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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19596-2022
Date of decision: 28.02.2024

PANKAJ BHANKAR

...Petitioner

VERSUS

HARYANA PUBLIC SERVICE COMMISSION AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Balvinder Sangwan, Advocate
for respondent No.1.

Mr. Samarth Sagar, Advocate
for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

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 order dated 22.08.2022 (Annexure P-12) by which the respondent-HPSC has declared that the experience certificates submitted by the petitioner from 21.11.2016 to 23.05.2018 were not in the relevant field and with a further prayer to declare that the aforesaid experience of the petitioner was in the relevant field and the petitioner is duly eligible for appointment to the post of Senior Manager (I.A.) and direction be issued to consider the claim of the petitioner for selection and appointment on the post of Senior Manager (I.A.)

under SC Category, which remained vacant due to non-availability of suitable candidate.

2. The brief facts of the present case are that the petitioner applied for the post of Senior Manager (I.A.), which was advertised by the respondent-Haryana Public Service Commission on 21.07.2018 vide Annexure P-1. There were total three posts of Senior Manager (I.A.), out of which two posts were meant for General Category and one post was meant for SC Category. A corrigendum was issued by the respondent-HPSC dated 21.10.2021 (Annexure P-2) and the last date of submission of the application was thereafter extended upto 05.11.2021. The petitioner applied for the aforesaid post under SC Category on 01.11.2021 (Annexure P-3) and along with the application, he filed various experience certificates, which were so required in pursuance of the aforesaid advertisement. On 07.12.2021 vide Annexure P-4, the petitioner was informed by the respondent-HPSC that his experience certificates were not in a relevant field as per the advertisement. Thereafter, the petitioner filed representations on 09.12.2021 and 10.12.2021 and he also filed a detailed representation on 12.01.2022 vide Annexure P-8, in which various relevant certificates were also attached. The final result was declared on 07.02.2022 and the petitioner was not selected. The petitioner thereafter filed a representation on 04.07.2022 vide Annexure P-10 that despite being duly eligible, he has not been selected because he was found to be not eligible for the aforesaid post on the ground of his qualification pertaining to experience. The petitioner filed a petition bearing CWP-16625-2022 before this Court, which was disposed of on 01.08.2022 vide Annexure P-11 by a Coordinate Bench of this Court with a direction to respondent No.1-HPSC to consider and decide the representation

(Annexure P-8) of the petitioner in accordance with law by passing a speaking order. Thereafter, the impugned order dated 22.08.2022 (Annexure P-12) has been passed by the respondent-HPSC, which is under challenge in the present writ petition.

3. Learned Senior Advocate appearing on behalf of the petitioner submitted that the petitioner along with the application form had attached all the requisite documents which were required under the advertisement. While referring to the qualification which was required, he further submitted that the essential qualification for the post of Senior Manager (I.A.) was 1st Class B.E./B.Tech in Civil Engineering preferably MBA as additional qualification with minimum 6 years relevant post qualification experience in development/creation and maintenance of Industrial Infrastructure and out of which at least 3 years should be in an executive position. He also submitted that so far as the educational qualification of the petitioner is concerned, the same is not in dispute because he is B.E. in Civil Engineering. However, the dispute which has arisen in the present case is pertaining to the minimum period of 6 years relevant post qualification experience, which the petitioner was not held to be having. To substantiate his arguments, he further submitted that the petitioner had supplied all the documents of experience to the respondent-HPSC pertaining to his 4 experience certificates by which the total experience of the petitioner comes out to be more than 6 years. The relevant qualifications as contained in the advertisement (Annexure P-1) is reproduced as under:-

2. **Essential Qualifications:-**

- i. *1st Class B.E./B.Tech in Civil Engineering preferably MBA as additional qualification with minimum 6 years relevant post qualification experience in*

development/creation and maintenance of Industrial Infrastructure. Out of which atleast 3 years should be in an executive position.

- ii. *Should be proficient in computer.*
- iii. *Hindi/Sanskrit upto Matric Standard or Higher Education.*

Note: (i) Part time experience will not be considered.
(ii) The experience certificate should be as per specimen given below:-

(Specimen of experience)

Letter Head of the Institution

(.....)
 (Name, Telephone no. & Address of the Institution/Organization/Department)
 Reg. No. _____

TO WHOM IT MAY CONCERN

No. _____ Date: _____
 It is certified that Sh./Ms. _____ S/o/D/o _____
 resident of _____ has/had been working in
 Development/creation and maintenance of Industrial Infrastructure as
 regular/Permanent/Temporary/Contract from _____
 to _____ on the post of _____ from
 _____ to _____ on executive position. Thus total experience gained
 by the said employee works out years months days.
 He/she is/was drawing the salary of Rs. _____ per month.

