

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

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CWP-16193-2017 (O&M)

Reserved on:- 20.02.2023

Pronounced on:- 28.02.2023

BALWAN SINGH

... Petitioner

Versus

STATE OF HARYANA AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. RK Malik, Senior Advocate with
Mr. SS Randhawa, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

Mr. Ramesh Goyat, Advocate
for respondent No.3.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for issuance of a writ in the nature of Certiorari quashing the decision of the Selection Committee dated 04.01.2017 (Annexures P-3 and P-4), vide which the petitioner was declared unsuitable for the post of Assistant Professor, ENT Department.

Learned Senior counsel for the petitioner submits that the respondent-Department advertised various posts including two posts of Assistant Professor, ENT (General 1 , SC 1); that the petitioner applied for the aforesaid post under the Scheduled Castes (SC) Category and that the petitioner was called for the interview on 04.01.2017. He further submits that the service conditions of the said post, were to be governed by statutory Rules called Haryana Medical Education Service Rules,

1988 (hereinafter referred to as the Rules, 1988); that as per Appendix F to the Rules, 1988, the total marks for the post in question were 100, out of which 75 were earmarked for the qualifications and other extra curricular activities and 25 marks for interview; that, though, in the said criteria, maximum marks have been prescribed, yet the fact remains that no minimum marks have been prescribed, so as to adjudge the suitability of a candidate and that in the absence of the prescribed minimum marks, the Selection Committee had no occasion to declare the petitioner unsuitable for the post in question. He, thus, submits that once the Rule making authority has not prescribed any minimum marks, then the Selection Committee, has no jurisdiction to declare a person unsuitable for any post and thus, prays that the petitioner is entitled for appointment against the post in question.

While placing reliance upon the judgment rendered by the Hon'ble Apex Court in Durgacharan Misra Vs State of Orissa, 1987 (4) SCC 646, it is contended by the learned Senior counsel for the petitioner that the Committee, constituted under the Rules, must follow the Rules and select candidates in accordance with the Rules. It is further contended that the Committee of its own cannot prescribe any additional requirements for selection either as to eligibility or suitability and the decision of the Committee to prescribe the minimum marks to be secured at the viva-voce test would, therefore, be illegal and without any authority. The relevant extract from the said judgment, would read as under:-

'The Rules have been framed under the proviso to Article 309 read with the Article 234 of the Constitution. Article 234 requires that the appointment of persons other than District Judge to the Judicial Service of State shall be made by the Governor of the State. It shall be in accordance with the rules made by the Governor in that behalf after consultation with the State Service Commission and with the State High Court. The Rules in question have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore faithfully follow the Rules. It must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva-voce test would, therefore, be illegal and without authority.

In the result we allow the petition and quash the selection made by the Orissa Public Service Commission with a direction to redo the select list on the basis of the aggregate marks obtained by the candidates in the written examination and at the viva-voce test and in the light of the observations made. The list so prepared shall be forwarded to the Government as required under rule 19 of the Rules for appointments as Munsifs. The persons who fall within the revised list, if they are already in service need not be disturbed. Their inter-se seniority, may however, be regulated as per the rankings in the revised list.

In the circumstances, however, we make no order as to cost'.

Further relying upon the judgment rendered by the Hon'ble Apex Court in Umesh Chandra Shukla vs Union of India and others, 1985 (3) SCC 721, it is contended by the learned Senior counsel for the petitioner that the selection committee has no power to prescribe the minimum marks, which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in Appendix. Reference was made to the following extract:-

'.....We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under rule 18 of the Rules is not legal. We, therefore, quash the list prepared by the Selection Committee and direct that a fresh list shall be prepared in order of merit on the basis of the aggregate of the marks obtained by the candidates at the written examination and at the viva voce test without taking into consideration the moderation marks added by the High Court and without reference to the decision of the Selection Committee that candidates who had obtained less than 600 marks in the aggregate should not be included in that list. It follows that the said list should contain only the names of the 27 candidates who had secured the minimum marks prescribed by the Appendix to the Rules for appearing at the viva voce

test. The appointing authorities directed to treat the final list so prepared as the list forwarded to it under rule 18 of the Rules. On the basis of the said list appointments will now have to be made in accordance with law and relevant Government orders providing for reservation of posts to candidates belonging to Scheduled Castes/ Scheduled Tribes and other backward classes. If in accordance with the interim order made by this Court any candidate has been appointed as a member of the Delhi Judicial Service his continuance in the service or his seniority shall be governed by the list to be prepared in accordance with the directions issued above. These petitions are accordingly allowed. There shall be no order as to costs'.

