

230 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-14330-2020 (O&M)
Date of Decision:13.02.2024

Vijay Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Jasbir Mor, Advocate for the petitioner.

Ms. Kapil Bansal, DAG, Haryana.

Mr. Hitesh Pandit, Advocate and
Ms. Suman Rani, Advocate for respondent No.2-HVPNL.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Mandamus* for issuance of directions to respondents-Commission to award 12/10 marks of service experience (5 years 11 months and 21 days) upto the closing date on the post of Shift Attendant/ALM to the petitioner as per the criteria mentioned in the advertisement No.3/2016 (Annexure P-3) and thereafter revise the final result of the petitioner for the post of Shift Attendant.

2. Learned counsel for the petitioner has submitted that the petitioner had applied for the post of Shift Attendant in pursuance of the advertisement issued by the Haryana Staff Selection Commission, Panchkula-respondent No.5 (hereinafter to be referred to as “Commission”) in the year 2013. In pursuance of the aforesaid advertisement the application which was filled up by

the petitioner for the post of Shift Attendant which has been attached as Annexure P-2 and it has been specifically mentioned that he has an experience as a Shift Attendant from 20.04.2010 till 14.01.2014 and in this way his total experience is shown to be 03 years, 08 months and 25 days. The aforesaid document was also attached alongwith the application form. Since the petitioner was eligible for some other posts as well, he also applied for the other posts apart from the post of Shift Attendant and filled up different forms which have also been attached alongwith the present petition as Annexure P2/A and in those forms as well his experience as Shift Attendant has been mentioned, which is the same.

3. He further submitted that, however, later on the aforesaid advertisement of the year 2013 was cancelled by the Commission and new advertisement was issued vide Annexure P-3 and the closing date for the submission of the application was 04.04.2016. In pursuance of the aforesaid advertisement, the petitioner again applied for the post of Shift Attendant and he filled up the application form. He further submitted that as per the fresh advertisement, wherein the details and qualifications have been mentioned it has been specifically mentioned that weightage of experience has to be given i.e. one percent mark for each completed years of service in the respective category be granted subject to a maximum of eight percent and in this way the petitioner was entitled to 07 marks which were to be added in his final merit list. He submitted that when the aforesaid second advertisement was issued, it has been so stated that in the second advertisement (Annexure P-3) at page 56 of the paper-book that against these posts no recruitment process could be initiated and the same were cancelled by the Commission vide public notice

dated 01.05.2015. It is further mentioned therein that the candidates who had earlier applied against the above categories and whose details are available on the website of the Commission will also be eligible against the re-advertised posts and such candidates will be exempted from the payment of application fee. It further stated that, however, such candidates will have to apply afresh alongwith proof of deposit the application fee. Learned counsel for the petitioner further asserted that in this way each candidate who had applied earlier in pursuance of the earlier advertisement which was cancelled, had to fill and submit fresh application form, however, concession with regard to fee was given. He further submitted that consequently the petitioner also applied by filling up a fresh application form which he has also attached alongwith the present petition as Annexure P-4. While referring to the aforesaid fresh application form, he submitted that now in the fresh application form against the column of experience as a contractual worker in any power utility other than Haryana Power Utility, the petitioner has mentioned "No" and even against the experience as a regular worker in Haryana Power Utilities, again he has mentioned as "No". He further submitted that it was an inadvertent mistake on the part of the petitioner who had mentioned the answer to the aforesaid queries as "No". He further submitted that in fact the petitioner was having the experience of 03 years, 08 months 25 days which is so reflected in the earlier/first application form, which is also attached with the present petition and it was only because of inadvertent mistake at the end of the computer person, who had filled up the form that he could not give the correct answer to the column. He further submitted that immediately after about 03 days, he gave a representation to the respondent-Commission, vide Annexure

P-5 for correction of the application form and submitted that the aforesaid representation was not considered by the Commission and when the final result was declared the aforesaid 07 marks for which he was entitled were not granted to him in the merit list and in this way he was not selected for appointment to the post of Shift Attendant. He submitted that his total merit marks are shown to be 96 whereas the last selected in the General Category has secured 103 marks and the last selected candidates in waiting list has secured 102 marks and submitted that had those 07 marks been added to the petitioner's merit then he would have also secured 103 marks and he would also have been selected but because of the fact that representation was not considered by the respondent-Commission, he was not granted the aforesaid marks. Learned counsel for the petitioner has also referred in this regard a Division Bench Judgment of this Court in ***CWP No.23185 of 2014 decided on 15.12.2014 titled as Usha Dhillon Vs. State of Haryana and others (Annexure P-24)*** to contend that the application should not be rejected on hyper-technical objection and relief can be granted if the error is bonafide and therefore the present petition has been filed seeking directions to the respondents-Commission to now consider the petitioner for the appointment to the post of Shift Attendant especially in view of the fact that various vacancy are still available for the post.

