

107+229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13212-2021 (O&M)
Date of decision: 22.10.2024

MANOJ KUMAR

...Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Pawan Kumar Mutneja, Senior Advocate with
Mr. Brijesh Kumar, Advocate and
Ms. Suverna Mutneja, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Deepak Balyan, Advocate for respondents No.2 to 4.

JASGURPREET SINGH PURI, J. (Oral)

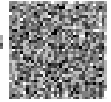
CM-1900-CWP-2024

Prayer in this application is for placing on record Annexure P-18 to
Annexure P-25.

For the reasons mentioned in the application, the same is allowed.
Annexure P-18 to Annexure P-25 are taken on record, subject to all just
exceptions.

CWP-13212-2021

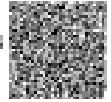
1. The present writ petition has been filed under Article 226 of the
Constitution of India seeking issuance of a writ in the nature of *certiorari* for
quashing the advertisement dated 04.12.2020 (Annexure P-1) and impugned



combined selection list of Assistant Engineer (Electrical Cadre) issued in March, 2021 (Annexure P-8), vide which the candidates having GATE 2019 marks have also been made eligible with GATE 2020 marks by clubbing the result of the candidates of GATE 2019 and GATE 2020, which is not permissible as the merit of every year is decided on the basis of GATE topper of a particular year with a further prayer to direct the respondents to prepare the list afresh by segregating the candidates of GATE 2019 and GATE 2020 against their respective posts available in the particular year.

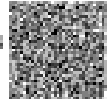
2. Learned Senior Counsel appearing on behalf of the petitioner while giving the brief facts of the present case submitted that the petitioner applied for the post of Assistant Engineer (Electrical Cadre) in pursuance of the advertisement issued vide Annexure P-1 dated 04.12.2020, wherein the closing date was 08.01.2021. He further submitted that the aforesaid advertisement was issued by four Power Utilities of the State of Haryana together and the said advertisement was issued after the decision was made by the State of Haryana for taking the aforesaid post out of the purview of the Haryana Public Service Commission (HPSC) in the year 2016 and now after the year 2016, the selection process for the aforesaid post is undertaken by the four Power Utilities together for their respective Utilities/Nigams. He further submitted that the petitioner applied against the BCA Category for which the earmarked posts were 12, which is clearly stated in the advertisement itself.

3. Learned Senior Counsel appearing on behalf of the petitioner also submitted that for the purpose of recruitment to the aforesaid post, the examination of GATE is part of the selection criteria, whereby the marks



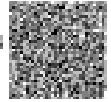
obtained by the candidates in GATE are to be considered for the purpose of selection. With regard to the aforesaid GATE, he submitted that it is a common test for the entire country which is conducted by a different IIT each year on rotation basis in pursuance of the Policy of the Government of India. He further submitted that in the year 2019, GATE was conducted by IIT, Chennai and in the year 2020, GATE was conducted by IIT, Delhi. He further submitted that prior to the issuance of the aforesaid advertisement (Annexure P-1), the four Power Utilities of the State of Haryana issued an advertisement vide Annexure P-5 dated 27.06.2019 for the same post i.e. Assistant Engineer (Electrical Cadre) and total six posts were earmarked for BCA Category depending upon the vacancies at that point of time but after inviting applications in pursuance of the aforesaid advertisement Annexure P-5 dated 27.06.2019, the aforesaid advertisement was cancelled and thereafter, fresh advertisement Annexure P-1 dated 04.12.2020 was issued and since the number of vacancies were increased, the total vacancies for BCA Category were 12.

4. Learned Senior Counsel submitted that GATE is being conducted on annual basis and every year exam is conducted by a different IIT and when the four Power Utilities issued the new advertisement Annexure P-1, then it was so incorporated in the advertisement that the GATE 2019 result will also be considered for the purpose of present recruitment as a one-time special measure and it will not be treated as a precedent for future recruitments. He further submitted that it was also provided in the advertisement that the earlier advertisement dated 27.06.2019 (Annexure P-5) is cancelled and therefore, the candidates who had applied in the advertisement of 2019 are required to apply



afresh and it was further provided that in case of the candidates who had appeared in both GATE 2019 and GATE 2020, they had an option to apply for the post advertised on the basis of GATE 2019 or GATE 2020 result as the case may be.

