IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17431-2018
Date of Decision : 20.01.2023

Shakti Raj ..... Petitioner

Versus

State of Haryana and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Anurag Goyal and Mr. Jawahar Lal Goyal, Advocates
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Shreenath A.Khemka, Advocate
for respondent No.3.

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VIKRAM AGGARWAL, J

1. By way of the present writ petition, the petitioner seeks quashing of the appointment of respondent No.3 to the post of Junior Draftsman in the Department of Town & Country Planning, Government of Haryana. He also seeks recommendation of his name for the said post as also an inquiry into the process of appointment of respondent No.3.

2. Vide advertisement dated 01.12.2015 (Annexure P-1), online applications were invited by respondent No.2 i.e. Haryana Staff Selection Commission for recruitment to different posts. There were 50 categories under which different posts were advertised in the State of Haryana. Category No.8 pertained to 10 posts of junior draftsman from different categories viz. general, SC, BCA etc. and included two posts of junior draftsman for the Scheduled Castes

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category. These posts are the subject matter of the present petition. The petitioner applied under the Scheduled Castes category for the post of junior draftsman by way of an online application (Annexure P-2). Written examination was conducted on 18.05.2017 in which the petitioner duly appeared and succeeded vide result dated 10.08.2017 (Annexure P-3). Initially four candidates were called for interview vide notice dated 29.12.2017 (Annexure P-4), being twice the number of vacancies advertized for the posts of junior draftsman. The cut of marks were indicated as 94 in the said notice. Subsequently, two more persons including the petitioner were called for interview telephonically and thereafter the result was declared on 15.05.2018 (Annexure P-5). The petitioner did not succeed but on a perusal of the result he found that two candidates including respondent No.3 were amongst the initial four candidates called for interview despite obtaining 94 marks in the written examination whereas the petitioner had obtained 98 marks in the written examination. The petitioner alleges that the whole exercise was carried out by the respondents with a view to illegally select and appoint respondent No.3 despite the fact that she had got lower marks in the written examination than the petitioner and was not eligible to be called for the interview.

3. The writ petition has been opposed by the respondents. A short reply has been filed by respondent No.1 stating that appointment letters had been issued by respondent No.1 on the basis of the recommendations made by respondent No.2 and, therefore, it had no role to play in the matter.

4. Respondent No.2 has filed a separate reply wherein it has been averred that during scrutiny of documents after the declaration of the result of the written examination, the petitioner was found to be not eligible as in his experience certificate, his salary was not mentioned. Similar was the case of one Mr. Raj Pal and accordingly four eligible candidates were shortlisted for interview

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which included respondent No.3. However, lateron, by adopting a fair and transparent procedure, the petitioner and Raj Pal were also called for interview which was held on 12.01.2018 but the petitioner could not be selected as he got lower marks in the interview. The petitioner was accordingly kept in the waiting list. The petitioner obtained 110 marks in total which included 98 marks in the written examination and 12 marks in the interview whereas respondent No.3 obtained 114 marks in total which included 94 marks in the written examination and 20 marks in the interview. It has also been averred that once the petitioner had appeared in the interview and had participated in the entire process, it was not open for him to subsequently challenge the selection process.

5. Respondent No.3 has also filed her separate written statement raising primarily the same objection that once the petitioner had participated in the selection process, it was not open for him to challenge the same once he was not appointed. On merits also, the writ petition has been opposed.

6. I have heard learned counsel for the parties and have perused the case file.

7. Learned counsel for the petitioner has strenuously urged that the appointment of respondent No.3 is illegal and that the same, therefore, deserves to be set aside. It has been submitted that as per the advertisement, no experience was required in case of a candidate being intermediate in architecture and the experience was required only in case the candidate was having a diploma. He has referred to the various documents annexed by him with the writ petition and has contended that the sequence of events would show that the appointment of respondent No.3 is illegal and arbitrary. It has been submitted that the respondents manipulated the entire process of appointment with a view to appoint respondent No.3 and deny the benefit of appointment to meritorious candidates like the

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petitioner who deserved to be appointed on the basis of their performance in the examination.

