

112

2023:PHHC:166553

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

CWP-16480-2023

DECIDED ON: 1st AUGUST, 2023

JYOTI NAGIL

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

COARM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Akshay Kumar Jindal, Advocate
For the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* to quash the order/communication dated 19.02.2022 (Annexure P-5) vide which the candidature of the petitioner for the post of Senior Manager (Estate) has been rejected. Another prayer has been made for issuance of a writ in the nature of *Mandamus* directing the respondent No.2 to consider the candidature of the petitioner for the post of Senior Manager (Estate) and for the post of Deputy Director (Project).

2. Learned counsel for the petitioner submits that in pursuance to Advt. No. 1 (10) (Annexures P-1 & P-2), the petitioner has applied for the advertised post of Senior Manager (Estate) and Deputy Director (Project) issued by the competent authority. The petitioner was called for written test

and after qualifying the same, he was called for scrutiny of documents on 22.11.2021 and 23.11.2021. Thereafter, the petitioner received an email dated 19.02.2022 (Annexure P-5) wherein, it was mentioned that he does not possess three years experience in an Executive Position and has not submitted his photograph. He was also directed to submit a representation.

3. The sole issue which is to be decided by this court in the present writ petition, is as to whether the candidature of the petitioner can be considered.

4. On 21.07.2018, Haryana Staff Selection Commission has advertised 7 posts of Senior Manager (Estate) under Haryana State Industrial and Infrastructure Development Corporation Ltd, for which last date of submission of application was prescribed as 20.08.2018. The essential qualification for the said post is reproduced as under:-

Essential qualification

- (i) *1st Class B.E./B.Tech or MBA or both having minimum 6 years relevant post qualification experience in a public Undertaking or an organization of repute, out of which atleast 3 years experience should be in an executive position. L.L.B will be an added advantage.*
- (ii) *Should be proficient in computer.*
- (iii) *Hindi/Sanskrit upto Matric Standard or Higher Education.*

5. Similarly, on 22.05.2019, Haryana Staff Selection Commission has advertised the post of Deputy Director (Project) (Group-A) under Haryana Industries and Commerce Department, for which last date of submission of application was prescribed as 24.06.2019. The essential qualification for the said post is reproduced as under:-

Essential qualification

- (i) Degree in Engineering or Technology with 1st Division from recognized University.
- (ii) Hindi or Sanskrit upto Matric Standard or higher education.
- (iii) Minimum 03 years experience in supervisory/managerial capacity in a Private Industry/Semi Government Undertaking/Department.

6. From perusal of afore-said clause it is clear that the candidate should have 3 years minimum experience in supervisory/managerial capacity in a Private Industry/Semi Government Undertaking/Department.

7. As per settled proposition of law in case titled as ***Balwinder Kaur Versus State of Punjab and others reported as 2018 (1) SCT 229***, the conditions of advertisement are sacrosanct and cannot be relaxed/violated otherwise it would amount to discrimination with the candidates. The relevant part of Judgment is reproduced here as under:

“It is by now well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from. If the petitioner's claim for validation of more than one year old B.C. Certificate is accepted, it would result to discriminatory consequences as there might be several other candidates who may have relied upon such expired certificates and have been denied benefit of reservation. Likewise, if the validity period of such like certificate is overlooked, it would be self destructive to the objectives of the reservation policy. A reference in this regard may be made to the judgement dated 18.8.2011, passed by this Court in CWP No.9859 of 2009 (Sukhjit Kaur Vs. State of Punjab and others).

An identical issue arising from a recruitment process initiated vide advertisement dated 23.9.2009 issued by the Education Department was dealt by a Coordinate Bench of this Court in

CWP No.5560 of 2011 (Jaspal Kaur and others Vs. State of Punjab and others) and other connected petitions decided on 2.11.2011. The relevant condition in advertisement dated 23.9.2009 which was the subject matter of controversy in Jaspal Kaur's case (supra) was identical to clause 6 pertaining to the present case. The B.C. Certificates furnished by the candidates in Jaspal Kaur's case (supra) were also not as per the time frame stipulated under the advertisement and as such were treated not valid. Challenge to the same was negated by the Coordinate Bench in the judgement dated 2.11.2011 in Jaspal Kaur's case (supra). It would be useful to extract the judgment in Jaspal Kaur's case (supra) herein below:

This order shall dispose of Civil Writ Petitions Nos. 22881 of 2010 and 3990, 4077, 4696, 4788, 5514, 5560, 5596, 5837, 6026, 7449, 7992, 8749, 8889, 11625, 11593, 12653, 12658, 12702, 12708, 12907, 13042, 15212 and 18493 of 2011, as the same broadly similar facts and issues, hence need not to be dealt with separately. For brevity, the facts are taken from Civil Writ Petition No. 5560 of 2011.

