

276

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

**CWP-7136-2020 (O&M)
Date of Decision: 04.01.2024**

Mannu Virk

...Petitioner

Versus

Vice Chancellor, Punjab University, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Gurminder Singh, Senior Advocate assisted by
Mr. Gurnoor Sandhu, Advocate and
Mr. K.S. Kharbanda, Advocate
for the petitioner.

Mr. D.V. Sharma, Senior Advocate assisted by
Mr. Indresh Goyal, Advocate
for the respondents.

HARSH BUNGER, J.

1. Petitioner-Mannu Virk (Lt. Cdr. Retired) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of Certiorari for setting aside the impugned advertisement No.01/2020 (Annexure P-1) vide which the respondent-Punjab University has invited applications for the post of Chief of University Security.

2. Briefly, the petitioner is stated to be a retired personnel from

Indian Army. It is the case of the petitioner that in the year 2016, the post of Chief Security Officer of Punjab University was advertised and the petitioner applied through proper channel. Petitioner claims that he was selected for the post of Chief of University Security-Security Officer and the same was reported in the newspaper also, however the University Authorities stopped the process of appointment of Chief of University Security without any reason. It is stated that recently, the Punjab University gave another advertisement for the post of Chief of University Security and the petitioner was wanting to apply for the said post, however, he was surprised to see that the University had totally changed the conditions regarding the candidature for the said post. Petitioner alleges that the conditions regarding the appointment of Chief of University Security has been relaxed in order to adjust some near and dear. Petitioner states that the eligibility conditions have been relaxed at high level by the University in comparison to the eligibility conditions as envisaged in the year 2016 advertisement, wherein the petitioner claims that he was selected. It is stated that the requirements as regards the height and chest measurements have been relaxed by keeping them at the low level and as per the year 2020 advertisement, the age has been fixed from 45 years to 55 years whereas, in the previous advertisement of the year 2016, the condition was that any candidate could apply who was up to the age of 56 years. Petitioner submits that by fixing the minimum level of age at 45 years, the petitioner and similarly circumstanced persons, despite being eligible, have been kept out from the process of selection and appointment to the post of Chief of University Security as the petitioner's date of birth is 17.12.1980. Petitioner states that he approached the respondents personally and requested that the

conditions be made appropriate whereupon, the petitioner was given assurance that the request of the petitioner would be considered, however, petitioner maintains that no change in the conditions laid down in the advertisement (Annexure P-1) have been made and accordingly, the petitioner has filed the instant Writ Petition before this Court challenging the aforesaid advertisement (Annexure P-1).

3. Upon issuance of notice of motion in this case, respondent No.2-University has submitted its Written Statement wherein, it has been categorically stated that in the earlier advertisement of the year 2016, the interviews were conducted on 31.08.2016 and 01.09.2016 but no selection whatsoever was made for the reason that the same was not approved by the Competent Authority i.e. the Syndicate as well as the Senate of the Punjab University. It was stated that the petitioner has not attached any proof evidencing his selection in the earlier advertisement of the year 2016. It has been specifically denied that the petitioner was ever selected for the post in the year 2016. It has been stated that the post of Chief of University Security is Class "A" post and the Senate/Syndicate of University is the appointing authority under regulation 3.1 (a) at page No.117 of the Punjab University Calendar (Volume I), 2007 and accordingly, the minutes of meeting of the Selection Committee were placed before the Competent Authority i.e. the Syndicate on 08.10.2016 wherein, the following decision was taken:-

***“RESOLVED:** That in view of the recommendation of the Board of Finance that fresh appointments in future shall be made only on need basis with due justification and after getting the same approved from the Board of Finance, which have duly been approved by the Syndicate and Senate, the recommendation of Selection Committee dated 31.08.2016 & 01.09.2016 for appointment of Chief*

of University Security-1 (Advt. No. 2/2016), Panjab University, Chandigarh be rejected by majority opinion (eight for rejection, one for approval and five for referring back to the Board of Finance). ”

Accordingly, it is stated that the posts of Chief of University Security advertised vide advertisement No.02/2016 was not filled up. It is stated that in the said advertisement it was made clear in the instructions to the candidates that it is not obligatory on the part of the University to call all eligible persons for interview and the University reserves the right not to fill up the posts. It is further the stand of the Punjab University that the Syndicate in its meeting held on 24.02.2018, decided to re-advertise the post of Chief of University Security and Vice Chancellor was authorized to constitute a Committee to frame the qualifications, guidelines and nature of post, etc; whereupon, the Committee was constituted and it submitted its recommendations which were placed before the Syndicate in its meeting, which was held on 26.05.2018 wherein, the proposed qualification/experience was modified. It is submitted that in case the petitioner had any grievance with regard to the selection process in the year 2016, then he should have espoused his grievance in the year 2016 itself. It is further submitted that even if the averment of the petitioner is to be accepted that he was selected even then mere selection does not give any vested or indefeasible right to appointment, accordingly, prayer for dismissal of the Writ Petition has been made.