8. Learned counsel for the State has sought to justify the process adopted by the State and the consequential appointment of respondent No.3 on the lines of the pleadings of the State in the written statement.

9. Learned counsel for respondent No.3 has, with equal vehemence, opposed the writ petition. It has been submitted that Raj Pal who was one of the candidates who had not been called for interview had approached this Court by way of ***CWP No.138 of 2018***, titled as ***Raj Pal vs. Haryana Staff Selection Commission*** which was disposed of vide order dated 10.01.2018 and Raj Pal was ordered to be interviewed. It has been submitted that the petitioner has not disclosed about the said fact in the writ petition and has, therefore, tried to mislead the Court. It has further been contended that once the petitioner had participated in the entire selection process, it would not be open for him to challenge the same subsequently. Learned counsel for respondent No.3 has also submitted that if the case of the petitioner is found to be having merit, the candidature of respondent No.3 should be protected and since respondent No.3 has been working on the said post for a number of years, now, her appointment should not be set aside. In support of his contentions, learned counsel has placed reliance upon the judgments of Hon'ble Supreme Court in ***Madan Lal and others vs. The State of Jammu & Kashmir and Ors. 1995 SCC (3) 486, Vikas Pratap Singh and Ors. vs. State of Chhattisgarh and Ors,*** *decided on* ***09.07.2013 in Civil Appeal Nos.5318-5319 of 2013 and Ran Vijay Singh & Ors. vs. State of U.P. & Ors., decided on 11.12.2017, in Civil Appeal No.367 of 2017.*** Learned counsel for respondent No.3 has lastly submitted that there are a number of posts vacant in the general category and, therefore, the petitioner can be adjusted qua the general category

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post. Reference in this regard has been made to order dated 22.12.2020, passed in CWP-381-2018, titled as Sumit Kumar vs. State of Haryana & Anr.

10. After hearing learned counsel for the parties and perusing the case file, this Court is of the opinion that respondent No.2 adopted a totally illegal procedure with a view to appoint respondent No.3. It has to be borne in mind that respondent No.2 was dealing with public appointments and was expected to adopt a fair and transparent procedure without extending any favour to anyone. However, instead of adopting a transparent procedure, respondent No.2 manipulated the process thereby not only commiting an illegality but also shaking the trust of the common man. The advertisement (Annexure P-1) was issued on 01.12.2015 for 50 categories of posts. Category No.8 dealt with 10 posts of junior draftsman out of which two posts were reserved for the scheduled castes category. The relevant part of the advertisement dealing with category No.8 reads as under:-

Cat. No.8.

10 post of Junior Draftsman (Re-advertised)

(GEN=2, SC=2, BCA=2, BCB=2, ESM GEN=1, ESM BCA=1, Total=10 **(PHC OH=1)**

E.Q.

(i) Matric or its equivalent.

(ii) Intermediate in Architecture;

OR

Successful completion of three years degree course in Architecture from an institution;

OR

Three years diploma in Architectural Assistantship from an Institution with two years experience as a draftsman in an Architectural or Town Planning Office; or Diploma certificate in Civil Draftsmanship from an institution with three years experience in an Architectural or Town Planning Office;

(iii) Hindi/Sanskrit up-to Matric standard or higher education.

