, it is stated that the said fact was found to be false and as such cost was imposed by this Court on 27.08.2013 (Annexure R4/2).

(18). In the reply, the respondent No.4, who also belongs to SC category, has appended experience certificates to show that he had 6 years and 4 months' of experience. He submitted that he did not enclose the experience certificate from Claas India P.Ltd. He further submitted that respondent No.4 had attached the experience certificates and mistake, if any, was done by the Commission for rejecting the application. The Commission realized and rectified its mistake by sending interview letter to the respondent No.4 and other similarly situated candidates whose application form was also rejected.

(19). Reliance has been placed on the decisions of the Supreme Court in

(i) **Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board &**

Anr. (2016) 4 SCC 754, (ii) Ram Sarup vs. State of Haryana (1979) SCC 1 168, (iii) Tridip Kumar Dingal & Ors. vs. State of West Bengal & Ors. (2009) 1 SCC 768, (iv) State of UP vs. Nawab Hussain (1977) 2 SCC 806 as well as of this Court in Anupam Malik vs. Kamal Singh Yadav & Ors. 2004 (4) SCT 590 and Union of India vs. Monika & Anr. 2018(2) SCT 104 to contend that the candidature of the reserved category candidate cannot be rejected simply on account of late submission of certificate and service of those candidates who were already appointed in service for want of natural justice and on the ground that they had gained 3 years' experience. It was also urged that by the time this Court was called upon to decide the matter, the selected and appointed candidate i.e. respondent No.4 has complete more than 10 years of service and as such it is not right to set aside his appointment at this stage.

(20). Heard learned counsel of the parties and gone through the record.

(21). The allegation as can be culled out is that the petitioner solely appeared in the interview held on 19.10.2012 in SC category for the post of Deputy General Manager (Plants). However, subsequently on 08.11.2012 again interview was held and respondent No.4 appeared in the said interview on 08.11.2012 for selection to the said post. Whereas candidate of respondent NO.4 stood rejected on 24.09.2012 (Annexure P8) on the ground that he did not append the requisite experience certificate with his application form. However, he was given granted liberty to move a representation/objection within 15 days therefrom, for the interview was scheduled to be held thereafter, on 19.10.2012. But the respondent No.4 did not move any such representation within the specified time, but a month later i.e. on 23.10.2012 (Annexure P10) which has

been accepted by the Commission and thereafter, was selected and appointed to the post in question.

(22). This Court vide order dated 02.05.2018 directed the respondents to furnish specific affidavit explaining the following points:-

- “(i) Whether respondent No.4 had, indeed, furnished all the documents, including the experience certificate, with his application form, before the closing date;*
- ii) Whether in terms of the advertisement, incomplete forms submitted by the candidates, were required to be out-rightly rejected;*
- iii) If the Commission had rejected the candidature of respondent No.4, then under what provisions/norms his representation for re-consideration of his candidature, could be considered;*
- iv) Whether respondent No.4 moved any such representation within the specified time, for it was specifically observed in the letter dated 24.9.2012 (Annexure P-8); that in the event no objections are filed within 15 days from the date of issuance of the said letter, no further correspondence will be entertained;*
- v) Whether, even in the normal parlance, after the candidature of a candidate is rejected owing to incomplete application form, he still can be granted another chance to make good the deficiencies for re-consideration of his candidature;*
- vi) And, if yes, whether all those candidates, whose forms were rejected for one reason or the other, were also given another opportunity.”*

(23). In compliance to the order dated 02.05.2018, an affidavit dated 28.05.2018 has been filed wherein it has been categorically averred that respondent No.4 furnished all the documents except experience certificate before the closing date i.e. 09.07.2012. As per general clarifications Note II (04) (07) of the Advertisement No.1, the incomplete and unsigned form without

proof of minimum required qualification etc. would render the candidate ineligible.

(24). On the point as to under what provisions/norms representation of respondent No.4 for re-consideration of his candidature, could be considered, it has been averred in the affidavit that representation dated Nil was received in the office of HPSC on 23.10.2012 in respect of rejection letter dated 24.09.2012 wherein he was required to submit the 'experience certificate' before the specified date i.e. 09.10.2012. The requirement of submission of experience certificate and/or objection within the specified date in terms of the rejection letter dated 24.09.2012, as per the affidavit of HPSC, is not rigid but relaxable as the Commission, in exercise of its powers took conscious decision to consider the representation of respondent No.4 considering the 'experience certificate' submitted after the specified date, to be valid.

