Neutral Citation No. (2024:HHC:5002)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No : 5396 of 2020

Decided on : 10.07.2024

Pushpender Kumar.

……..Petitioner.

Versus

Himachal Pradesh Subordinate Selection Board and ors.

.....Respondents.

Coram

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?[1]

For the petitioner	:	Mr. Abhyendra Gupta, Advocate.
For the respondents	:	Mr. Angrez Kapoor, Advocate, for respondent no.1.
	:	Mr. Amit Sharma, Advocate, for respondent no.2.
	:	Mr. Arvind Sharma, Advocate, for respondents no. 3 to 6.

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1 *Whether reporters of the local papers may be allowed to see the judgment?*

M.S. Ramachandra Rao, Chief Justice (oral)

In this CWPOA, the petitioner has assailed order dt. 11.10.2018, whereby the final result on the basis of direct recruitment made by H.P. Staff Selection Commission, Hamirpur, H.P., for the post of Refrigeration Plant Operator (on contract basis) was notified. It records that petitioner was not selected for the said post reserved for OBC (Unreserved) candidates, which post was lying vacant as per said order.

2. The case of the petitioner was that he had passed matriculation in 2006, 10+2 in 2008 and obtained ITI in the trade of Refrigeration in the year 2013-2015. He also stated that he belongs to BPL family which has low income. He has also produced "Non Employment Certificate" and "Less Land Certificate". He contends that he alongwith others had applied for the post of Refrigeration Plant Operator notified by the Commission, and though he possesses working experience as Refrigerating Technician and had enclosed Annexure A-6 certificate in support thereof, his candidature was rejected and respondents no. 3 to 6 have been appointed.

3. Reply is filed by the Staff Selection Commission opposing the grant of relief to the petitioner by taking specific plea

that the petitioner does not have five years' experience after acquisition of the ITI course certificate and therefore, his candidature was not considered by the Commission.

4. Learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***Subhash*** Vs. ***State of Maharashtra and anr.***[2]

5. In that case, the petitioner had applied for the said post and had acquired working experience of one year prior to the acquisition of the basic qualification, which was diploma in Automobiles Engineering. When he was denied appointment, he approached the Tribunal which rejected his claim on the basis of the circular issued by the Government. The Supreme Court held that the Motor Vehicles Department (Recruitment) Rules, 1991 framed under Article 309 of the Constitution show that a mere possession of the working experience of at least one year in a reputed Automobile Workshop as mentioned under Rule 3(c) is enough, and rule does not make any distinction between acquisition of such experience "prior to" or "after" the acquisition of the basic qualification. It, therefore, set aside the order of the tribunal and declared that the petitioner satisfies the requisite qualifications required by the rules

[2] (1995) Sup3 SCC 332

and directed the respondents to consider the petitioner for appointment, if otherwise, satisfies the requisite qualifications, including the marks obtained in the written test and the interview already held.

6. This legal position is not disputed by the counsel for the respondents.

7. Having regard to the said settled legal position, the view taken by the Commission that the petitioner is ineligible on the ground that he did not secure experience "after" acquiring the ITI Course Certificate, cannot be sustained, since the cumulative experience secured by the petitioner before and after acquiring the ITI Course Certificate as is evidenced by Annexures A-5 and A-6 (colly.) shows he had the said experience of five years as mandated by the rules.

8. Accordingly, the Writ petition is allowed; the impugned order (Annexure A-7), insofar as the petitioner was denied appointment to the post of Refrigeration Plant Operator, OBC (Unreserved) on contract basis, is set aside and respondents are directed to appoint the petitioner in the said post in the vacancy in that category indicated in the impugned order within six weeks.

9. The Writ petition, is accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(M.S. Ramachandra Rao)
Chief Justice

(Satyen Vaidya)
Judge

10th July, 2024
(sushma)