

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14001-2020 (O&M)
Date of Decision: 20.02.2024

SHIVAM ROHILLA

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Sunil K. Nehra, Advocate and
Mr. Mukul Ahuja, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

Mr. Kanwal Goyal, Advocate,
Mr. Govind Tanwar, Advocate and
Ms. Sheema Dahiya, Advocate
for respondent No.2-HPSC.

Mr. R.K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate for respondent No.5.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioner is qua the non-selection of the petitioner on the post of Assistant Town Planner (Group A) as advertised vide advertisement No. 5/2019 dated 05.07.2019.
2. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner was allowed to compete for the post in question provisionally under the orders of the Court and the petitioner has already competed and it has also come on record that the petitioner, who was competing in the Reserved Category of BCA has secured more marks than the last selected candidate in the said category wherein, 03 posts have been reserved.
3. Learned senior counsel for the petitioner further submits that the

only dispute in the present petition is that whether, the petitioner was eligible to compete for the post in question, keeping in view the Rules governing the service as notified by the statutory rules, which were duly reflected in the advertisement in question.

4. Learned senior counsel for the petitioner further argues that from a bare reading of the rules, which were also a part of the advertisement, the petitioner duly fulfilled all the requisite qualifications to compete for the post in question. He further submits that keeping in view the affidavit given by the Secretary, Town Planning, Haryana in pursuance to the order passed by the Coordinate Bench of this Court dated 04.07.2023, the respondents have conceded the fact that the petitioner was having the required qualification as mentioned in the rules but only objection taken is that the petitioner became Member of the Institute of Town Planners, India (in short 'ITPI') in the year 2020 only which is after the last date cut off date for submission of application form so as to treat the petitioner ineligible for the post in question.

5. Learned senior counsel for the petitioner contends that the only requirement prescribed in the advertisement was “eligibility to be a Member of ITPI” and there was no actual membership required to be obtained by a candidate competing for the post in question upto the last date of the application forms hence, from a combined reading of the qualification possessed by the petitioner with that of the statutory qualification mentioned in the statutory rules, which were part of the advertisement coupled with the affidavit filed by the respondent/State, the petitioner was fully eligible to compete for the post in question.

6. Learned counsel for the respondent/State submits that the intention of the Department while framing the statutory rules as well as the qualification which was mentioned in the advertisement, was that the membership of ITPI was essential hence, once it is a conceded position that the petitioner was not a Member of the ITPI, the petitioner has rightly been treated ineligible keeping in view the decision of the Committee which was constituted to advise on the said issue.

7. Learned counsel appearing on behalf of the private respondent submits that once there is no ambiguity qua the qualification of the private respondent and he has been duly selected and appointed and is working for the last 3 ½ years and had joined the said post after resigning from the earlier assignment, he should not suffer any prejudice especially when, one post in BCA category is still lying vacant keeping in view the information which has been received by the private respondent through RTI.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. As per the advertisement, which was issued on the basis of the statutory rules governing the post of the Assistant Town Planner, following qualifications were advertised to be fulfilled by a candidate who wanted to compete for the post in question.

9.1 A post graduate degree in Urban and Regional Planning/Urban Planning/Regional Planning/ M. Tech. In Planning (Urban, Traffic and Transport, Housing, Infrastructure), or equivalent making the holder eligible for associate membership of the Institute of Town Planners, India.

9.2 B. Tech. Degree in planning from a recognized Institute/University with two years experience in the field of Town Planning under a qualified town planner.

9.3 Hindi/Sanskrit upto Matric standard.

10. A bare perusal of the above would show that either a candidate should be Post graduate in certain disciplines which deals with the town planning or should have equivalent qualification and should be eligible to be a Member of the ITPI.

11. The argument which is being raised by learned senior counsel appearing on behalf of the the petitioner is that only the eligibility to be a Member of the ITPI was required and not actual membership, as per the plain reading of the rule governing the service, which was also formed part of the advertisement. A bare reading of the eligibility criteria reproduced hereinbefore will show the same. In case, the intent of the Department was that a candidate who is applying should also be a member of the ITPI it should have been written in unambiguous terms that apart from obtaining the academic qualifications or its equivalent, the candidate should also be a member ITPI rather than saying that the candidate should be “eligible to be a member of ITPI”. The interpretation being given by the Department to the said rule to mean that a candidate should be a Member of the ITPI is not borne out of the rule governing service, which was part of the advertisement as well. Hence, there is no ambiguity that the petitioner is required to be treated as an eligible candidate to compete for the post in question. keeping in view the qualification possessed by him.

