

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109

CWP-8677-2017

Date of Decision: 24.01.2024

Shivam Sharma

...Petitioner

Versus

Union of India and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.P.M.Kansal, Advocate
for the petitioner.

Mr.Sandeep Verma, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of result dated 17.04.2017 (Annexure P-1) to the extent his candidature has been rejected for the post of Junior Technical Assistant.

2. The petitioner pursuant to an advertisement of the respondent applied for the post of Junior Technical Assistant. The petitioner participated in the written test wherein he secured 81.75 marks. The petitioner belongs to general category and there were 300 seats. The petitioner was not

subjected to interview because respondent formed an opinion that the petitioner is not complying with requirement of essential qualification.

3. Learned counsel for the petitioner submits that the petitioner has secured Bachelors Degree in Engineering with Chemistry, thus, he complied with prescribed qualification still respondent has rejected candidature of the petitioner. In support of his contention, he relies upon judgment of Delhi High Court in *Neeraj Pal and ors vs. Central Warehousing Corporation, 2018 SCC OnLine Del 13016.*

4. Per contra, learned counsel for the respondents submits that Uttrakhand High Court in *Tarun Pal vs. Ministry of Consumer Affairs, Food & Public Division, 2018 SCC Online Utt 138* has rejected claim of an identically placed candidate. The petitioner was having Chemistry Subject in one semester, thus, he cannot be considered for the post of Junior Technical Engineer. Mere study of subjects in few semesters as ancillary subjects would not render a candidate eligible for the post of JTA as the requirement of job would not be fulfilled. The petitioner is deliberately misreading the contents of the advertisement.

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

6. The conceded position emerging from record is that the petitioner is holding Degree of Bachelors in Engineering. The petitioner had studied Chemistry in one of the semester. The petitioner participated in the written test and secured more marks than the last selected candidate. The

claim of the petitioner has been rejected on the sole ground that he does not fulfill essential qualification criteria prescribed in the advertisement.

7. The Delhi High Court in Neeraj Pal's case (supra) has considered advertisement in question and has held that requirement of the advertisement is not to have Degree in Chemistry, Zoology or Bio-chemistry whereas it requires that degree should be with Zoology, Chemistry or Bio-chemistry, thus, candidates having studied Zoology, Chemistry or Bio-chemistry as ancillary subjects cannot be denied opportunity to participate in the selection process.

8. It is apt to notice that counsel for respondent expressed his inability to controvert the findings of the judgment of Delhi High Court as well as applicability of said judgment to the facts of the present case.

9. On 04.01.2024, counsel for the respondents had sought time to ascertain possibility to issue appointment letter to petitioner considering his fresh appointment in 2024. Though the respondent is unable to dispute the applicability of judgment of Delhi High Court yet pleaded that judgment of Uttarakhand High Court should be considered. Delhi High Court while passing judgment in Neeraj Pal's case (supra) has noted judgment of Uttarakhand High Court in Tarun Pal's case (supra). The relevant extracts of the judgment in Neeraj Pal's case (supra) read as :

13. On the other hand, learned counsel appearing on behalf of the respondents submits that the job profile of "Junior Technical Assistant" demands that the candidate should have been enough exposure to the subjects as mentioned in

the recruitment rules and accordingly, the answering respondent has been recruiting the candidates for the post of JTA who are having a Degree in Agriculture or who have studied the required subjects i.e. Chemistry, Zoology or Bio-Chemistry during all semesters/years in their Degree course. Mere studying of the subjects in a few semesters as ancillary subject/optional subject will not equip the candidate with the sufficient knowledge/expertise to deal with the complex technical matters at the warehouse. He further submitted that it was nowhere mentioned in the reply dated 26.04.2017 that candidate require a Degree in Zoology/Chemistry/Bio Chemistry as alleged by the petitioners. Mere study of subjects in few semesters as ancillary subjects would not render a candidate eligible for the post of JTA, as the requirement of job would not be fulfilled. The petitioners have completely misunderstood or deliberately attempting to misconstrue the contents of the advertisement and the reply dated 26.04.2017 to secure employment with the answering respondent even though they do not qualify the prescribed minimum qualification.

X X X X

17. As per the advertisement dated 20.09.2016, the educational qualification required for the post of "Junior Technical Assistant" is 'Degree in Agriculture or a Degree with Zoology, Chemistry or Biochemistry as one of the subjects.' It was never clarified by the respondent no. 2 that the applicants require a degree in Zoology, Chemistry

or Bio-chemistry before reply dated 26.04.2017 to the representation of petitioner no. 2.

X X X X

21. I am conscious that one of the candidate namely Tarun Pal approached the High Court of Uttarakhand at Nainital but lost his legal battle in the writ petition and the appeal as well whereby it is observed that the question as to whether he studied Bio-chemistry as one of the papers in 4th semester would fulfil the requirement is a matter to be understood from the stand point of the employer particularly having regard to the nature of the duties to be performed by the selected candidate.

X X X X

27. The word ‘with’ connotes inclusion and not exclusion whereas the word ‘in’ connotes specific enclosure. The intention of the legislatures were quite clear while drafting of the rules. The word ‘in’ had been used in the former portion of the Rules. Had it been the intention of the legislature that the Degree should specifically be ‘in’ Zoology, Chemistry or Bio-chemistry, the said word would have been used instead of ‘with’ as has been done in case of the subject of Agriculture. Thus, respondent no. 2 clearly failed to apply doctrine of literal interpretation in the instant matter. The legislature is presumed to have used the language it actually intends to use, keeping in view the legislative intent. The use of words in the rule/provisions had to be understood in its ordinary sense. It is quite evident from the reading of the rule that the legislature intended to use the

word 'with' in inclusive manner rather than exclusive. The use of the word 'in' is quite specific as in the case of Degree in Agriculture. Therefore, the only clear and natural meaning that emerges is that the applicant must possess a Degree along with one of the specified subjects. Therefore, the plain and ordinary reading of the aforesaid rule makes it quite clear that the applicant must possess a Degree with Zoology, Chemistry or Bio-chemistry as one of the subjects. Hence, respondent no. 2 had issued the final result without appreciating the aforesaid interpretation of the rule in question.

10. This Court finds it appropriate to subscribe opinion of Delhi High Court than of Uttarakhand High Court.

11. In the present petition cause of action arose in 2017 and in the same year, petitioner approached this Court. On account of Covid-19 and heavy Board, matter could not be finally adjudicated within a short span. There is no lapse on the part of petitioner. If petitioner is denied effective relief on account of efflux of time, it would not be true justice. It is settled law that justice must not only be done but must also seem to be done. Supreme Court *Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284* has held that a litigant cannot be made to suffer because of act of Court. The relevant extracts of the judgment read as:

8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem

gravabit” — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else.

12. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. As agreed by petitioner, the appointment of petitioner, for all purposes, would be considered as fresh appointment of 2024.

(JAGMOHAN BANSAL)
JUDGE

24.01.2024
anju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>