4. On the other hand, Mr. Kapil Bansal, DAG, Haryana, submitted that it is a case where the entire process was conducted by way of an online process. He further submitted that it has not been disputed by the petitioner himself that while he filled up the form in pursuance of the fresh advertisement (Annexure P-3) he did not mention his experience and has specifically stated

'No' against the column of experience and when his candidature was to be evaluated and processed by the Commission then there was no occasion to have considered the marks of experience which the petitioner is claiming. He further submitted that so far as the filling up of the experience in the first application form is concerned, the same was in pursuance of the earlier advertisement of the year 2013 and the same process was totally cancelled and a fresh process was started and thereafter fresh applications were invited to which the petitioner has filed the new application and therefore there can be no co-relation between the first application and second application form and it is not expected from the Commission to have picked up the earlier application form which was filled up in pursuance of the earlier advertisement because the Commission had to see the fresh application form which was filed by the petitioner in which he did not give any details of his qualification and therefore no fault can be found on the part of the Commission. He further submitted that so far as the writ petition bearing No.***CWP-23185-2014 titled as Usha Dhillon Vs. State of Haryana and others***, which the learned counsel for the petitioner referring to, is concerned, the same was neither permissible nor it was given by the petitioner and therefore it was not considered by the Commission at the time of preparation of the final merit list. He also referred to the advertisement (Annexure P-3) wherein it has specifically been provided that the candidates applying for a post must ensure that they fulfill all the eligibility conditions on the last date of application and if on verification at any time before or after the written examination or interview or appointment, it is found that they do not fulfill any of the eligibility condition or it is found that the information furnished is false or incorrect, their candidature will be cancelled.

5. He further submitted that it is also mentioned in the advertisement that all the original certificates/documents/testimonials of educational qualifications and other documents which are “mentioned” in the online applications, one set of self attested copies of all these certificates are to be brought at the time of interview. He further submitted that only those documents which were uploaded and were part of the application form and which were so mentioned in the application, were required to be considered at the time of interview but the petitioner did not even mention his experience in the online application and therefore there was no question of considering any certificate at the time of selection process. He also submitted that it is also so stated in the advertisement that no offline form will be accepted since it was a purely online submission system and even otherwise also representation if any given by the petitioner could not have been considered because the entire process was online. Learned State counsel also submitted that once the petitioner himself admitted that it was because of an inadvertent mistake on the part of the petitioner himself who had not filled up the experience and the selection process was already completed and all the candidates who were selected, joined way back in the year 2019-20 and now with regard to the aforesaid selection process, the petitioner cannot be adjusted or appointed to the post of Shift Attendant. He further submitted that the aforesaid judgment passed in *Usha Dhillon's case(supra)* is not applicable to the present case as it is distinguishable and he, however, has referred another judgment passed by the Hon'ble Supreme Court in *Karnataka State Seeds Development Corporation Limited and another Vs. Smt. H.L. Kaveri & ors. 2020 (3) SCC 108* in this regard and therefore the present petition is liable to be dismissed.

6. I have heard the learned counsel for the parties.

7. Most of the facts of the present case are not in dispute. It is a case of the petitioner himself that when he earlier filled up the application form in pursuance of the earlier advertisement of the year 2013 and in that application form he specifically incorporated his experience as 03 years 08 months and 25 days but the aforesaid advertisement was cancelled by the Commission and a fresh advertisement was issued wherein it has been so stated that earlier advertisement stands cancelled and fresh application to be filled up although concession of fee was given for the purpose of adjustment. Thereafter, in pursuance of the fresh advertisement (Annexure P-3) the petitioner filled up a fresh application form which is also attached alongwith the present petition as Annexure P-2/A. In the aforesaid application form admittedly the petitioner in the column of experience specifically stated "No". In other words, in the second application form which was now a fresh application form, the petitioner did not fill his experience and rather on the other hand he filled up "No" against the column of experience. At the time when the application of the petitioner was processed, the Commission did not award the marks for experience to the petitioner although practically the petitioner was having experience but he did not mention it in the application form. However, the petitioner after filling up of the second application form had given a representation to the Commission with regard to the modification but as per the learned counsel for the petitioner, it was not considered by the Commission. However, it is a case of the respondent-State that there is no method of considering any representation because the entire process is an online process and even otherwise also, there was no representation of the petitioner and in

this way the petitioner who had secured 96 marks was below the last selected candidate who had secured 103 marks and therefore the petitioner was not selected.

8.. Learned counsel for the petitioner has relied upon a Division Bench Judgment of this Court (Annexure P-24) passed in **Usha Dhillon's case (Supra)**. However, a perusal of the aforesaid judgment would show that the petitioner therein could not apply because of technical glitch and thereafter she had represented to the concerned authority and therefore this Court had interfered in that matter. This Court is of the view that the facts of the aforesaid judgment are distinguishable from the present case and therefore is not applicable to the present case. On the other hand learned State counsel has relied upon a judgement of Hon'ble Supreme Court in ***Karnataka State Seeds Development Corporation Limited's case (Supra)***, wherein in such a situation the mistake could not have been rectified because in case the petitioner was to be considered again then it would have affected the rights of other candidates as well.

9. After hearing of learned counsel for the parties, this Court is of the view that once the petitioner himself admitted that due to inadvertent mistake he could not fill up his application form completely/properly and did not mention his experience in the application form, consequently he was not granted the aforesaid benefit of experience then it could not have been rectified later on by giving of a representation, if any. The entire process was online and all the selected candidates have already joined way back in the year 2019-2020 as per the learned counsel for the State. The mere fact that now fresh vacancies are available as of today cannot create any right in favour of the petitioner in

view of the fact that there are various other candidates who were also to be considered in the mode of selection.

10. Consequently, this Court does not find any merit in the present petition.

11. Dismissed.

(JASGURPREET SINGH PURI)
JUDGE

13.02.2024
shweta

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