

CWP-8865-2021
CWP-10521-2021
CWP-10582-2021

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2024:PHHC:047069

114, 115 and 116

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-8865-2021
Date of decision: 08.04.2024

MANISH KUMAR
Vs.
UNION OF INDIA AND OTHERS

....PETITIONER
...RESPONDENTS

VIKASH KUMAR
Vs.
UNION OF INDIA AND OTHERS

CWP-10521-2021
....PETITIONER
...RESPONDENTS

ANAND
Vs.
UNION OF INDIA AND OTHERS

CWP-10582-2021
....PETITIONER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. G.S. Brar, Advocate
for the petitioner(s)

Mr. S.K. Sharma, Senior Panel Counsel
for the respondents-Union of India
(in CWP-10521-2021 and CWP-8865-2021)

Mr. Arihant Goyal, Central Government Counsel
for the respondent-Union of India (in CWP-10582-2021)

JAGMOHAN BANSAL, J (ORAL)

1. By this common order CWP-8865-2021, CWP-10521-2021 and CWP-10582-2021 are being disposed of since issues involved in all the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-8865-2021.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking:

- (i) setting aside result dated 25.02.2021 (Annexure P-4).
- (ii) direction to respondents to consider the claim of the petitioner for Practical (Skill) Test.

3. The petitioner, pursuant to an advertisement by respondent-ITBP applied for the post of Constable (Driver). He cleared Physical Efficiency Test (for short 'PET') and Physical Standard Test (for short 'PST').

4. On 19.01.2020, he appeared for written test and qualified the same. He secured 79 marks, out of 100. He was further subjected to qualifying Practical (Skill) Test on 25.02.2021. He secured 10.5 out of 50 marks whereas minimum qualifying marks were 16.5. The respondent rejected candidature of the petitioner on the ground that he has failed to secure minimum qualifying marks in the Practical (Skill) Test. Thus, he could not be considered for the post of Driver.

5. Mr. G.S. Brar, Advocate submits that petitioner cleared PET, PST and written test. He secured 79 marks out of 100 marks which are more than marks of last selected candidate, thus, he should be considered for the post of driver.

6. Per contra, Mr. S.K. Sharma, Senior Panel Counsel submits that the post advertised was of driver and skill test was indispensable. Post of driver is a post of a skilled workman. The petitioner(s) could not secure minimum qualifying marks in the skill test, thus, they could not be considered, despite being in merit list.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. Mr. G.S. Brar, Advocate does not dispute the fact that respondent had prescribed qualifying marks for Skill Test and petitioners had undergone said test.

9. It is prerogative of the Recruitment Agency to prescribe qualifying marks. If qualifying marks are prescribed, no candidate after participating in the selection process can claim that he should be considered for the post, despite not securing qualifying marks.

10. The petitioners consciously participated in the selection process and after having been declared unsuccessful, they are now disputing the criteria of qualifying marks.

11. A two Judge Bench of Apex Court in ***Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others 2023 SCC OnLine SC 344*** has held that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate. The relevant extracts of the judgment read as:

“67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective

criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.

68. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) In Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.

ii) In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after

participation in the selection process. The pertinent observations of this Court are as under:

“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

iii) Similarly, in Ashok Kumar v. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90 : 10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select

List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

“13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100, this Court held that: “18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724)”.

12. A three Judge Bench of Hon’ble Apex Court in ***Dr. Kavita Kamboj Versus High Court of Punjab and Haryana and Others, 2024 SCC OnLine SC***

254, while dealing with challenge to selection criteria prescribed by the High Court has held that qualifying marks for interview may be prescribed by recruitment board. In this case, High Court prescribed qualifying marks for viva voce. The candidates after participating in the selection process assailed prescription of qualifying marks. The Supreme Court while dismissing claim of unsuccessful candidates has held:

“43. In Taniya Malik v. Registrar General of the High Court of Delhi, the petitioners challenged the prescription of minimum cut-off marks for the viva voce during the selection process of the Delhi Judicial Service Examination 2015. A two-Judge Bench of this Court declined to accept the challenge of the petitioners on the ground that “it is desirable to have the interview and it is necessary to prescribe minimum passing marks for the same when the appointment in the higher judiciary to the post of District Judge is involved.” The court further observed that the interview is the best method of judging “the performance, overall personality and the actual working knowledge and capacity to perform otherwise the standard of judiciary is likely to be compromised.”

44. In the present case, the High Court has come to the conclusion that apart from seeking proficiency in the substantive knowledge of law, based on the written test, in-service judicial officers must possess communication and other skills which would emerge in the course of an interview. We must be mindful of the fact that the interview in such cases is not being held at the very threshold of the service, while making recruitments at the junior-most level. Rather, the interview is being held to fill up a senior position in the District Judiciary, that of an Additional District and Sessions Judge. Such officers, based on their prior experience, must be expected to demonstrate a proficiency in judicial work borne from their long years of service. The purpose of the interview for officers in that class is to assess the officer in terms of the ability to meet the duties required for performing the role of an Additional District and Sessions Judge. Consequently, there would be a reasonable and

valid basis, if the High Court were to do so, to impose a requirement of a minimum eligibility or cut-off both in the written test and in the viva voce separately.

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65. In numerous decisions, this Court has emphasized the importance of the control which is wielded by the High Courts over the District Judiciary. Undoubtedly, it is equally well-settled that when the Rules under Article 309 hold the field, these Rules have to be implemented. Where specific provisions are made in the Rules framed under Article 309, it would not be open to the High Court to issue administrative directions either in the form of the Full Court Resolution or otherwise, that are at inconsistent with the mandate of the Rules. On the other hand, in cases such as the one at hand, where the Rules were silent, it is open to the High Court to issue a Full Court Resolution. The High Court did so initially on 29 January 2013, but modified the Resolution on 30 November 2021 by prescribing that candidates for appointment to the Higher Judicial Service should have a minimum of 50% both in the written test as well as in the viva voce independently. The wisdom of the prescription is clear. A candidate should not just demonstrate the ability to reproduce their knowledge by answering questions in the suitability test, but must also demonstrate both practical knowledge and the application of the substantive law in the course of the interview. The Rules being silent, it was clearly open to the High Court to prescribe such a criterion as it did in 2013, when the 50% cutoff was prescribed on aggregate scores and also, in 2021, when the 50% cutoff was prescribed on the written test scores and the viva voce separately.”

[Emphasis Supplied]

13. In the case in hand, the petitioners participated in the selection process. They could not achieve qualifying marks in skill test. Their case is squarely covered by afore-cited judgments of Supreme Court in **Tajvir Singh**

Sodhi (Supra) and Dr. Kavita Kamboj (Supra). All the petitions deserve to be dismissed and accordingly dismissed.

08.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No