4. I have heard learned counsel for the parties and perused the paper book with their able assistance.

5. In the instant petition, the petitioner has only challenged the advertisement (Annexure P-1) whereby, applications were invited from the

eligible candidates for the posts so advertised including the post of Chief of University Security and the petitioner has not sought any relief in pursuance of the earlier advertisement given in the year 2016 for the post of Chief of University Security i.e. Annexure P-2.

6. As regards the aforesaid advertisement of the year 2016, wherein the petitioner claims to have been selected, although the petitioner has not sought any relief in pursuance of the said advertisement and rightly so, in view of the settled legal position as stated by the Hon'ble Supreme Court in the case of *Shankarsan Dash v. Union of India (1991) 3 SCC 47*, wherein it has been held that when the action of the State Government is not arbitrary in any manner, the recommended person has no right or claim of selection. The relevant observations in para 7 of the above judgment are reproduced as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted...”

7. The Apex Court in *S.S. Balu & Anr. v. State of Kerala & Ors. (2009) 2 SCC 479*, has held that it is for the employer to fill up the posts or

not to fill up the same and in the absence of any discrimination or arbitrariness, the candidate will have no legal right for obtaining a writ of mandamus if his/her name appears in the select list.

8. The reliance can also be placed on a recent judgment in *Commissioner of Police and Anr v. Umesh Kumar (2020) 10 SCC 448*, wherein also the Apex Court while relying upon the judgment in *Punjab SEB v. Malkiat Singh (2005) 9 SCC 22*, held that mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment.

9. As far as the challenge to the advertisement (Annexure P-1) is concerned, the petitioner has primarily stated that the eligibility criteria/qualifications have been modified by the University in order to adjust the near and dear ones. Petitioner has also placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of *K. Manjusree vs. State of Andhra Pradesh, 2008 (3) SCC 512* to contend that once the selection process was underway, then the criteria for selection could not be changed.

10. I have considered the aforesaid submissions of learned Senior counsel for the petitioner. As regards the reliance placed upon the case of *K. Manjusree (supra)*, it is observed that the said reliance is misplaced as the same is distinguishable on facts. In the said case, it was observed that if the Selection Committee has prescribed minimum marks only for the Written Examination before the commencement of the selection process, it cannot either during the selection process or after the selection process add an additional requirement that the candidate should also secure minimum marks in the interview. Accordingly, it was held that changing the criteria after

completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview, accordingly, the same was found to be illegal. Whereas in the instant case, the selection process initiated on the basis of advertisement made in the year 2016 was dropped by the Competent Authority i.e. Syndicate at its meeting held on 08.10.2016 and the selection process initiated vide the impugned advertisement (Annexure P-1) is an altogether new selection process.

As regards the allegations made by the petitioner that the eligibility criteria/qualifications have been changed by respondent-University to adjust their near and dear one; it is observed that perusal of the Writ Petition would manifest that apart from general and vague averments, no specific allegations/*malafides* have been alleged therein and in my considered view, the advertisement (Annexure P-1) and also the eligibility criteria/qualifications as mentioned therein cannot be quashed on the mere asking of the petitioner. Furthermore, it is noticed from the perusal of the advertisement (Annexure P-1) that the applications were invited from the eligible candidates by 18.02.2020 by 04:00 P.M. which was further extended up to 28.02.2020 by 04:00 P.M. vide corrigendum (Annexure P-5), whereas the instant Writ Petition came to be filed in the month of March, 2020, which is beyond the last date for applying for the advertised post.

11. It is also well settled that the appropriate authority/appointing authority are empowered to lay down condition of service, which includes the source from which an appointment is to be made and the qualification required for such appointment. The Court has no jurisdiction under Article 226 of the Constitution of India, even to suggest the source of recruitment or the minimum qualification for such appointment. If one or other source is

stipulated to fill up the post or a qualification is laid down for appointment, though the same can be challenged, if arbitrary, otherwise the Court should not interfere with the same. Merely, because the Petitioner does not possess minimum age as prescribed in 2020 advertisement, the advertisement cannot be challenged on that ground, nor the qualification laid down can be held to be arbitrary on that basis.

12. In view of the above discussion, I do not find any merit in the instant Writ Petition, and the same is accordingly dismissed.

13. All pending applications (if any) shall stand closed.

04.01.2024
Himani

(HARSH BUNGER)
JUDGE

- | | |
|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |