



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-2969-2024 (O&M)
Date of decision: 05.12.2024

Shri Vishwakarma Skill University

... Appellant

Vs.

Anuradha

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rajesh Gaur, Advocate
for the Appellant.

Ms. Pooja Jaglan, Advocate
for the respondent.

DEEPAK MANCHANDA, J.

1. Through the present intra-court appeal, the Appellant has challenged the judgment dated 21.08.2024 passed by a learned Single Judge of this Court, wherein the writ petition filed by the respondent was allowed by issuing of directions to issue the letter of appointment to the respondent within two months to enable her to join the job. Additionally, Rs.25,000/- costs were also ordered to be paid to the respondent within two months.

2. The facts emerging from the record are that through Advertisement No.SVSU/2020/ESTT/NTCD/10 the Appellant-University advertised 19 posts, including the post of Game Organizer. The last date to submit the application was 21.12.2020. The respondent applied for consideration of his candidature against the advertised post of Game Organizer.

Thereafter, the result was declared by the Appellant on 22.11.2022 (Annexure P-8), wherein it was explicitly stated that the Executive Council in its 25th Meeting held on 15.11.2022 had approved the recommendations of the establishment Committee for appointment to regular posts and that the appointment would be made subject to background verification and verification of original documents. The respondent, in pursuance to her selection, vide email dated 19.12.2022, requested the Appellant to issue her the appointment letter. After considering the request, the Appellant, vide letter dated 02.01.2023 requested the respondent to provide the practical/professional experience certificates (along with pay scales) as mentioned in the eligibility conditions for the post described above and also to produce the certificate mentioning jobs and responsibilities for the claimed period of experience, duly countersigned by the competent authority, within 15 days from the date of issuance of the letter. In compliance, the respondent submitted photostat copies of her certificates along with the certificate duly signed by the Head of the Institute of Raja Ram Verma Sarvodaya Kanya Vidyalaya, Nand Nagar, Delhi, in which the entire period of her experience i.e more than 5 years was duly mentioned. Thereafter, the appellant/University again asked the respondent to supply the experience certificate duly countersigned by the DDE within 15 days, which was also sent. However, even then when she was not appointed CWP No.8380 of 2023 was filed by the respondent seeking therein issuance of directions to the Appellant to appoint her as a Game Organizer, which petition of hers has been allowed by the learned Single Judge vide impugned judgment dated 21.08.2024.

3. Learned counsel for the Appellant contends that learned Single

Judge did not appreciate that the approval of the respondent by the Executive Council was merely a preliminary recommendation subject to background verification, document and experience verification in compliance to the terms and conditions as advertised. He further contends that the respondent did not assail the decision of the Committee dated 10.03.2023, which was duly communicated to the respondent through a letter dated 01.04.2023, as the respondent was non-suited on account of non-fulfilment of the essential eligibility criterion of possessing a minimum of five years of practical/professional experience, therefore, the learned Single Judge wrongly allowed the writ petition filed by the respondent.

4. Per contra learned counsel for the respondent submits that the respondent was selected on merits which was the sole candidate and that she also fulfilled all the prescribed qualifications including that of experience of five years, but the Appellant had wrongly calculated the days per year after excluding the days on which the respondent did not work because she was a daily wager. She further submits that as per the terms and conditions of the advertisement, the candidate applying for the post of Game Organizer was required to have five years of practical/professional experience, for which the respondent had already attached the certificates and sent them to the university. Still, the Appellant-University non-suited the respondent by wrongly interpreting the aforementioned eligibility qualification mentioned in the advertisement, stating that it is the number of days to be counted per year rather than the entire academic year. Learned counsel has further argued that a perusal of the period mentioned above would show that the respondent has worked for the whole of the academic year after excluding the vacations and

her experience is more than five years. Therefore, there was no occasion for the appellant-University to have non-suited the respondent by converting the same into number of days per year and hence, the learned Single Judge, after considering the aforestated facts, has rightly allowed the writ petition filed by the respondent.

5. We have heard learned counsel for the parties and have perused the material on record.

6. A bare perusal of the pleadings would show that for adjudication of the controversy involved in this intra-appeal, we need to examine the terms and conditions of the advertisement published by the Appellant-University and in light of the same adjudicate as to whether the respondent possessed the required practical/professional experience.