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Age: 17-42 years

Pay Scale: ₹9300-34800+₹4000 GP

11. A perusal of the aforesaid would show that there were three educational qualifications, the first being matric or its equivalent. The second qualification had three parts. The first part was Intermediate in Architecture, the second was three years degree course in Architecture and the third was three years diploma in Architectural Assistantship with two years experience as a draftsman or diploma in Civil Draftsmanship with three years experience. The third basic educational qualification was Hindi or Sanskrit upto Matric standard or higher education. It, therefore, means that if someone was an intermediate in Architecture or was having a three years degree course in Architecture, there was no requirement of experience. The requirement of experience was three years diploma in Architectural Assistantship or a diploma in Civil Draftsmanship. Admittedly, the petitioner was Intermediate in Architecutre which is clear from his form (Annexure P-2) No doubt, the said form also mentions about experience as a draftsman and experience in Architecture or Town Planning which also the petitioner had. However, the plain language of the advertisement shows that there was no requirement of experience if a person was an Intermediate in Architecture. The result of the written examination was declared on 10.08.2017 vide Annexure P-3 and the petitioner who had Roll No.1150800074 was found to have cleared the examination. It was mentioned that two times the eligible candidates against the advertised posts had been called for scrutiny of documents. The petitioner was called for scrutiny of documents but was not called for interview initially. However, it appears that once, one Raj Pal knocked the doors of the Court vide CWP No.138 of 2018, which was allowed vide order dated 10.01.2018, the petitioner alongwith Raj Pal was called for interview telephonically. The final

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result was declared after the interview and the detailed result was also declared on 28.03.2018 wherein the petitioner was kept in the waiting list and two candidates namely Suman Devi and respondent No.3 were selected. Raj Pal who had filed CWP No.138 of 2018 could not make it even in the waiting list. When the petitioner obtained the detailed result which is on record as Annexure P-5, he found that respondent No.3 had obtained 94 marks in the written examination and the petitioner had obtained 98 marks and still he was not called for interview. His apprehension was correct because the record shows that this was deliberately done by respondent No.2. In its written statement, respondent No.2 has stated that the petitioner initially was not called for interview because he was not eligible as his experience certificate did not depict his salary but lateron adopting a transparent procedure he was called for interview. Respondent No.2 very cleverly concealed the factum of Raj Pal having filed CWP-138 of 2018 vide which ₹50,000/- costs were imposed upon respondent No.2. The order dated 10.01.2018, passed in CWP No.138 of 2018 (Raj Pal vs. Haryana Staff Selection Commission) reads as under:-

> "1. In compliance of the previous order, original record has been produced in Court by Ms. Shruti Jain Goyal. A perusal of the record shows that the petitioner makes the cut above the last candidate called for interview. His case has been rejected on a frivolous and untenable ground that of the two certificates of experience produced by the petitioner from 'Jaiswal & Associates', one bears the rubber stamp of the firm while the other does not. Even if the one bearing rubber stamp is accepted and the other ignored, the result would be the same. They both certify that the petitioner worked in the organization from 05.07.1995 to 17.07.1997 as an Architectural Assistant.
>
> 2. Ms. Goyal on instructions from the Haryana Staff Selection Commission submits that the certificates do not disclose the registration number of the firm of Architects run in the name and style of 'Jaiswal & Associates'. This is an argument only to be noticed and

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rejected. Law does not require an architect and his associates should form a company or a firm which is registered under the regulatory laws.

3. Having heard learned counsel for the parties and keeping in view the fact that the petitioner is higher in merit in the written examination than the last candidate called for interview, I deem it appropriate to allow this writ petition. The decision debarring the petitioner in the interview process is held to be an utterly perverse decision and the same is not sustainable and is accordingly quashed. The petitioner shall be interviewed on 12.01.2018 for the post of Junior Draftsman advertised in the Town & Country Planning Department, Haryana.

4. Since the ground taken for ignoring the petitioner is wholly wanton and fallacious, the Haryana State Selection Commission is directed to pay ₹50,000/- as costs to the petitioner at the time of interview for needlessly compelling him to approach this Court and waste its time. Costs are made recoverable by the respondent from those who took the impugned decision without any application of mind.

5. It will be open to the respondent in the event of appointment of the petitioner, to verify the aforesaid certificates, in case of doubt.

