

CWP-22426-2021 &
CWP-22249-2021

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2025:PHHC:031106



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

**CWP-22426-2021 (O&M)
Date of Decision:05.03.2025**

KULDEEP KUMAR

..... Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

2)

CWP-22249-2021 (O&M)

RAJESH

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. S.S. Sahu, Advocate for the petitioner(s).

Ms. Palika Monga, DAG, Haryana.

Mr. Aryaman Kumar Singh, Advocate for
Ms. Shubhra Singh, Advocate
for respondents No.2 to 4 & 6.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-22426-2021 and CWP-22249-2021 are disposed of since issues involved in the above captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-22426-2021.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 28.09.2021 (Annexure P-5) whereby respondent has withdrawn his recommendation for the post of Shift Attendant.

3. The petitioner pursuant to advertisement No.3/2016 dated 20.02.2016 applied for the post of Shift Attendant. In the advertisement,

*“Online applications are invited for direct recruitment of under mentioned categories of posts using the website of **HARYANA STAFF SELECTION COMMISSION** i.e. www.hssc.gov.in. The online application can be filled up from **05.03.2016 to 04.04.2016** till **11.59 P.M.**, thereafter website link will be disabled. The candidates are strictly advised to apply online well in advance without waiting for last date of submission of online application form. The printed copy of the online application form with necessary certificates must be brought at the time of verification/scrutiny-cum-interview. No offline application form or copy of downloaded application form will be accepted by the office. Qualifications/eligibility conditions, age and other documents will be determined with regard to last date fixed to apply online applications also called as closing date i.e. **04.04.2016** given in the advertisement. The details of the posts are as under.*

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integrity of this document



4. The petitioner appeared for written test and his name figured in the merit list. He was called for verification of documents and his candidature was rejected on the ground that he was possessing ITI certificate in a course other than prescribed in the advertisement. He preferred Civil Writ Petition No.23457 of 2017 before this Court assailing action of the respondent. This Court vide interim order dated 12.10.2017 directed the respondent to provisionally consider the petitioner for interview. The respondent considered him and he came to be selected. The petitioner was issued joining letter and he joined service on 10.03.2019. The respondent vide communication dated 28.09.2021 (Annexure P-5) has withdrawn its recommendation. The order dated 28.09.2021 being a short order is reproduced as below:

“OFFICE ORDER No. 854/SE/HR DATED:-28.09.2021.

Secretary, HSSC Panchkula vide his office memo no. HSSC/ Conf/Misc/2019/155 dated 08.03.2019 had supplied a list of 805 nos. of candidates recommending therein appointment to them to the post of SA against Advt. No. 3/2016, Category No. 01. As such all the candidates were appointed on the post of SA in DHBVN including the following two candidates:-

Sr. No.	Merit No.	Name, DOB and Father's Name of the Candidate (Sh).	Roll No.	Cat.	Memo No. & Date vide which appointment letter issued	Present place of posting
1	299	Kuldeep Kumar (16.10.91) S/o Sh. Dharam Pal	1301604614	BCA	No. Ch-04/ SA- 299 dated 10.03.2019	SDO OP S/Divn Uklana under Circle Fatehabad
2	333	Rajesh (10.12.95)	1301631779	BCA	No. Ch-02/ SA-333 dated 10.03.2019	SDO OP S/Divn Bhuna under Circle Fatehabad



*Now, the Secretary, HSSC, Panchkula vide his office letter bearing memo no. HSSC/Contd/Misc/2021/359 dated 09.08.2021 has intimated that the Diploma of ITI in respect of both the above named Officials are not valid, so the candidates are not fulfilling their qualification for the post of SA. Further, office has withdrawn the recommendation of the above named officials to the post of SA. As such, the whole matter has been considered and it has been decided to dispense with their services immediately. Accordingly, their services are dispensed with forthwith. **This carries the approval of SE/HR, DHBVN, Hisar.***

5. From the perusal of afore-cited order, it is evident that petitioner's recommendation has been withdrawn on the ground that he does not possess diploma of ITI in respect of notified trade.