2. Suffice it to mention that the petitioners applied for different teaching posts for appointment in the Education Department, Punjab in the one or the other reserved category but their categories have been subsequently changed by the respondents after rejecting their Backward/Dependent of Ex-Serviceman Certificates, consequently treating them in the open category. The common issue raised by the aggrieved petitioners pertains to the justification of change of their respective category.

3. Petitioners in these cases were applicants for one or the other teaching posts in response to the Advertisement dated 23.09.2009, followed by the Corrigendum dated 27.09.2009. They belong to reserve categories of Backward Class or Dependent of Ex-Serviceman. The

Advertisement dated 23.09.2009 (Annexure P-2) containing Clause-6 regarding validity of a Backward Class Certificate is reproduced herein as under:

6. The Certificate of B.C. is to be within one year from the last date of submissions and this Certificate should be in terms of the letter dated 17.01.1994 and 17.8.2005 issued by the Department of Welfare, Punjab Government.

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:

Condition No. 6: The Certificate of B.C. Category should not be more than 1 year prior to the last date of submission of applications and this Certificate should be as per the Punjab Government, Department of Welfare Letter No. 1/41/93-RS/1/209 dated 24.2.2009.

Similarly, as regard to Dependents of Ex-Servicemen, the advertisement stipulates as follows:

The reservation under Ex-serviceman quota is applicable only in the case of residents of Punjab and in case the Ex-serviceman himself is not a candidate then this reservation would be applicable for the dependents. Such Ex-Servicemen/dependents would present the original certificate made prior to the last date of submission of applications and issued by the competent authority appointed by the Government at the time of counselling.

The subsequent Corrigendum issued on 27.09.2009 (Annexure P-3) further stipulates as follows:

Condition No. 8: The candidates seeking reservation under Freedom Fighter Quota will have produced the original certificate made prior to the last date of submission of applications in

terms of Punjab Government letter No. 4-13- 8P3-95/Special-477 dated 24.9.1998 and letter No. 4-13- 8P2-25/Special/62 dated 11.2.1999 and issued by the competent authority appointed by the Government at the time of counselling.

4. Notwithstanding the explanation(s) or justification given by the petitioners, the fact of the matter is that their Certificates of Backward Class or as Dependents of Ex-Servicemen, as relied upon by them, were more than one year old in the case of Backward Class candidates and/or the original Certificates were not produced in case of Dependents of Ex-Servicemen. Consequently, their candidatures for the reserved category have been rejected, treating them in the open category.

5. An identical question came up for consideration before a Co-ordinate Bench in Civil Writ Petition No.11647 of 2008 decided on 18.5.2009 (Loveljeet Kaur and others Vs. The State of Punjab and others) and the claim was turned down after observing as follows:

The requirement of the notification is that the Certificate should not be older than one year preceding the last date for submission of the applications. All these Backward Class Certificates produced by the petitioners except petitioner No. 6, were issued much after the last date and, thus, cannot be considered for the purposes of selection against the Backward category. No material has been placed on record to show that the petitioners produced Certificates in accordance with condition No. 6 of the advertisement issued by the competent

authority within one year preceding the last date for submission of the applications.”

(emphasis supplied)

6. *Thereafter a bunch of writ petitions were dismissed by this Court along with Civil Writ Petition No. 9859 of 2009 (Sukhjit Kaur V. State of Punjab and others) on 18.08.2011 supplementing the above reproduced reasoning as under:*

It is well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from on pick and choose basis. If the petitioner's claim for validation of more than one year old Backward Class Certificate is accepted it shall lead to discriminatory consequences as there might be several other candidates who may have relied upon such expired Certificates and have been denied the benefit of reservation. Similarly, if the validity period of such like Certificates is over looked, it can be self destructive to the object of the reservation policy which consciously excludes those who are in creamy-layers.

(emphasis supplied).”

8. The view taken by the Coordinate Bench in **Jaspal Kaur's** case (supra) would apply squarely to the facts of the present case. No exception as such can be taken to the decision of the respondent authorities to reject the candidature of the petitioner, as he does not possess requisite experience as per advertisement i.e. 3 years in executive position and not submitting photograph. The candidature of the petitioner has been rightly rejected vide

impugned order/communication dated 19.02.2022 (Annexure P-5). This court finds no merit in the present writ petition and consequently, the petition stands dismissed, with no orders as to costs.

AUGUST 1st, 2023
sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No