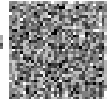
5. Learned Senior Counsel further submitted that the effect of the same was that the petitioner had applied only for the fresh advertisement (Annexure P-1) and had not applied for the earlier advertisement (Annexure P-5) but the students who had applied for the earlier advertisement (Annexure P-5), which was cancelled were given a new option vide fresh advertisement (Annexure P-1), according to which they could choose amongst the marks of GATE 2019 and GATE 2020 for the purpose of selection to the aforesaid post. He further submitted that the consequence of the same was that the result of GATE 2019 and GATE 2020 was different for different candidates because the standard of examination and the authority who had conducted the examination were different. It is a case of the learned Senior Counsel appearing on behalf of the petitioner that when the GATE 2019 was conducted by IIT, Chennai, then they being liberal, the marks obtained by the students were on the higher side but when in the year 2020, GATE was conducted by the IIT Delhi, then they being strict, the overall marks obtained by the students were lesser as compared to GATE 2019. So far as the present petitioner is concerned, he submitted that the petitioner appeared for GATE 2020 and he obtained lesser marks being overall strict in nature but those candidates who had appeared and taken exam for GATE 2019 which was conducted by IIT Chennai, they had an edge over those who appeared in GATE 2020 but for the purpose of considering the marks



obtained either in GATE 2019 or GATE 2020, they have been treated at par for the purpose of the present recruitment in pursuance of the advertisement (Annexure P-1), which created an inequality and therefore, it was violative of Article 14 of the Constitution of India.

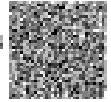
6. He further submitted that even otherwise also for the initial advertisement (Annexure P-5), there were six posts for Executive Engineer (Electrical Cadre) under BCA Category but for Annexure P-1 which was the latter advertisement, six more posts were added and in fact the four Power Utilities ought to have split up the 12 vacancies into 6+6 and the marks of the GATE 2019 should have been considered for the six vacancies and GATE 2020 should have been considered for the other six vacancies. He further submitted that since the petitioner had cleared GATE 2020 and he had to compete with those who had taken the examination for GATE 2019, he was not selected being lower in merit and this has affected his rights in this regard and therefore, a direction may be issued to the respondents to bifurcate the vacancies in two parts i.e. 6+6 and to apply the marks obtained by students in the GATE examination i.e. of the years 2019 and 2020 in a ratio of 6:6 and a fresh merit list be prepared. He further submitted that the two GATE examinations cannot be considered together in view of the information received by him under the RTI Act vide Annexure P-10.

7. On the other hand, learned counsel for respondents No.2 to 4 while referring to the reply filed on behalf of the respondents No.2 to 4 submitted that when the earlier advertisement was issued vide Annexure P-5, then although there were six vacancies for BCA category but at the time when the second



advertisement (Annexure P-1) was issued, the vacancies thereafter were 12 and therefore, there was no occasion for bifurcating the vacancies for the purpose of the application of the GATE examination. He further submitted that when the earlier advertisement was issued, then some of the candidates filed three writ petitions bearing *CWP-32019-2019*, titled *Davinder Singh and others versus State of Haryana and others*, *CWP-34921-2019*, titled *Annupriya versus State of Haryana and others* and *CWP-3282-2020*, titled *Umesh Kumar Verma versus State of Haryana and others* seeking quashing of the order dated 04.10.2019, vide which the recruitment of 107 Assistant Engineers (Electrical, Mechanical and Civil) in Haryana Power Utilities were advertised and during the pendency of the aforesaid writ petitions, whereby the advertisement itself was under challenge, the respondents cancelled the advertisement and decided to make a fresh advertisement and consequent upon the same, the advertisement (Annexure P-1) was issued.

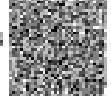
8. Learned counsel for respondents No.2 to 4 also submitted that although for the purpose of selecting the candidates for the aforesaid post, the marks of GATE which they obtained is one of the criteria for their selection on merits but the reason as to why the aforesaid option which was given to make applicable the marks obtained either in GATE 2019 and GATE 2020 was that those candidates who had applied for the earlier advertisement (Annexure P-5), they have cleared their examination for GATE 2019 and when in the year 2020, fresh advertisement (Annexure P-1) was issued, then they had not appeared or cleared GATE 2020 examination and in case the GATE examination of 2019 was not to be considered as so pleaded by the learned Senior Counsel appearing



on behalf of the petitioner, then the effect of the same would be depriving the candidates of the earlier year of even applying for the aforesaid post because they could not be held to be eligible and in order to eliminate any discrimination against those candidates who had applied for GATE 2019 advertisement which was cancelled, it was decided that they can apply afresh and they can avail the benefit of GATE 2019 examination. He further submitted that in this way, all the candidates who had cleared GATE 2019 and GATE 2020 were treated at par.

9. He further submitted that mere fact that for one GATE examination stricter marks are given and for other examination liberal marks are given cannot become a ground for denying those candidates who had cleared GATE 2019 and taking them out from the zone of consideration because their rights are being affected. He further submitted that a perusal of the advertisement (Annexure P-1) would show that it was only a one-time measure in view of a particular situation, where the advertisement was cancelled and therefore, the present writ petition is liable to be dismissed.

10. Learned counsel for respondents No.2 to 4 further submitted that even otherwise also the petitioner is not entitled to get any relief from this Court because of the reason that the petitioner after having participated in the selection process and after not being selected has challenged the advertisement and selection, which he cannot do especially in view of the law laid by Hon'ble Supreme Court in **State of Uttar Pradesh versus Karunesh Kumar and others, 2022 SCC Online SC 1706, Ashok Kumar and another versus State of Bihar and others, (2017) 4 SCC 357** and **Madras Institute of Development Studies**



and another versus K. Sivasubramaniyan and others, (2016) 1 SCC 454 and

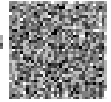
rather he is estopped from raising a challenge to the advertisement and the selection at this stage after he has not been selected by filing a writ petition and on this ground as well, the present writ petition is liable to be dismissed.

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

12. It is a case where the core issue involved is that the petitioner had passed the GATE 2020 examination and he was not a candidate of GATE 2019 examination. The grievance of the petitioner is that since the advertisement is of the year 2020, only those candidates should be considered for the 2020 advertisement who had cleared GATE 2020 examination and not GATE 2019 examination. However, the case of the respondents is that the reason as to why GATE 2019 candidates have also been considered was that the advertisement which was issued in the year 2019 was subsequently cancelled and in case those students who passed GATE 2019 examination are not considered, then it will prejudice the rights of hundreds of those students being taken out of the zone of consideration. One of the arguments which has also been raised by the learned Senior Counsel appearing on behalf of the petitioner was to make a bifurcation of 6:6 posts.

13. So far as the aforesaid issue with regard to as to whether the candidates of GATE 2019 should have been considered to be within the zone of consideration or not, the relevant portion of the advertisement (Annexure P-1) is reproduced as under:-

1. Haryana Power Utilities (HPUs) i.e. Haryana Vidyut Prasaran Nigam Limited (HVPNL), Haryana Power Generation Corporation Limited (HPGCL), Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) & Dakshin Haryana

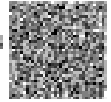


Bijli Vitran Nigam Limited (DHBVNL) are carrying out the work of Transmission, Generation and Distribution of electricity in the State of Haryana. Haryana Power Utilities (HPUs) have decided to undertake recruitment of Assistant Engineer/ Electrical cadre and Assistant Engineer/Civil cadre against the available vacant posts meant for direct recruitment based on GATE-2019 or GATE-2020 result & Socio-economic criteria and Experience.

