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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1444-2023 (O&M)
Date of Decision: 07.11.2024

Parveen Kumar

....Petitioner(s)

Versus

Haryana Staff Selection Commission and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shvetanshu Goel, Advocate for the petitioner.

Ms. Dimple Jain, DAG, Haryana.

Ms. Kirandeep Kaur, Advocate for
Mr. Vishal Chauhan, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned result dated 15.04.2021 (Annexure P-4) declared by respondents No.1 and 2 to the extent that the petitioner has not been selected despite being entitled and eligible for selection and also for quashing of impugned order dated Nil (Annexure P-14), with a further prayer to direct the respondents to award 3 marks on account of experience to the petitioner and thereafter select and appoint the petitioner on the post of Lower Division Clerk in category 4 as per his entitlement from the date of his entitlement and release



the salary and other allowances and arrears thereof together with interest @ 18% per annum.

2. While giving the brief facts of the case, learned counsel for the petitioner has submitted that the petitioner applied for the post of LDC in the reserved category as an SC candidate in pursuance of an advertisement issued by the Haryana Staff Selection Commission vide Annexure P-2. He submitted that he completed all the processes of the aforesaid selection process and he obtained total 59 marks. However, the last selected candidate in the SC Category obtained 60 marks and therefore, he was not finally selected for appointment to the aforesaid post. He submitted that as per the advertisement, in the criteria of award of marks, there is a provision for granting of marks for experience which can be granted to a maximum extent of 8 marks which has been so stated in page No.62 of the paper-book. The same is reproduced as under:-

'd. Experience:

One-half (=0.5) mark for each year or part thereof exceeding six month of experience, out of a maximum of sixteen years, on the same or a higher post in any Department/Board /Corporation/Company/Statutory Body/Commission/Authority of Government of Haryana. No marks shall be awarded for any period less than six months.

(A maximum of 8 marks)'

3. While referring to the aforesaid provision whereby marks are to be provided for experience, it has been so provided that 0.5 marks for each year or part thereof exceeding six months of experience out of a maximum of sixteen years on the same or a higher post in any Department/Board



/Corporation/Company/Statutory Body/Commission /Authority of Government of Haryana are to be awarded. He submitted that the petitioner was fulfilling the aforesaid experience but he has not been awarded any marks for experience and he has rather been awarded 0 marks which is evident from Annexure P-5 whereby against the column of experience, 0 marks have been granted to the petitioner. In this regard, he submitted that in fact the reason as so stated by the respondents even in the reply was that the petitioner had worked as a Finance Manager in Mahatma Gandhi National Rural Employment Guarantee Scheme under the Rural Development Department of the State of Haryana and as per the respondents, the aforesaid position of Finance Manager cannot be treated to be either at par or a higher post as compared to the post of LDC and that is the reason as to why the marks were not awarded. He submitted that in case the marks for experience are awarded to the petitioner, then he will get 3 more marks for experience and his total marks will come out to be 62 and therefore, he was entitled to get selected and appointed to the post of LDC and his candidature should have been forwarded by the Commission to respondent No.3. He referred to the experience certificate at page No.94 of the paper-book in which his experience has been mentioned. The aforesaid experience certificate is reproduced as under:-

“Experience Certificate

1. This is to certify that Sh. Parveen Kumar S/o Sh. Amir Chand resident of Village Sukhera Khera, Tehsil Mandi Dabwali, District Sirsa of Haryana State has been serving as Finance Manager on contract basis under Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in the office of Rural Development Department, Haryana.



2. *The period of engagement was from 28.10.2013 to 27.04.2014, 28.04.2014 to 27.10.2014, 05.11.2014 to 04.05.2015, 11.05.2025 to 10.11.2015, 17.11.2016 to 16.11.2017 and 17.11.2017 to 16.11.2018 and 16.11.2018 to till date and the completed years and months are 5 years and 7 months.*

3. *The EPF account no.(if any) is/was NIL.*

Place: Chandigarh Name:- Sunita Saini

Date: 02.07.2019 Designation:-Account Officer

*Address: Rural Development Deptt. Haryana.
30 Bays Building, Sector-17 B,
Chandigarh.*