(25). It is further informed that the Commission had not only considered the representation of respondent No.4 but also the representations of 7 other rejected candidates who had applied for the said post. Further, it is stated that the candidature of respondent No.4 was not rejected owing to 'incomplete application' form but on account of 'non-submission of the requisite experience certificates'. Not only this, the candidature of 7 other candidates (Annexure RR-1) who had applied for the same very post about which respondent No.4 had applied were rejected but on their representation, they were considered eligible and allowed to appear in the interview.

(26). As per the advertisement, the essential qualification prescribed by the respondent No.3-Commission, for the posts of Deputy General Manager (Plants) (Class-I) in HAFED, reads as under:-

“i) Degree in Mech.Engg. or degree in production/industrial Engg. Or degree/B.Tech in food processing technology Engg. With 3 years experience in each/respective category...

ii) xxxx xxxx xxxx”

(27). The closing date in the above-mentioned advertisement was fixed as 09.07.2012. Sub-Note (4) to (7) of Note II under the General Clarification of the Advertisement, which relevant in the present context, is reproduced as under:-

“4. Incomplete Application Form i.e. without proof of age and the minimum required qualifications will be straightway rejected without entering into any correspondence.

5. The eligibility of candidates with regard to qualifications and experience will be determined on the closing date for receipt of application Forms.

6. Haryana Public Service Commission will not be responsible for any delay on the part of Post Department or Courier Agency and all the applications received after the closing date will be rejected outright.

7. Incomplete Application Forms or unsigned Application Forms shall render the candidate ineligible.”

(28). In fact, in the “INSTRUCTIONS TO CANDIDATES FOR APPOINTMENT BY SELECTION” issued by the respondent No.3-Commission, it has been categorically mentioned in Clause-8 that the application should be accompanied by attested copies of the required certificates and those applications not accompanied by the prescribed certificate/unattested certificates will be rejected and that no subsequent date of interview will be given for the purpose of production of certificates. It was further instructed that no certificate is acceptable after the date of interview. Clause-8 of the said Instructions reads as under:-

“The applications should be accompanied by the attested copies of all the required certificates. The attestation should be made by a Gazetted Officer or by a Magistrate under the seal of his office giving the name of the Officer and his dated signatures. Original certificates must be produced at the time of interview, unattested copies of certificates will not be acceptable. If a candidate who fails to produce the original certificates at the time of interview, his candidature will be rejected and he will not be interviewed. No subsequent date of interview will be given and no appeal will be acceptable on this account. Photostat copies must also be attested. Application not accompanied by the prescribed certificates or accompanied by unattested certificates will be rejected and no correspondence will be entertained in this connection. Under circumstances beyond control a candidate may be permitted to produce certificate other than those which relate to determine his eligibility at the time of interview. No certificate is acceptable after the date of interview.”

(29). Clause-19 of the said Instructions also envisages that *“all achievements in any field will be acceptable if made before the last date of submission of application forms to the Commission”*. Clause-20 also states that *“any achievement in any field if not mentioned in the application form will not be accepted if a certificate is not produced before the closing date.”*

(30). Further as per the interview call letter issued by respondent NO.3-Commission, informing the date of interview as 19.10.2012, it was specifically mentioned in the Note given at the bottom of the call letter that the “date of interview will not be changed”. It also appears from the letter dated 24.09.2012 (Annexure P8) issued to respondent No.4 stating therein that the application form submitted by the respondent No.4 for the aforesaid post is being rejected since “you have not possessed 3 years experience in respective category”.

Besides, while rejecting the application form, the respondent No.3-Commission, for the reasons best known to them, also incorporated the following lines:-

“If you have any objection against the decision of the Commission, you can represent with documentary proof in support of your claim to the Commission within 15 days from the date of issue of this letter failing which your representation will not be considered and thereafter no correspondence will be entertained in this regard”.