7. The terms and conditions of the advertisement for the post of Game Organizer and details of the knowledge of the respondent in her certificate (Annexure R-3) are reproduced here below:-

1.	Name of the Post	Game Organizer
2.	Pay Matrix	Level-6
3.	Age limit	50 years
4.	Essential Qualification	Bachelor's degree with at least 50% marks in Physical Education /sports/Yoga with 05 (five) years practical/professional experience

3rd Meeting about office order no.SVSU/2022/Estt./E-1829/2492-2493 dated 03.12.2022 was held on 10.03.2023 at 11:00 AM. The observations of the Committee on the reply received from the candidate against the observations raised in the second Meeting held on 24.01.2023 are as under:-

“1. The candidate have submitted the experience letters issued

HOD and countersigned by the DDO, and the details are as follows:-

- a. 26.08.2014-08/05/2015 :- 172 days DOI:-03/05/2019*
- b. 01.07.2015-10.05.2016 :- 212 days DOI:- 03/05/2019*
- c. 01.07.2016-03.06.2017 :- 218 days DOI:-03/05/2019*
- d. 01.07.2017-30.06.2018 :- 254 days DOI:-03/05/2019*
- e. 03.07.2018-03.07.2019 :- 206 days DOI:-19/06/2019*
- f. 01.07.2019-08.05.2020 :- 226 days DOI:-03/11/2020*
- g. 01.09.2020-30.06.2021 :- 173 days DOI:-09/07/2021*

8. After perusing the qualification prescribed in the advertisement for the said post of Game Organizer and the experience possessed by the respondent, we find that the appellant-University did not dispute the aforestated period. The first year starts on 26.08.2014 and ends on 08.05.2015 and same would constitute one academic year. Similar is the position in the subsequent periods. In total, there were 07 years of experience. However, the university counted the number of days per year, but academic year should not have been considered because the respondent was serving as a daily wager without any paid leave. The learned Single Judge did not accept the argument raised by the appellant-University that if the respondent was working on a daily wage basis for the period above, which was undisputed, then the number of days during which the respondent had worked has to be counted first and then same should have been converted into number of months, which should have been compared with the total period of five years and rejected the argument of the appellant-University that for five years the total number of months has to be $12 \times 5 = 60$ months. Further, if the aforesaid number of days is re-calculated, then the number of months comes out to be 45.5 months, which is less than 60 months, and the respondent still needs to fulfil the eligibility qualification.

Learned Single Judge rejected the plea raised by the appellant-University being hypothetical and perverse by justifying the same that, as per the advertisement, the only requirement was five years of practical/professional experience, which does not indicate that the experience mentioned above was to be on a regular post or ad hoc basis. We find that the learned Single Judge, while justifying the calculations, specifically observed that the essential qualifications would be five years of practical/professional experience, and when the year is to be seen, then, of course, the academic year during which the classes are being held is to be considered. There was no justification for the Appellant-University by misinterpreting the essential qualifications in a manner that suits it by first converting the year into several working days, and after converting them into days, the same is again calculated in terms of months and once it is counted in terms of months, again it is compared to the total number of months in 5 years which is 60 months and Ld Single Judge rightly deprecated the approach of the Appellant-University being perverse and hypothetical to defeat the rights of the respondent, who was selected on merit and was the sole candidate.

9. The learned Single Judge, while allowing the writ petition, relied upon the judgments of a Division Bench of this Court in “**Chandigarh Administration Versus Vipin Gupta and another**”, 2010 SCC Online P&H 10726 and in **Jyoti Bala Versus State of Punjab and others**, 2024 SCC Online P&H 3590. The relevant portions of the Division Bench judgment **Vipin Gupta’s** case (supra), are extracted below:-

"1. Having heard learned counsel for the parties and perusing the record with their assistance, we find that the discussion can be conveniently divided by framing the following two substantive questions of law.

(A) Whether the expression 'working experience' used in Rule 6 read with Appendix 'B' providing for promotion to the post of Executive Engineer would include the experience gained while working on current duty charge on the post of Sub Divisional Engineer or it is only that experience which is gained while discharging duties as a substantive holder of that post regular basis?

(B) What is the effect of order dated 1.10.2008 (A-13) passed by Competent Authority granting approval for reckoning of service rendered on a CDC basis from 6.11.2001 to 30.1.2003 towards qualifying service for determining eligibility for promotion to the post of Executive Engineer (Civil)?