Further, reliance has been placed upon the order dated 02.03.2017 passed by a Coordinate Bench of this Court in CWP-4866-2015 titled as Jyoti Rani and Others vs Bhagat Phool Singh Mahila Vishwa Viddyalaya, Khanpur Kalan Sonapat and others. The relevant extract would read as under:-

'Therefore, observation made by the selecting committee "quality of the research papers as well as performance in the interview was not satisfactory" is set aside and the matter is remanded to the selecting authority for reconsideration of the petitioners' candidature pursuant to the advertisement dated 1.7.2013 (Annexure P-1) within a period of two months from today. Since no bench mark is stipulated for selection. Therefore, respondents cannot apply any principle of bench mark for selection.

At this stage, learned counsel for the respondents submitted that respondents issued fresh advertisement.

Until the selection process pursuant to the advertisement dated 1.7.2013 (Annexure P-1) is complete, the respondents are directed not to proceed with the process of selection to the post of Assistant Professor (English) for one SC post with reference to second advertisement dated 2.6.2014 (Annexure P-5).

Petition stands disposed of.

On the other hand, learned counsel for respondent No.3 would argue that the Selection Committee constituted in the present case comprised of Vice-Chancellor; Pro-Vice-Chancellor; Director, Pandit BD Sharma University; Director/Principal of the College, Director, General Health Services, Director General, Medical Education and Research, Haryana, Head of the Department concerned of PGIMS Rohtak, two outside experts and Registrar of the University of Health Sciences. Rohtak; that the said Committee was the only recommending body, which consisted of eminent experts from the respective subjects; that the Committee had thoroughly interviewed the petitioner and one Dinesh Kumar and that the petitioner had secured 38.69 marks out of 75 marks under the head qualification and other curricular activities and 05 marks in interview out of 25 marks (total 43.69 marks), whereas Dinesh Kumar had secured 33.14 and 8 marks respectively (total 41.14 marks) and thus, a conscious decision was taken by the Committee in declaring both the candidates 'unsuitable', as they have miserably failed to secure good marks, in order to show their competence for the post of Assistant

Professor, ENT Department.

Learned counsel for respondent No.3 further submits that the criteria of not prescribing minimum marks was/is applicable to all the candidates appearing in the interview; that the marks vary according to the performance of the candidates in the field of career, experience and extra curricular activities and that in the present case, 75 marks were prescribed for qualification/experience and other curricular activities and 25 marks for interview.

Learned counsel for respondent No.3, while further rebutting the argument of the learned Senior counsel for the petitioner, submits that in the case of 'Durgacharan Misra' case, the written test was conducted under the Orissa Judicial Services Rules, 1964 and in the said examination minimum marks were prescribed, whereas in the present case there was no written test and thus, the same is not applicable to the present case and that, the other judgments relied upon by the learned Senior counsel for the petitioner are not applicable to the present case, being distinguishable on facts. He, thus, submits that once the selection committee has thoroughly assessed the competence of both the candidates, as per their ability and found them unsuitable, the petitioner has no right to challenge the same and that too after participating in the entire selection process.