Tel: No. 0172-2705535

4. While referring to the aforesaid experience certificate, he submitted that the same has been issued by the Account Officer of the Rural Development Department, Haryana wherein his experience as a Finance Manager on contract basis under the Mahatma Gandhi National Rural Employment Guarantee Scheme in the office of Rural Development Department, Haryana was 5 years and 7 months and in this way, as per the experience as so incorporated in the advertisement as reproduced above, he was entitled for 3 marks. So far as the issue as to whether the post of Finance Manager in a Government Department was to be considered on a higher pedestal as compared to the post of LDC is concerned, the learned counsel referred to a letter issued by the Commissioner, Mahatma Gandhi Narega & Director and Special Secretary, Rural Development Department, Haryana, Chandigarh which is appended with the present petition at page No.93. The aforesaid letter is reproduced as under:-

'From



*Commissioner Mahatama Gandhi Narega &
Director and Special Secretary,
Rural Development Department, Haryana,
Chandigarh.*

To

*Parveen Kumar,
Finance Manager, MGNREGA Scheme,
Rural Development Department, Haryana,
Chandigarh.*

*Memo No.MGNREGA-2022/7540
Chandigarh Dated : 04.07.2022*

*Subject: for the post of Finance Manager under MGNREGA
Scheme.*

*On the above said subject in reference to your letter
dated 26.05.2022 it is informed that the post of Finance Manager
can be a higher post to LDC on account of Education,
qualification, salary and nature of work.*

Sd/-

*Scheme Economist,
For: Commissioner Mahatama Gandhi Narega &
Director and Special Secretary,
Rural Development Department, Haryana,
Chandigarh.'*

5. Learned counsel while referring to the aforesaid letter issued by the aforesaid authority submitted that the post of Finance Manager was a higher post as compared to LDC in terms of education, qualification, salary and nature of work and submitted that the aforesaid letter has been issued by an officer of the State of Haryana none less than the Director and Special



Secretary in the Government of Haryana in the Rural Development Department and therefore, the petitioner was entitled for grant of the aforesaid benefit of 3 marks and in case he is granted the aforesaid benefit of 3 marks, then he has to be considered as per his merit and his case has to be forwarded to respondent No.3 for the purpose of appointment to the post of LDC. He submitted that necessary directions may be issued to the respondents in this regard for considering his case for the post of LDC after awarding him 3 marks in this regard.

6. On the other hand, Ms. Dimple Jain, learned DAG, Haryana while referring to the reply filed by the respondent-Commission submitted that the only reason as to why the petitioner was not granted 3 marks was that the experience which was so mentioned in the advertisement was that the candidate should have an experience on the same or on a higher post but the petitioner did not have any experience on the post of LDC nor did he have any experience on a higher post on the clerical side and therefore, no such marks could have been awarded to the petitioner.

7. Learned counsel appearing on behalf of the respondent-Nigam submitted that she is not aware as to whether any vacant post of LDC is available in the respondent-Nigam or not as of now.

8. I have heard the learned counsels for the parties.

9. The issue involved in the present case is that the petitioner is claiming 3 marks on the basis of experience which has been so mentioned in the advertisement itself and which has been reproduced above. The petitioner has not been granted the benefit of experience on the ground that the petitioner



has attached the certificate of experience as 'Finance Manager' under the Mahatma Gandhi National Rural Employment Guarantee Scheme in the office of Rural Development Department, Haryana although as per the certificate, he has 5 years and 7 months of experience. It is not in dispute that in case the aforesaid experience is to be counted, then his marks for experience of 5 years and 7 months comes out to be 3 marks. However, the dispute in the present case is as to whether the petitioner was entitled for the grant of the experience marks on the basis of the aforesaid certificate or not. It is the stand of the respondent-Commission that the post on which the petitioner has worked as a Finance Manager was not same or higher post to that of LDC. It cannot be termed as a higher post. Whereas the stand of the petitioner is that the post of the Finance Manger is higher as compared to LDC which is clear from the letter issued by the Commissioner, Mahatama Gandhi Narega & Director and Special Secretary, Rural Development Department, Haryana, Chandigarh as reproduced above.