It is further certified that above facts and figures are true and based on service record available in development/creation and maintenance of Industrial Infrastructure.

Date: _____ Name & Signature of the Issuing Authority with seal.

- (iii) No Experience will be considered other than claimed in the application form.**
- (iv) The post shall be governed by Haryana State Industrial & Infrastructure Development Corporation Service bye laws is available at [http://hsiidc.org.in/RTI ch v](http://hsiidc.org.in/RTI%20ch%20v).**

4. The four documents of experience which the petitioner had relied upon are as follows:-

- “1. Worked as Project Executive (Civil) in NBCC from 17.12.2013 to 16.12.2015 (1Y-11M-30D) as Executive position.

2. *Worked as Contract Engineer-Civil in BEL from 21.11.2016 to 23.05.2018 (1Y-6M-2D) as Executive position.*
3. *Worked as Project Engineer-Civil in NCCBM from 24.05.2018 to 12.04.2019 (10M-19D) as Executive position.*
4. *Worked as Assistant Manager-Civil in Hindustan Urvark and Rasayan Ltd. from 22.04.2019 to 31.10.2021 (2Y-6M-9D) as Executive position.”*

5. Learned Senior Advocate appearing on behalf of the petitioner also submitted that when the petitioner was not appointed on the aforesaid post against the SC Category despite the fact that he was duly eligible in accordance with the requisite qualifications as prescribed in the aforesaid advertisement, he had given a representation to the respondent-HPSC that he was duly eligible with regard to the same and thereafter, he filed a writ petition before this Court as aforesaid, which was disposed of by a Coordinate Bench of this Court on 01.08.2022 vide Annexure P-11. The aforesaid order is reproduced as under:-

“Learned Senior counsel for the petitioner submits that the petitioner had applied for the post of Senior Manager (IA) in scheduled caste category in response to the advertisement issued by the respondents on 21.07.2018 (Annexure P-1). The petitioner is fully qualified and has the requisite experience of working at senior posts from public sector undertakings. Copies of the certificates in this regard have been appended along with the representation as Annexure P-8. The respondents did not fill the post in SC category on the ground that no SC candidate has been found to be eligible in terms of the criteria laid down in the advertisement. He also submits that the petitioner has sent a representation dated 12.01.2022 (Annexure P-8) in this regard to the respondents and submits that the respondents be directed to consider the same in a time bound manner.

Issue notice to the respondents.

At the asking of the Court, Mr. Anant Kataria, DAG, Haryana, accepts notice on behalf of the respondents.

Heard.

The petition is disposed of with a direction to respondent No.1 to consider and decide the representation of the petitioner (Annexure P-8) in accordance with law and pass a speaking order within a period of fifteen days from the date of receipt of certified copy of this order.”

6. While referring to the aforesaid order passed by a Coordinate Bench of this Court, learned Senior Advocate appearing on behalf of the petitioner further submitted that it was directed by this Court that on the representation of the petitioner, by which he had claimed that he was already having relevant experience as mentioned in the aforesaid advertisement, a speaking order shall be passed within a period of 15 days. He further submitted that thereafter, vide impugned order dated 22.08.2022 (Annexure P-12) a speaking order was passed by the Secretary of the respondent-HPSC. He further submitted that now as per the aforesaid speaking order, the experience certificates pertaining to serial Nos. 1, 3 and 4 as reproduced above were considered to be in the relevant field and there was no dispute with regard to the aforesaid three certificates. He further submitted that a perusal of the aforesaid order would show that earlier the respondent-HPSC had raised a dispute with regard to one certificate at serial No.4 pertaining to Hindustan Urvark and Rasayan Ltd. but thereafter the respondent-HPSC came to a conclusion, which has been so specifically incorporated in the aforesaid impugned order that the said certificate is in the relevant field. He further submitted that in this way, the respondent-HPSC admitted the relevance of all the three certificates, which were at serial Nos.1, 3 and 4. He further submitted that the respondent-HPSC has so stated in the aforesaid impugned order that so far as the certificate at serial No.2 i.e. the experience for which the petitioner worked as Contract

Engineer-Civil in BEL from 21.11.2016 to 23.05.2018 as executive position is concerned, the same was not in relevant field and in this way, if the aforesaid experience of 1 year, 6 months and 2 days is to be excluded from the total period of experience, then the experience of the petitioner falls short of required period of 6 years and it comes out to be 5 years, 4 months and 28 days and this was the reason that he has been rendered ineligible.