(31). The petitioner has also placed on record the representation moved by the respondent No.4 which was moved on 23.10.2012 i.e. after 15 days of the interview which was held on 08.10.2012. The contents of the representation of respondent No.4 is reproduced as under:-

*“Haryana Public Service Commission
Receiving No.6395
Dated: 23.10.2012*

To

*Haryana Public Service Commission,
Panchkula*

Respected Sir,

It is submitted that I had applied in D.G.M. Plants H.Fed and the same was rejected by you on account of lack of experience. I fulfill the three years experience of Mechanical line. The copy of my experience of three years in Mechanical Line (photo stat copy) is attached herewith. Kindly give me an opportunity for interview.

Thanking you

*Applicant Sd/-
Ashok Kumar s/o Chunni Lal.. ”*

(32). A perusal of the copy of experience certificate showing respondent No.4 having acquired three years experience in Mechanical Line would show that the same was issued on 20.10.2012 i.e. after the cut-off date i.e. 09.07.2012. The same is reproduced hereunder:-

“To whom so ever it may concern

This is to certify that Mr. Ashok Kumar s/o Sh. Chunni Lal has been working as Associate Manager in our organization w.e.f. March 03, 2009 to till date. He has three years and eight months of experience in Mechanical Engineering Department. He is responsible for all the Mechanical Engineering related activities in the plant.

His present gross emoluments are Rs.62471/- per month.

We wish him success in his future.

For Claas India Pvt. Ltd.
Sd/- Sudhir Kumar Gupta
General Manager-Mechanical Engg. Deptt.

Date: October 20, 2012
Place: Morinda”

(33). The petitioner even sought copy of interview letter sent to respondent No.4 to appear for the interview on 08.11.2012, under the Right to Information Act. Besides, the petitioner also sought the grounds on which the application form of respondent NO.4, which was rejected, has been accepted after expiry of last date of submission of application form and under which provision of law which course of action has been adopted. Annexure A, as forwarded by the respondent No.3-Commission, which is reply to the RTI application of the petitioner, reads as under:-

<i>“Sr. No.</i>	<i>Information sought by applicant</i>	<i>Answer</i>
1.	Xxxx	Xxxx
2.	<i>Copy of Interview letter sent to Mr. Ashok Kumar in the Scheduled Caste category of Haryana for the above said post by the Commission to appear for interview on dt. 08.11.2012. If the copy of the same is not available in Haryana Public Service Commission, please mention under which rule is it provided that such records are not required to be maintained?</i>	<i>Only one copy of interview letter is prepared</i>
4.	<i>Ground on which the rejected application on Mr. Ashok Kumar was accepted after the expiry of the last date of submission of application form</i>	<i>Sh. Ashok Kumar had claimed his experience in his application form according to which on the basis of his application form he was called for interview by the order of the commission.</i>
5.	<i>Rule under which the rejected application</i>	<i>On the basis of representation</i>

	<i>form of Mr. Ashok Kumar was accepted</i>	<i>submitted by Sh. Ashok Kumar he was called for interview by the commission.</i>
6.	<i>Xxxx</i>	<i>Xxxx</i>
10.	<i>Copy of interview schedule on which date it is published for above said post three different dates i.e. 19.10.2012, 08.11.2012 and 06.12.2012</i>	<i>The date of interview was announced for 19.10.2012. As per orders of commission, <u>candidates on the basis of their representations were called for interview on 08.11.2012 and 06.12.2012.</u></i>

(34). A Full Bench of this Court in *Indu Gupta vs. Director, Sports Punjab, Chandigarh & Anr. AIR 1999 P&H 319*, considered whether it is obligatory on the part of the applicant to annex the requisite certificate along with the application form prior to the last date of its submission. The Full Bench observed that the advertisement/brochure has the force of law and that strict adherence to its terms and conditions is of paramount consideration and 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. The Full Bench further held as under:-

“14. The terms and conditions of the brochure imposes a clear obligation upon the applicant to make a specific claim and support such claim with requisite documents. The specific claim of the candidate would be liable to be entertained only if it is supported by the said documents. In absence thereof or if the application is otherwise incomplete, it would be liable to be rejected and the authorities concerned would be under no obligation to consider such claim. To stake a claim under a particular category is for the candidate to decide but once such a decision is taken by him he is obliged to strictly adhere and comply with the terms and conditions of the brochure and furnish all the requisite information asked for including submission of the certificate like gradation certificate in case of a claim being staked to sports category.”

xxxx xxxx xxxx

“16. In view of the above discussion the only unassailable and veritable view is that a candidate to such entrance test, in view of the terms and conditions of the brochure, afore-referred, is obliged to submit all the certificates required to annex along with the application and submit the same complete in all respects before the cut off date. In default thereto, no obligation is imposed upon the authorities concerned to entertain such application or to grant seat to that candidate.”