6. A copy of this order be given to the learned counsel under the signature of the Bench Secretary."

12. The position which finally emerges is that initially four candidates were called for interview i.e. Suman Devi Roll No.1150800127 who got 102 marks in the written examination; Sanjay Kumar Roll No.1150800298, who had/got 94 marks in the written examination; Neha Chandel (Respondent No.3) Roll No.1150800307, who got 94 marks in the written examination and Raman Kumar Roll No.1150800511, who got 98 marks in the written examination. The petitioner and Raj Pal were left out on the ground that they were not eligible as their experience certificate did not mention the salary. They were left out wrongly

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because in so far as the petitioner is concerned there was no requirement of experience once the petitioner was an Intermediate in Architecture. Even in the case of Raj Pal, the action of respondent No.2 in not calling him for interview was adversely commented upon by this Court vide order dated 10.012018 in CWP No.138 of 2018 and the said order has also attained finality. It is, therefore, very clear that respondent No.2 adopted a completely illegal and arbitrary procedure. Subsequently, respondent No.2 had to call the petitioner for interview since Raj Pal was also called but it exercised the discretion vested in it and awarded less marks to the petitioner in the interview than respondent No.3 so that she could be selected. Since only four persons were to be called for interview, had respondent No.2 acted fairly, respondent No.3 would not have been eligible for being called for the interview. Once she was not eligible for being called for interview, her subsequent selection and consequential appointment would also be illegal.

13. This Court, for once, was inclined to refer the matter to some Centralized Investigating Agency which could examine the records of respondent No.2 to find out more such illegalities and irregularities. However in the case of ***Dr. Manik Bhattacharya vs. Ramesh Malik & Ors. 2022 (4) SCT 373***, the Hon'ble Supreme Court has held that CBI probe should not be ordered straight-away in matters of illegal public appointments unless allegations are so outrageous and perpetrators of the alleged offences are so powerful that investigation by the State police would be ineffectual. This Court, therefore, chooses not to adopt the said course of action.

14. I have gone through the judgments relied upon by learned counsel for respondent No.3. In ***Madan Lal's case (supra),*** it was held by the Hon'ble Supreme Court that once someone takes a chance and appears in the selection process, it would not be open for such a candidate to challenge the selection

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process only because the result of the interview is not palatable to him and he had not succeeded in the same. This judgment would not help respondent No.3 and will not demolish the case of the petitioner because in the present case, the petitioner was not aware of the manipulation committed by respondent No.2 and it is only when he got the complete result that he found out that respondent No.3 had obtained 94 marks in the written examination whereas he had obtained 98 marks and he had, therefore, been deliberately left out on a flimsy ground. Once the petitioner was not aware of what had happened, it was not expected from him to have raised any dispute or to have protested earlier. In ***Vikas Pratap Singh's case (supra),*** the Hon'ble Apex Court held that ouster of persons from service after successful training and having served the State for more than three years would cause undue hardship to them and ruin their lives and careers and they would also suffer an irreparable loss as they had become over-age and had lost the opportunity to appear in the subsequent examination. In ***Ran Vijay Singh's case (supra)***, also a similar view was taken.

15. Though there is no dispute in the ratio of law laid down in the said judgments, these would also not come to the aid of respondent No.3 as the appointment of respondent No.3 is completely illegal as she was not eligible to be called for interview. Merely because respondent No.3 has now served for three years would not make her appointment legal. In the judgments under reference, there was no such illegality which had been committed. In both cases, the issue was of re-evaluation and re-appreciation of the answer sheets and there was no manipulation of records and consequently no illegal appointments. No illegality can be justified by mere efflux of time. This Court has, therefore, no hesitation in holding that the appointment of respondent No.3 was illegal. No direction regarding adjusting the petitioner against a general category post can also be given

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as the direction in CWP-381 of 2018 was on the basis of the statement given by the State counsel and not otherwise.

16. In view of the afore-mentioned facts and circumstances, the writ petition is allowed. The appointment of respondent No.3 is set aside being illegal. Respondent No.2 is directed to re-frame the final result and offer appointment accordingly. Further, for having committed this illegality, this Court deems it appropriate to impose costs of Rs.1,00,000/- on respondent No.2. It is expected that the State of Haryana will look into the matter and fix the responsibility for the illegality committed by respondent No.2.

(VIKRAM AGGARWAL)
JUDGE

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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No

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