7. Learned Senior Advocate appearing on behalf of the petitioner further submitted that so far as the aforesaid experience certificate at serial No.2, wherein the petitioner worked as Contract Engineer-Civil in BEL from 21.11.2016 to 23.05.2018 as executive position is concerned, the objection which was raised by the respondent-HPSC, although orally, was that it was not in the prescribed format and it did not state whether he had been working in the development/creation and maintenance of Industrial Infrastructure as regular/permanent/temporary/contract for a particular period on executive position. The aforesaid certificate which he had relied upon is attached along with the present petition along with Annexure P-8 at page No.47 of the paper-book. The aforesaid certificate is reproduced as under:-

SERVICE CERTIFICATE

“This is to certify that Mr. PANKAJ BHANKAR, TE-328 has worked in this Organization during the period 21.11.2016 to 23.05.2018 as a Contract Engineer in Infra-NCS Division. His last consolidated emoluments were Rs.27,000/- (Rs. Twenty Seven Thousand Only) per month.

He has been relieved from the duties w.e.f. 23.05.2018.”

FOR BHARAT ELECTRONICS LIMITED

ASST. MANAGER (HR)
BHARAT ELECTRONICS LTD.
BHARAT NAGAR, GHAZIABAD U.P.

8. Learned Senior Advocate appearing on behalf of the petitioner further submitted that the aforesaid certificate has been issued by none other than the Bharat Electronics Limited, which is a Government of India Enterprise and he had worked with the aforesaid Bharat Electronics Limited. He further submitted that, as alleged by the respondent-HPSC, the aforesaid certificate which was issued to the petitioner by Bharat Electronics Limited was not in a proper format because it did not lay down the duties and when the petitioner was told vide Annexure P-7 that his work experience was not in accordance with the requisite experience as per the advertisement, then in response to the same, the petitioner had written an e-mail to the respondent-HPSC vide Annexure P-8 dated 12.01.2022, which is so appended with the present petition at page No.45 of the paper-book along with relevant attachments. While referring to the e-mail which is at page No.46, he further submitted that the said e-mail was from the concerned Enterprise i.e. Bharat Electronics Limited, which was sent to the petitioner and that communication which gave the details of the nature of work and duties which were performed by the petitioner was sent to the respondent-HPSC vide e-mail dated 12.01.2022 at page No.45 and regarding which there is no dispute raised by the respondent-HPSC as to whether it was received by the respondent-HPSC or not. While referring to the aforesaid e-mail dated 12.01.2022 at page No.46, he further submitted that detailed responsibilities performed by the petitioner have been so given in the aforesaid e-mail, which clarifies that the petitioner had requisite experience as per the advertisement. He further submitted that in this way, all the formalities were completed and the respondent-HPSC came to know as to what was the nature of duties which the petitioner had performed and therefore, the aforesaid

e-mail dated 12.01.2022 coupled with e-mail at page No.46 and certificate at page No.47 of the paper-book would show that the respondent-HPSC was very well aware and was informed with regard to the nature of duties and despite the aforesaid position, the petitioner was never called for the interview only because of this reason that with respect to the aforesaid certificate only, he did not fulfil the condition of the format by which it was to be given. He further submitted that in other words, the only objection of the respondent-HPSC was that the certificate as aforesaid was not in a proper format, whereas by way of an e-mail which has been stated aforesaid, he had rather forwarded the said e-mail to the respondent-HPSC, which was sent by aforesaid Bharat Electronics Limited to him and which describes the entire role, functioning and the responsibility of the petitioner when he was working with Bharat Electronics Limited. He further submitted that in this way, all the formalities stood completed and the respondent-HPSC was under an obligation to have called the petitioner for interview and thereafter to have processed his case in accordance with law.

9. Learned Senior Advocate appearing on behalf of the petitioner has also brought to the notice of this Court that the aforesaid position was well explained to the respondent-HPSC for number of times and even representations were given to the respondent-HPSC but when it failed to decide the representations, he was compelled to file a writ petition before this Court as aforesaid and a Coordinate Bench of this Court while disposing of the petition vide Annexure P-11 had rather directed the respondent-HPSC to pass a speaking order with regard to the same and it was the duty of the respondent-HPSC to have passed the speaking order with regard to the fact as to whether

the petitioner was eligible or not eligible. However, a perusal of the impugned order (Annexure P-12), which was passed purportedly in pursuance of the order passed by this Court would show that in the aforesaid order it has been so stated that after re-consideration, all the other certificates were found to be in the relevant field but the only certificate, which was at serial No.2 was not found to be in the relevant field. He further submitted that the manner in which the respondent-HPSC has dealt with the experience certificate of the petitioner at serial No.2, which was the sole basis of rendering the petitioner as ineligible has been so stated and reproduced as under:-