2. The GATE-2019 result is also being considered in the present recruitment as one time special measure and it shall not be treated as precedent for future recruitments. *As the earlier advertisement dated 27.06.2019 was cancelled, therefore, all the candidates who had applied in 2019 are required to apply afresh. Further, the criteria for selection for the post of AE has changed now, therefore, no claim whatsoever, with respect to earlier advertisement dated 27.06.2019 and public notice dated 12.09.2019 shall be entertained. In case of candidates who have appeared in both GATE-2019 and GATE-2020, they have the option to apply for the post advertised on the basis of GATE-2019 or GATE-2020 result as the case may be.*

*Haryana Power Utilities (HPUs) viz. Haryana Vidyut Prasaran Nigam Limited (HVPNL), Haryana Power Generation Corporation Limited (HPGCL), Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) & Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) invite applications for the post of Assistant Engineer/ Electrical Cadre, Assistant Engineer/ Mechanical under Electrical Cadre and Assistant Engineer/ Civil cadre from the eligible candidates, **who have qualified/ cleared the GATE-2019 or GATE-2020 exam as the case may be and fulfills the qualification criteria of the HPUs as given in para-3 below.***

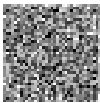
14. A bare perusal of the aforesaid would show that the aforesaid Clause-2 has been inserted only as a one-time measure in view of the reason that 2019 advertisement was cancelled and thereafter, a fresh advertisement was issued in the year 2020 and in order to bring those candidates who had cleared GATE 2019 examination which is held annually, they were permitted to make a



fresh application and to make an option with regard to as to whether they wanted to take the benefit of GATE 2019 examination or GATE 2020 examination with a purpose that marks in whichever is higher in the result may be considered. As per the learned counsel for respondents No.2 to 4, there would be number of candidates who had cleared GATE 2019 examination and advertisement was issued in the year 2019 but later on was cancelled and they may not have appeared for GATE 2020 examination, then the rights of such candidates would be seriously affected if such relaxation would not have been given to them and in order to bring them within the zone of consideration, the aforesaid option was give as a one-time measure.

15. So far as the aforesaid issue as to whether the respondents were within their rights to have given the aforesaid option or not is concerned, this Court is of the considered view that this is a Policy measure which has been taken by the respondents in order to bring those candidates who had cleared GATE 2019 examination and they had applied for the advertisement in the year 2019 but the same was later on cancelled and the purpose was to put them within the zone of consideration so that their rights are not prejudiced. This Court does not find any fault in the aforesaid decision being taken by the respondents. It cannot be said that the petitioner has been discriminated by enlarging the zone of consideration.

16. So far as the second submission made by the learned Senior Counsel appearing on behalf of the petitioner that there should be a bifurcation of posts in the ratio of 6:6 is concerned, this Court is of the considered view that the aforesaid argument also appears to be hypothetical in nature. Whether such



a bifurcation should be made or not is also a matter of a policy decision which can be taken as per vacancy position. It does not amount to any discrimination.

17. So far as the argument raised by the learned Senior Counsel appearing on behalf of the petitioner that two GATE examinations cannot be considered together is concerned, this Court would not go into the aforesaid issue in view of the fact that the present writ petition itself is not maintainable because the petitioner has challenged the advertisement and the selection after he himself participated in the selection process.

18. Even otherwise also, this Court after considering the law laid by Hon’ble Supreme Court is of the considered view that once the petitioner has himself participated in a selection process and was not selected, then he cannot turn around and challenge the whole selection process and file a writ petition. In this regard also the present writ petition is not even maintainable and not sustainable.

19. Consequently, the present writ petition being devoid of any merit, is hereby dismissed.

22.10.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No