10. First of all the provision of grant of experience has to be analyzed for the purpose of considering as to what extent the benefit of experience is to be granted. A perusal of the aforesaid provision of experience which is contained in clause (d) as reproduced above would show that it provides that the marks of experience has to be given when a candidate has experience on the same or on a higher post in any Department /Board/Corporation /Company /Statutory Body Commission/Authority of Government of Haryana. So far as the experience of the petitioner as a Finance Manager under the Mahatma Gandhi National Rural Employment Guarantee Scheme in the office of Rural



Development Department, Haryana is concerned, the same is a Scheme which is run by the Government of Haryana in the Rural Development Department and therefore, so far as the experience of the petitioner is concerned, it was certainly under the department of the Government of Haryana. So far as the issue as to whether the post of Finance Manager is higher to the post of LDC is concerned, a perusal of the letter issued by the Commissioner, Mahatama Gandhi Narega & Director and Special Secretary, Rural Development Department, Haryana, Chandigarh as reproduced above would show that it has been specifically so stated by the aforesaid officer that the post of Finance Manager can be a higher post to LDC in terms of education, qualification, salary and nature of work. The aforesaid letter is issued by an officer who is none else but a senior officer of the State of Haryana i.e. Director and Special Secretary, Rural Development Department, Haryana, Chandigarh and therefore, the reliance which has been placed by the learned counsel for the petitioner on the aforesaid letter is well placed.

11. There is another important issue involved in the present case. A perusal of the provision which has been so incorporated in the advertisement Annexure P-2 which provides for the experience would show that a candidate must have an experience on the same or on a higher post. There is no other provision or clarification regarding meaning of the aforesaid provision of experience in the advertisement or under any other instructions etc. In other words, the scope of the aforesaid clause of experience appears to be very wide. As to how to determine the same and what is the meaning of higher post is not provided in any of the provisions of the advertisement nor it has been shown to



the Court. Therefore, the interpretation of the higher post is left to the whims and fancies of the Commission. Such action on the part of the respondent-Commission by granting them a discretion to interpret according to their own understanding is not in accordance with law. The advertisement deals with the recruitment process and it is necessary that in the recruitment at least the provision of experience has to be in clear terms or in case it is not stated in the advertisement, then it has to be by way of any instruction/rule/bye-laws/regulations, whereas nothing has been shown to the Court as to how the aforesaid provision is to be interpreted. On the other hand, a senior officer of the State of Haryana of the level of Director and Special Secretary rather has written a letter to the petitioner which is in the nature of a certificate that the post of Finance Manager can be a higher post to LDC even in the terms of qualification, salary and 'nature of work'. Therefore, this Court is of the considered view that the experience for the post of Finance Manager which the petitioner had acquired and on which he has worked has to be considered as a higher post as compared to that of the LDC. So far as the argument which has been raised by the learned State counsel that the nature of duties of the Finance Manager and the LDC is different is concerned, the same cannot be sustained in view of the fact that it is only an argument which has been raised by the learned State counsel which is not based upon any document and therefore unsubstantiated. In the absence of any specification being so provided either in the advertisement or any other instrument having the force of law, the argument of the learned State counsel cannot be accepted and the same is liable to be rejected.

12. In view of the aforesaid facts and circumstances, the present petition is allowed. The respondent-Commission is directed to consider the case of the petitioner after granting marks of experience based upon his experience certificate and after doing the same to consider his case for recommendation to the concerned recruitment authority within a period of three months from today.

13. In case the name of the petitioner after due consideration by the Commission and after granting the aforesaid 3 marks is recommended to the concerned authority for appointment, then the concerned authority who is to appoint shall consider appointing the petitioner in accordance with law. In the event of the non-availability of any vacant post of LDC against the SC Category, the concerned department i.e respondent No.3 shall create a supernumerary post in this regard and appoint the petitioner in accordance with law and he will be entitled for all consequential benefits including seniority etc. from the date when similarly situated candidates were appointed according to the merit of the petitioner. However, the petitioner shall not be entitled for any monetary benefit pertaining to salary till the time he joins.

07.11.2024

(JASGURPREET SINGH PURI)

rakesh

JUDGE

Whether speaking	Yes/No
Whether reportable	Yes/No