“In compliance of directions passed by the Hon'ble High Court vide order dated 01.08.2022, the representation dated 12.01.2022 (Annexure P-8) has been re-considered and it has been observed as under:-

The petitioner has annexed experience certificate issued by BEL & HURL along with his representation dated 12.01.2022 (Annexure P-8). After considering the same, it has been found that:-

- 1. The Experience certificate for the period from 21.11.2016 to 23.05.2018 (01Y-06M-02D) from the BEL is same which was sent earlier by the petitioner with his representation dated 09 & 10.12.2021. Hence same has already been taken into consideration and it was found that the same is not in the relevant field i.e. Development/Creation and Maintenance of Industrial Infrastructure as required as per advertisement.*
- 2. The Experience certificate for the period from 22.04.2019 to 31.10.2021 (02Y-06M-09D) from HURL is issued on 07.01.2022 i.e. after issuance of final rejection letter. Said certificate is in the relevant filed.”*

10. Learned Senior Advocate appearing on behalf of the petitioner further submitted that a perusal of aforesaid would show very clearly that the experience certificate which the petitioner had submitted with regard to the period from 21.11.2016 to 23.05.2018, which is at page No.47 of the paper-book, no application of mind and no reason or no order has been passed with regard to the fact as to how the petitioner was rendered ineligible. A perusal of the same would also show that it only states that the aforesaid certificate has already been taken into consideration and it was found that the same is not in the relevant field. He further submitted that what the respondent-HPSC has done even despite the order passed by this Court is that the respondent-HPSC has only reiterated what earlier action was taken and therefore, in this way the respondent-HPSC has not even applied its mind and has violated the order passed by this Court and the action of the respondent-HPSC is rather contemptuous in nature. He further submitted that the petitioner had applied for a job and right of livelihood is a Fundamental Right contained under Article 21 of the Constitution of India and the petitioner was diligent enough to have approached this Court by way of filing a writ petition earlier and a direction was issued to the respondent-HPSC to pass a speaking order and such a speaking order was required to be passed by application of mind, backed by reasons and by taking into consideration Annexure P-8 but on the face of it, the respondent-HPSC has not even considered anything but it has only stated that the said certificate from Bharat Electronics Limited was earlier found to be not in the relevant field and therefore, the respondent-HPSC has not only committed contempt of Court but it has also taken away the livelihood of the petitioner, which is so protected under Article 21 of the Constitution of India.

He further submitted that in this way, the right of the petitioner for being considered for job/appointment after taking the aforesaid is an inherent right and the aforesaid impugned order (Annexure P-12) is liable to be set aside and quashed.

11. On the other hand, learned counsel for respondent No.1 submitted that on the basis of direction issued by this Court vide Annexure P-11, the respondent-HPSC has passed a detailed speaking order, which has been annexed as Annexure P-12 and all the other certificates of the petitioner were also considered and rather the certificate pertaining to Hindustan Urvark and Rasayan Limited was considered to be in the relevant field which earlier was not found to be in the relevant field and in this way, there was a due application of mind and therefore, it cannot be said that the respondent-HPSC was in contempt and has not applied its mind before passing the aforesaid order (Annexure P-12). He has also drawn the attention of this Court to the advertisement itself, wherein it has been so provided that the experience certificate should be in a proper format and the specimen of experience has been so given in the advertisement itself which shows that in the certificate it should have been provided that the candidate had been working in the field of development/creation and maintenance of Industrial Infrastructure on regular/permanent/temporary/contract basis and it is further provided that no experience will be considered other than claimed in the application form. He further submitted that in this way, the petitioner has not adhered to the condition which is so specified expressly in the advertisement, which is clear from the certificate which he has attached at page No.47 of the paper-book because it does not state anywhere that in what capacity he was working and what duties

he was discharging and therefore, the certificate which the petitioner had furnished was not in consonance with the advertisement and therefore, the present writ petition is liable to be dismissed.