(35). At this stage, it would be appropriate to make reference to the judgment of a Division Bench of this Court in the case of **Mukta Bansal v. State of Punjab, 1997 (4) R.S.J. 796** where the Court held as under :--

"It is also equally a settled principle of law that the eligibility of the candidate has to be considered at the time and date meant for submission of application forms. It is also not disputed that the application of the petitioner was not complete by 25-6-1997, the last date for admission of firms. This is also not disputed that in absence of such a certificate the petitioner would not be eligible for claiming a seat in the sports category. The very foundation of the claim is based upon gradation certificate which admittedly was not submitted on the aforesaid date. The respondents obviously could not have considered the petitioner as eligible, if his application was not complete in all respects and was not accompanied with the gradation certificate as on 25-6-1997".

(36). A Full Bench of this Court in **Amardeep Singh Sahota v. State of Punjab, (1993) 4 Serv LR 673** had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration.

(37). In *Raj Singh v. Maharshi Dayanand University, 1994 (4) RSJ 289* another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law.

(38). Again, a Full Bench of this Court in *Sachin Gaur v. Punjabi University, AIR 1996 Punj & Har 109* took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. It is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Applications filed in violation of the terms of the brochure have only to be rejected.

(39). It has been held by the Rajasthan High Court in *Dr. Sri Kant Rao v. State of Rajasthan, (1975) 2 Serv LR 94* that "equality of opportunity will be determined for the purpose of Article 16 of the Constitution by the terms of advertisement calling for applications for filling up a post. Where in the advertisement, it was not suggested that the qualifications prescribed were relaxable or the applications would be entertained thereafter (on the expiry of the prescribed date), it will not be open to the competent authority to relax the terms of the advertisement.

(Emphasis applied)

(40). In the present case, firstly, as per list (Annexure P6), it was only the petitioner Mange Ram who was present in the interview, out of total 3 candidates, which was held on 19.10.2012. The application form of respondent No.4 stood rejected on 24.09.2012 on the ground of non-submission of 3 years experience certificate, however, 15 days time was granted to respondent No.4 to represent with documentary proof. Rejection of application form of respondent No.4 and simultaneous grant of 15 days time to represent in itself runs contrary to the very terms and conditions of the advertisement which, in no uncertain terms, stipulates that “**incomplete Application Form** i.e. without proof of age and the minimum required qualifications **will be straightway rejected** without entering into any correspondence” and that “the eligibility of candidates with regard to qualifications and experience will be determined **on the closing date** for receipt of application Forms. It is well settled that the advertisement has the force of law and that strict adherence to its terms and conditions is of paramount consideration and 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. That being so, under which provision of law did the respondent No.3-Commission called upon the respondent No.4 to represent within 15 days once his application form was outrightly rejected being incomplete. In fact, the provision of 15 days’ period enabling a rejected candidate to represent in support of his claim in itself is a practice unknown to law and hence is liable to be deprecated.

(41). Secondly, even after 15 days’ period granted to respondent No.4 which started from 24.09.2012 and in pursuance thereto, the respondent No.4 submitted his representation on 23.10.2012 i.e. after 29 days. Meaning thereby

that the respondent No.4 filed his representation much after the prescribed period of 15 days within which the respondent No.4 was required to represent. Another aspect which frowns this Court is that even the experience certificate submitted by respondent No.4 is of dated 20.10.2012 i.e. after the cut-off date prescribed by the Commission to be 09.07.2012 which is not in sync with the Instruction No.19 which provides that “*all achievements in any field will be acceptable if made before the last date of submission of application forms to the Commission*”. Therefore, re-consideration of representation of respondent No.4 after the rejection of his candidature vide Annexure P8 as also the acceptance of experience certificate dated 20.10.2012 of respondent No.4 issued after the cut-off date i.e. 09.07.2012, would amount to changing the rules of the game as drawn in the advertisement which is clearly impermissible. This view of mine is fortified by several decisions of the Supreme Court. [Ref. **P. K. Ramachandra Iyer v. Union of India 1984 (2) SCC 141**; **Umesh Chandra Shukla v. Union of India 1985 (3) SCC 721**, and **Durgacharan Misra v. State of Orissa 1987 (4) SCC 646**].

