

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 109

Civil Writ Petition No.17958 of 2023

Date of Decision: *September 01, 2023*

Bhupinder Sharma and others

..... PETITIONER(S)

VERSUS

State of Haryana and others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Ajay Kumar Gupta, Advocate for the petitioners.

Mr. Ravinder Singh Budhwar, Addl. AG, Haryana.

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Tribhuvan Dahiya, J. (Oral)

This petition has been filed seeking a writ of *mandamus* directing the respondents to allow the petitioners to submit their application for appointment as Physical Education Assistant, in response to notification/advertisement, Annexure P-1, uploaded on the Haryana Kaushal Rojgar Nigam Limited (for short, 'the Nigam') website on 28.07.2023.

2. Briefly, the facts of the case are, the respondent/Nigam vide notification dated 28.07.2023 invited applications for the post of Physical Education Assistant on contract basis for two thousand posts; last date to submit the applications was 08.08.2023. The petitioners' applications for the post were not accepted on the ground of being overage. Having crossed forty two years of age, they were declared ineligible, as is apparent from the screenshot, Annexure P-11.

3. Learned counsel for the petitioners contends that as per Clause 8.4 of the Deployment of Contractual Persons Policy, 2022, Annexure P-23, (hereinafter referred to as, 'the Policy') upper age limit for

engagement in a job is forty two years. However, vide instructions dated 12.01.2023, Annexure P-22, age relaxation has been provided to experienced candidates; they have been permitted to apply beyond the age of forty two years. In terms thereof, the petitioners have a right to apply for the post in question.

4. Learned State counsel, appearing on advance notice, contends that as per Clause 8.2 of the Policy, only the candidates who have experience of same job role of any Department/Organization under the Haryana Government, are eligible to apply. The petitioners do not have any such experience, and, therefore, their applications could not have been accepted. He, however, does not dispute the fact that age relaxation to experienced candidates has been given as per the clarificatory instructions dated 12.01.2023. He further submits that in the notification inviting applications dated 28.07.2023, it has been mentioned that 'More Info Read The Official Notification Given Below'. Therefore, the applicants could have searched the notification/instruction dated 12.01.2023 on the official website of the Nigam, as the same stood uploaded there. It is also submitted that cut-off date/closing date of submitting the application was 08.08.2023, which is already over. In these circumstances, the petitioners' application cannot be accepted.

5. Heard.

6. It is not in dispute that the experienced candidates have been provided age relaxation to apply on the basis of clarificatory instructions dated 12.01.2023. It is also not disputed that the said clarificatory instructions did not form part of the advertisement/notification dated 28.07.2023, nor is there any indication therein that the outer age of the candidates can be relaxed in terms of the said instructions. Merely because a

vague indication has been given in the advertisement regarding more information being available on the official website, it cannot be accepted as due notice to the candidates about the age relaxation. Only because the instructions stood uploaded on the official website, along with so many other documents, it does not absolve the respondents of their duty to specifically inform the applicants, or at least indicate about it in the advertisement at the relevant place. To ensure fairness of the selection process, the respondents were bound to do that; failure on their part in so informing has caused prejudice to the petitioners, and deprived them of the right to consideration for the posts advertised.

7. Clause 8.2 of the Policy reads as under:

8.2. Deployment of experienced and other manpower against fresh indent.-

At the time of deployment of manpower in any Indenting Organisation against the fresh indent of a District-

- (i) first preference shall be given to the experienced candidates of the same Job Role of any Department/ Organisation under Haryana Government in order of period of experience and are residing in the same District;
- (ii) failing (i) above, the preference shall be given to the experienced candidates residing in any district of Haryana.
- (iii) failing (i) & (ii) above, the merit list shall be prepared of other eligible candidates of residing in any District of Haryana as per selection criteria specified in Para 8.8.

Note.- For the purpose of this para, Chandigarh and Panchkula will be treated as one and the same District.

A reading of the clause makes it clear that for engagement in a job preference will be given to experienced candidates of the same job role of any Department/Organisation under the Haryana Government. It nowhere stipulates that only candidates having experience in a government Department are eligible to apply. Therefore, there is no substance in the argument raised by learned counsel for the respondents that clause 8.2 makes the petitioners ineligible to apply for want of experience in a government Department. Further, even if closing date for submission of the applications is over, that cannot prevent this Court from permitting the petitioners to submit the application since they were prevented from doing so on account of respondents’ failure to bring relevant instructions regarding age relaxation to their notice. It is not on account of any lapse on the petitioners’ part that they could not submit the applications within time; rather, fault lies with the respondents. Therefore, they cannot be permitted to take shelter behind the closing date to cover up their failures. Besides, it is not the respondents’ case that after the closing date any vital step in the process of selection has been taken or that acceptance of the petitioners’ application forms will derail or delay the process.

8. As per the advertisement, essential qualification and experience for the post is as under:

Post Name	Qualification	Vacancy
Physical Education Assistant	Minimum 10 Years Experience. Matric + Certificate In Physical Education Conducted By The Haryana Education Department Or An Equivalent Qualification Recognized By The Haryana School Education Board.	2000

It is apparent on record that only petitioners no.1, 4 and 5 have more than ten years’ job experience. Therefore, only these petitioners are eligible to apply for the posts in question, even after relaxation of upper age limit for them.

9. In view of aforesaid discussions, the petition is allowed *qua* petitioners no.1, 4 and 5 only, and they are permitted to submit application forms for the post in response to the advertisement, dated 28.07.2023, within three days from today. In case such an application is submitted, the same shall be considered by the respondents in accordance with law and as per terms of the Policy.

(Tribhuvan Dahiya)
Judge

September 01, 2023
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<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>