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

13. On the basis of the aforesaid facts and circumstances, the only issue which is involved in the present writ petition is as to what is the effect of the certificate of Bharat Electronics Limited for a period from 21.11.2016 to 23.05.2018, which has been attached at page No.47 of the petition along with Annexure P-8. The aforesaid certificate although is a valid certificate and there is no dispute with regard to the authenticity of the certificate but the only dispute is with regard to the format in which the aforesaid certificate has been issued. However, when an objection was raised by the respondent-HPSC, then the petitioner had rather informed the respondent-HPSC by way of an e-mail, which was sent to him by Bharat Electronics Limited and he forwarded the same to the respondent-HPSC on 12.01.2022, which clearly provided as to what were the responsibilities of the petitioner when he worked at Bharat Electronics Limited. So far as the note of the advertisement which has been so relied upon by learned counsel for respondent No.1-HPSC is concerned, the same was although required to be done but that defect in the certificate was cured by way of sending the clarification through e-mail dated 12.01.2022 and once the defect itself was cured then the petitioner could not have been non-suited only because of the fact that the format was not in accordance with the advertisement.

14. This Court is of the view that once a dispute arose with regard to the format of the aforesaid certificate and the petitioner thereafter filed a writ petition before this Court because his candidature was rejected and a direction

was issued by this Court to pass a speaking order with regard to the representation depicting the certificates, then it was a duty of the respondent-HPSC to have considered each and every certificate in accordance with law and in case the petitioner was to be non-suited on the ground of any procedural defect or any other defect, then it was a duty of the respondent-HPSC to have passed an order backed by reasons. A perusal of the impugned order Annexure P-12 would show that the only reason for non-suiting the petitioner and rendering him ineligible was the certificate issued by Bharat Electronics Limited, which is at serial No.2 as reproduced above. A perusal of the impugned order would also show that so far as the certificate of Hindustan Urvarak and Rasayan Limited is concerned, the respondent-HPSC conceded to the same that it was in the relevant field. However, in case the aforesaid certificate of Bharat Electronics Limited was to be considered as a part of the total experience then admittedly the total experience of the petitioner would have exceeded 6 years and the petitioner would have been rendered as eligible candidate but when the aforesaid experience of Bharat Electronics Limited is subtracted from the total experience, then he falls short of required experience of 6 years. Therefore, the only issue which is involved in the present case would be as to whether on the basis of the aforesaid format of certificate, the petitioner could have been rendered to be ineligible or not. A perusal of the aforesaid impugned order would also show that when the respondent-HPSC had passed the said impugned order, the same was passed in pursuance of the order passed by this Court vide Annexure P-11, wherein a direction was issued to the respondent-HPSC to pass a speaking order on the basis of representation of the petitioner (Annexure P-8) but when the certificate of the petitioner of Bharat

Electronics Limited from 21.11.2016 to 23.05.2018 was considered, neither any reason has been mentioned nor it depicts any application of mind at all. When the aforesaid experience certificate was mentioned in the impugned order, it only states that earlier it was taken into consideration and it was not found to be in the relevant field. This Court is of the view that the aforesaid order pertaining to the aforesaid certificate, which was the sole base for rendering the petitioner ineligible is not in consonance with the order passed by this Court vide Annexure P-11. The e-mail sent to the respondent-HPSC forwarding the description of role and duties by the Company itself was not considered. It was the duty of the respondent-HPSC to have considered the aforesaid certificate in accordance with law by giving reasons in this regard.

15. During the course of arguments, learned Senior Advocate appearing on behalf of the petitioner submitted that there was one post of Senior Manager (I.A.) against Scheduled Caste Category but nobody has been considered and appointed on the said post till date and no other person was found to be eligible for the same.

16. In view of the totality and circumstances of the present case, the present writ petition is allowed. The impugned order dated 22.08.2022 (Annexure P-12) is hereby set aside and quashed. The respondent-HPSC is directed to consider the petitioner on the basis of the aforesaid certificate of Bharat Electronics Limited, which has been appended with the present petition at page No.47 along with the e-mail at page No.46 in accordance with law. The petitioner will not be rendered ineligible only on account of the fact that the aforesaid certificate was not in a proper format. Let the entire exercise be completed by the respondent-HPSC within a period of three months from today.

17. Since the present is a second round of litigation filed by the petitioner and a perusal of the impugned order (Annexure P-12) would show that the respondent-HPSC has not effectively complied with the order passed by this Court, especially the ground on the basis of which the petitioner has been rendered ineligible with regard to the certificate of Bharat Electronics Limited, no reason at all has been mentioned as aforesaid, in an ordinary course, this Court could have considered issuance of contempt notice to the respondent-HPSC but taking a lenient view, this Court deems it fit and proper to impose costs upon the respondent-HPSC. The costs are assessed as Rs.25,000/-. The same shall be paid to be petitioner within a period of aforesaid three months.

28.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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