(42). Thirdly, the date of interview of respondent No.4, in the SC category, was fixed as 08.11.2012. In the said interview, as per list (Annexure R3), only the sole candidate i.e. respondent No.4 was called for the interview. Moreover, there is nothing on record to suggest that since various representations are being received from rejected candidates, as such interviews will be held on various dates so as to give a fair chance to other candidates. Had it been so, the Commission ought not to have rejected the candidature of applicants with incomplete application forms rather, they should have sent notice calling upon the applicants to make up the deficiency within a stipulated

period and thereafter, should have fixed the date of interview. Such whimsical act on the part of the respondent No.3-Commission only smacks of *mala fide*, ulterior motive, favouritism and nepotism giving space for tainted selection of their favourite candidate.

(43). It is well settled and requires no reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure as prescribed in the advertisement which has the force of law. Consequently, when a particular schedule is mentioned in an advertisement; the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must be mentioned in the advertisement. But in the present case, as per the information furnished by the Commission, there is no such power in the Rules which provide for rejuvenating the candidature of a rejected candidate. Moreover, the power of relaxation, if exercised has to be given due publicity which has apparently been given a go-bye. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India. Nothing has been placed on record to show that any public notice/notification/circular was issued or pasted that interviews for the post of Deputy General Manager shall be held on different dates.

(44). Fourthly, it is astonishing that the respondent No.3-Commission being a Government establishment, is not maintaining official record inasmuch as the information furnished under the RTI Act to the petitioner suggests that the copy of interview letter issued to respondent No.4 is not available on the official record of the respondent No.3-Commission since “only one copy of interview letter is prepared”. Furthermore, after having rejected the candidature of respondent No.4 vide Annexure P8, it was solely on the basis of representation submitted by respondent No.4 that he was called for interview by the Commission. It is heartbreaking to learn that the Commission, with its high stature of making selection for the whole State, is not being run by rule of law but on the influence of ‘representations’ made by a rejected candidate by permitting him another chance of appearing in the interview. All discretionary powers of executive authorities have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers. The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for each and every authority and therefore, no one, howsoever high he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise, it would be an exercise of power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations. The basic requirement of Articles 14 & 16 is fairness in action by the State, and non-arbitrariness in essence and substance

is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose.

(45). I, therefore, have no hesitation in holding that when the respondent No.3-Commission, in the present case, took into consideration the requisite experience certificate issued after the cut-off date, it acted with patent illegality, irrationality, arbitrariness and against the mandate enshrined in Articles 14 & 16 of the Constitution of India and on this ground itself, the selection of respondent No.4 is liable to be quashed.

(46). Accordingly, this writ petition is allowed and the recommendation dated 22.01.2013 issued by respondent-Commission vide which respondent No.4 has been recommended for appointment, is quashed. The respondent No.3-Commission is directed to recommend the name of the petitioner for appointment to the post of Deputy General Manager (Plants) (Class-I).

(47). This Court is, nevertheless, fully conscious of the legal position that appointment of a candidate who has erroneously secured public employment without fulfillment of minimum qualifications can always be annulled upon discovery of mistake. An appointment which is erroneous or illegal from the very inception does not clothe the appointee with any indefeasible right and such appointment is always subject to correctional decisions. However, this Court cannot be oblivious of the fact that the writ petition was filed way back in 2015 and by the time, this Court was called upon to decide the matter, the selected and appointed candidate viz. respondent No.4 has completed approximately ten years of service. It is well-settled that no man should suffer because of procedural delay. Broom has stated the maxim *actus*

curiae neminem gravabit — an act of court shall prejudice no man. Therefore, in the peculiar circumstances of the case, respondent No.2 – HAFED is directed to consider the desirability of adjusting respondent No.4 on a vacant post (if he is still in service), since the lapse, if at all, was on the part of respondent No.3-Commission and not on the part of the respondent No.4.

(48). Ordered accordingly.

17.07.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No