In support of his contentions, learned counsel for respondent No.3 relies upon the judgment passed by the Hon'ble Supreme Court in Major General Ipa Dewan vs Union of India, 1995 (3) SCC 383. An emphatic reference has been made to the following extract:-

'.....13. So far as the non-selection of the appellant by the Selection Board for promotion to the rank of L.t. General is concerned, we see no illegality in the procedure adopted by them. We have also perused the work sheets relating to all four officers considered. Not only the appellant but two other seniors to the person selected were overlooked. The selection, it may be noted, was not based on seniority, but on merit. There is no allegation of malafides or bias against the members of the Selection Board. All that can be and is suggested against the process of selection is that the Board took into consideration the aforesaid adverse remarks. Assuming that the said remarks were indeed taken into consideration, the non-selection of the appellant cannot be faulted. Firstly, it cannot be said that the said remarks alone were the cause of non-selection; the non-selection of appellant appears to be based on an over-all assessment. Secondly, the statutory complaint preferred by the appellant against the said remarks have been rejected by the Central Government, no doubt subsequent to the said consideration. As stated above, the situation may have been different had the said complaint been upheld partly or wholly. In the circumstances, the Court cannot sit as an appellate authority over the acts and proceedings of the Selection Board.

14. We are also satisfied on a perusal of the relevant record that the adverse remarks made by the Chief of the Army Staff against the appellant are based upon and consistent with the report of the Court of Enquiry regarding the responsibility of and the role played by the appellant in processing the cases

against Nanda.

15. We make it clear that we express no opinion upon the validity or otherwise of the orders of the Central Government rejecting the statutory complaint preferred by the appellant against the adverse remarks aforesaid. If it is open to the appellant in law to question the said orders, he can always do so in accordance with law'.

While relying upon Major General Ipa Dewan's case (supra), it is contended by the learned counsel for respondent No.3 that the petitioner has not alleged any mala fide or bias against any member of the selection committee, that has found him unsuitable for the post in question.

Learned State counsel has argued that once the petitioner had participated in the entire selection process, he cannot turn around and challenge the same, after having been declared unsuitable. In support of his contention, learned State counsel relies upon the judgment delivered by the Hon'ble Apex Court in Madras Institute of Development Studies and another vs Dr. K. Sivasubramaniyan and others, 2015 AIR (Supreme Court) 3643. It is, thus, contended that the selection committee in the present case consisted of eminent persons/experts and their integrity cannot be doubted.

I have heard the learned counsel for the parties.

The petitioner had applied for the post of Assistant Professor, ENT Department under Scheduled Castes (SC) Category and was called for the interview on 04.01.2017. The petitioner was interviewed by an

expert committee, which consisted of Vice-Chancellor; Pro-Vice-Chancellor; Director, of the Pandit BD Sharma University; Director/Principal of the College, Director, General Health Services, Director General, Medical Education and Research, Haryana, Head of the Department concerned of PGIMS Rohtak; two outside experts and Registrar of the University of Health Sciences. Rohtak. The excellence/competence of the petitioner and Dinesh Kumar was assessed after taking into consideration various aspects i.e. career (percentage of marks, attempts, position of medal, publications and paper presentation), experience and extra curricular activities. After due consideration, both the candidates were given marks by the selection committee, wherein the petitioner had secured 38.69 marks (in academic qualification) and 05 marks (in interview) i.e. total 43.69 marks, whereas Dinesh Kumar had secured 33.14 and 8 marks respectively i.e. total 41.14 marks. Thus, they were rightly declared 'unsuitable' by the selection committee, keeping overall assessment.

In Madras Institute of Development Studies's case (supra), the Hon'ble Apex Court has categorically held as under:-

'18. The contention of the respondent no.1 that the short-listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of

eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent- writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor:

19. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

21. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came

for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal’s case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting:

“It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an

unfavourable report, he adopted the device of raising the present technical point.”

As noticed above, there are no allegations of any mala fida and bias on the part of the members of the Selection Committee. The criteria adopted by the Selection Committee, cannot be dispute by the petitioner at this stage, when he had duly participated in the selection process. The challenge of the petitioner to the selection process, after having participated in the sane and after having remain unsuccessful, is nothing but an afterthought. The judgments relied upon the learned Senior counsel for the petitioner, arising out of different set of facts, are distinguishable.

In view of the above and the law laid down by the Hon'ble Apex Court, I find no merit in the present petition.

Dismissed.

28.02.2023

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

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