6. Mr. S.S. Sahu, Advocate for the petitioner(s) submits that respondent considered certificates of petitioner and thereafter made his appointment. The petitioner's appointment was not made mechanically whereas he was considered on the direction of this Court, thus, his certificates were thoroughly examined and thereafter he was appointed.

7. *Per contra*, Ms. Palika Monga, DAG, Haryana submits that petitioner is possessing diploma in the trade of Mechanic-cum-Operator Electronics Communication System (for short, 'MCOECS'). In the advertisement, the said trade was not notified as essential qualification, thus, diploma in MCOECS could not be considered. The recommendation of petitioner was made by mistake and it was bound to be recalled.

8. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

9. From the perusal of record, it is evident that it is second



round of litigation. The petitioner was not called for interview despite being higher in merit on the ground that he did not possess requisite qualification. He preferred Civil Writ Petition No. 23457 of 2017 before this Court. The respondent filed reply to said writ petition. In the reply, the categorical stand of the respondent was that petitioner did not possess requisite diploma. He is possessing two years diploma in MCOECS whereas in the advertisement other trades are notified. The relevant extracts of the reply are reproduced as below:

“Whereas the petitioner possesses the qualification of 2 years diploma in electronic (MCOECS) trade whereas the requisite qualification provided in the advertisement was:-

"2 years ITI Course in Electrician/Electronics/Wireman trade or Lineman & Electrician (Maintenance & Repair of Electrical and Domestic Appliances) from VEI (Vocational Education Institute)"

The petitioner is claiming the equivalency of his qualification with qualification as required at Serial No.(i) of the advertisement (Annexure P-1). In this regard, it is respectfully submitted that the said advertisement does not envisage consideration of candidature of persons possessing qualification declared equivalent and in the absence of a specific stipulation in the advertisement the decision of the Respondent-Commission not to consider the candidature of the petitioner cannot be declared arbitrary or unconstitutional. If the requisitioning department wanted to treat those possessing equivalent qualification also then the words "or qualification declared equivalent/or equivalent qualification" would have been incorporated in the service rules and consequently in the advertisement. The absence of these words in the advertisement is clearly indicative of the



intention of the employer not to consider those who possess qualification other than those sought in the advertisement. It is also a settled legal position that court cannot sit over as an expert committee to access (sic) the "equivalence" of the qualification since it is the subject matter of Department/an expert committee."

10. The reply to aforesaid writ petition makes it clear that petitioner was not called for interview on the sole ground that he is not possessing diploma in requisite trade. On the direction of this Court, he was provisionally considered. He was issued appointment letter. Before issuing appointment letter his testimonials were re-considered and thereafter he was found fit for job and accordingly appointment letter was issued. He joined service on 10.03.2019. On the complaint of another unsuccessful candidate, the respondent by impugned order dated 28.09.2021 (Annexure P-5) withdrew its recommendation on the same ground which was raised before this Court in Civil Writ Petition No. 23457 of 2017.

11. The respondent formed an opinion that petitioner is not eligible for the post of Shift Attendant despite being higher in merit. On the direction of this Court, the respondent considered testimonials of petitioner and thereafter formed an opinion that petitioner is eligible for the post of Shift Attendant. He was not mechanically considered and issued appointment letter. The sequence of events makes it clear that respondent considered each and every aspect and thereafter issued appointment letter in favour of the petitioner. There was no occasion to recall appointment letter after 2 ½ years. As per principle of res-judicata, uniformity and consistency, the respondent had no authority to recall its



recommendation. It is not a case of mistake whereas it is a case of conscious decision.

12. There is another aspect of the matter. The petitioner joined service on 10.03.2019. A period of 6 years from the date of his joining has passed away. It is not the case of the respondent that ITI certificate produced by petitioner was a forged and fabricated document. The only allegation is that it is of a different stream/trade. The petitioner must have settled his affairs in the light of regular post granted by respondent. On account of passing of 6 years, it would be difficult for him to get another job. He was not at fault. There was complete disclosure on his part. He cannot be punished, at this belated stage, on account of mistake, if any, on the part of respondent.

13. In the backdrop, the instant petitions deserve to be allowed and accordingly allowed. The respondent shall permit the petitioner to join within two weeks from today.

13. Pending misc. application (s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

05.03.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No