12. Even otherwise, the respondent/Department was directed to give

a specific affidavit on their view about the eligibility of the petitioner *qua* the post in question. Vide affidavit dated 16.10.2023, the Secretary, Town and Country Planning, Haryana has mentioned as under:

That with regard to the said orders, it is hereby stated that the qualifications required for appointment to the post of Assistant Town Planner (Group-A) in terms of the Haryana Service of Town Planners (State Service Class-1) Rules, 1976, is as follows:

1	2	3	4
Sr. No.	Designation of Post	Academic qualifications and experience for direct recruitment	Academic qualifications and experience for appointment other than by direct recruitment.
1.	Assistant Town Planner	<i>i. A post graduate degree in urban and regional planning/ urban planning/ regional planning/ M. Tech. in Planning (Urban, Traffic and Transport, Housing Infrastructure), or equivalent making the holder eligible for associate membership of the Institute of Town Planners, India. Or B. Tech. Degree in planning from a recognized institute/university with two years experience in the field of town planning under a qualified town planner. ii. Hindi/Sanskrit upto matric standard.</i>	<i>By promotion A person having five years experience as Planning Assistant in the Department By Transfer/Deputation i. A post graduate degree in urban and regional planning/ urban planning/ regional planning/ M. Tech. in Planning (Urban, Traffic and Transport, Housing Infrastructure), or equivalent making the holder eligible for associate membership of the Institute of Town Planners, India. Or B. Tech. Degree in planning from a recognized institute/university with two years experience in the field of town planning under a qualified town planner. ii. Hindi/Sanskrit upto matric standard.</i>

3. That further, as per the HPSC advertisement dated 05.07.2019, the eligibility of candidate for recruitment to the post of ATP, with regard to qualification, experience, any certificate and other conditions of eligibility etc., is determined as on the last date of submission of online application form i.e. 05.08.2019.

4. *That in the present case,*
 - i. *The candidate had received his degree of Master of Planning (Urban Planning) from School of Planning and Development, Sushant University in May, 2019, and thus fulfilled the basic academic qualification as laid down in the service rules before in the HPSC deadline of 05.07.2019;*
 - ii. *However, the candidate became eligible for Associate Membership of ITPI on 05.09.2020, i.e. after the said HPSC deadline of 05.07.2019, since his degree of Master of Planning (Urban Planning) from School of Planning and Development, Sushant University issued in May, 2019 was validated by ITPI vide refer dated 05 September, 2020.*

13. A bare perusal of the said reproduction would show that the respondent/Department is treating the petitioner eligible qua the academic qualification, but the only reason given to oust the petitioner from the zone of consideration is that the petitioner became the Member of the ITPI in September 2020 and not prior to the last date of submission of the application forms in order to treat the petitioner ineligible. Hence, the eligibility of the petitioner qua the educational qualification is not in dispute at all and the dispute being raised by the State with regard to the Membership of the ITPI not possessed by petitioner, before the last date of submission of application form is not correct in view of the statutory rule which was also a part of the advertisement. Only eligibility to be a member of ITPI was required and not the actual membership of ITPI. Petitioner was eligible to be member of ITPI, which is clear from a conceded fact that later on the petitioner got the membership of ITPI.

14. Keeping in view the above, the claim of the petitioner that he should be treated eligible for the post in question needs to be accepted and is accordingly accepted.

15. The question which now arises that there were 03 posts of Assistant Town Planner in BCA Category which were advertised and all the 03 posts have been filled up. The private respondent is last selected candidate in the said category.

16. At this stage, learned senior counsel appearing for respondent No.5 submits that there was no ambiguity *qua* the qualification being possessed by the private respondent and he was duly selected and appointed by the Department and is working for the last 3 ½ years. He further submits that the private respondents has altered his position keeping in view the appointment given as he left a job so as to join the assignment of the post of Assistant Town Planner in pursuance his selection/appointment to the advertisement in question hence now, ousting him from the appointment will leave him nowhere and rather, his life will be severely prejudiced without there being any fault of his in whole of the situations.

17. Learned senior counsel for the private respondent further submits that there is a post in BCA category which is lying vacant in the Department in the cadre of Assistant Town Planner keeping in view the information received by RTI vide letter dated 30.08.2022, copy of which has been appended as R5/2.

18. Keeping in view above the factual circumstances of the present case, the claim of the petitioner is allowed and he be considered eligible for appointment and the respondents are directed to consider the claim of the petitioner on the basis of the provisional result and in case, he is found within the merit *qua* the 03 posts of BCA in the cadre of Assistant Town Planner advertised, he be appointed accordingly from the date, the candidate lower in

merit stand appointed or the candidates similarly situated as the petitioner have been appointed. It may be noted that keeping in view the controversy where there was no *mala fide* attached, the petitioner will be entitled for seniority and other benefits except the arrears of salary, which learned senior counsel appearing on behalf of the petitioner has stated will not be claimed by the petitioner.

19. Qua respondent No.5, as he was not at fault and there is already a post lying vacant, respondent No.5 be adjusted against the said post and be allowed to continue.
20. Petition allowed in above terms.
21. Pending application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

20.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No