RE: QUESTION - A

12. Question No. 1 has cropped up for consideration by this Court earlier. As long as the expression 'working experience' is used in the statutory Rules, the law laid down by this Court will continue to apply. In similar circumstances, the expression 'working experience' came up for interpretation before a learned Single Judge of this Court in the case of [Dr Ravinder Pal Kaur v. State of Punjab and others](#), 1979 (2) SLR 645. In the case mentioned above, the statutory rules required teaching experience as an Assistant Professor in the speciality concerned for five years. In that case, the petitioner was appointed Assistant Professor of Radiology ad hoc. Her appointment was regularized three years later. The question before the Court was whether the experience she gained while working on an ad hoc basis could be treated as 'experience' in terms of the requirement of the rules. The learned Single Judge of this Court believed that the teaching experience was mostly the same, whether it was gained on ad hoc or regular appointments. It was held that the teaching experience envisaged by the statutory rules was more expansive than the one gained while holding appointments regularly under the statutory rules. Therefore, the teaching experience she gained in the Medical Colleges while working on an ad hoc basis is valid for counting the requisite experience for direct appointment as Professor. Such an experience could not be ignored. It is, thus, patent that it was a case of direct appointment, yet the judgment ratio concerns the counting of experience gained while working on an ad hoc basis. The view as mentioned earlier has also been followed and applied in the cases of promotion by this Court in the case of [Balbir Singh Yadav and others v. State of Haryana and others](#), 1984 (1) SLR 466 and by a Division Bench of this Court in the case of [Dharam Singh v. State of Punjab and others](#), 1985 (1) SLR 358. Therefore, the principle that emerges from the aforesaid case law is that once an employee has gained experience working on an ad hoc or regular basis, the Rule's requirement is satisfied. As long as a person has earned the experience of working in a teaching post like Lecturer or Senior Lecturer, then such an experience cannot be ignored, and on that basis, the

petitioner could not have been non-suited from consideration for promotion to the post of the Head of the Department. A similar question arose concerning promotion before a Division Bench of this Court, of which one of us (M.M. Kumar, J.) was a member. In C.W.P. No. 21663 of 2008, decided on 3.7.2009 ([Geeta Devi v. State of Haryana and others](#)), this question has been answered in favour of that petitioner by reckoning the period of service rendered on an ad hoc basis towards determining his eligibility condition of experience and the other argument was rejected.

13. When the abovementioned principles are applied to the facts of the present case, it becomes evident that the statutory Rules govern the applicant-respondent in the present case. At this stage, it would be pertinent to read Rule 6 in Appendix 'B', which reads as follows:-

"6. Method of appointment, qualifications and experience. -

(1) Appointment to the Service shall be made in the manner specified in Appendix 'B':

Suppose no suitable candidate is available for the Service by promotion and direct appointment. In that case, an appointment to the Service shall be made by transferring a person holding a similar or an identical post under a State Government or Government of India.

(2) A person shall be appointed to a post in the Service if he possesses the qualifications and experience specified against that post in Appendix B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion based on seniority alone:

14. A perusal of Rule 6(1) makes it patent that an appointment to the service must be made as prescribed in Appendix B'. Sub-rule (2) of Rule 6 makes it further clear that no person could be appointed to a post in the Service unless he possesses the qualification and experience specified against that post in Appendix B'. A further perusal concerning the requirement in Appendix 'B' shows that to become eligible for promotion to the post of Executive Engineer, a Sub Divisional Engineer must have experience working for a minimum period of eight years. The Rule provides for filling up the Executive Engineer post from Sub Divisional Engineer by a hundred per cent promotion. Therefore, as long as a person has eight years of working experience, a sub-divisional engineer becomes eligible for promotion to the post of executive engineer. The expression 'working experience' does not mean he must have gained experience while working on a permanent substantive post for which he has been appointed regularly. In other words, long-term regular promotion would not be necessary to gain

experience working because whether a person works on a post in his capacity as ad hoc/current duty charge holder/ temporarily, his nature of duties continues to be the same, which any regularly promoted person would require to discharge. Therefore, it follows that the applicant-respondent No. 1 was entitled to count his experience for eligibility from 6.11.2001 to 30.1.2003 towards a qualifying period of eight years for determining eligibility for promotion to the post of Executive Engineer.

10. After perusing the impugned judgment and the observations made by the learned Single Judge regarding the conduct of the appellant-University, which resulted in passing of strictures against the officials as well as for imposition of costs of Rs.25,000/-, the same seems to be justified and requires no interference by this Court.
11. Given the above discussion, we are not inclined to interfere with the impugned judgment, so the appeal fails and is dismissed.
12. Since the main case is dismissed, pending application(s), if any, have also rendered infructuous.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

05.12.2024

vanita

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No