

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.767 of 2011
DATE OF DECISION :24.5.2011

Preeti

PETITIONER

VERSUS

State of Haryana and another

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present:- Shri R.K.Malik, Senior Advocate with Shri Jagbir Malik, Advocate
for the petitioner.

Shri Harish Rathee, Senior D.A.G. Haryana.

Shri H.N.Mehtani, Advocate for the H.P.S.C.

MAHESH GROVER, J.

The controversy raised in this petitions is limited. The petitioner responded to the advertisement issued by the Haryana Public Service Commission in for the post of Lecturer (School Cadre). The selection process included a screening test which was conducted on 26.12.2010. 33% posts were reserved for female categories. The respondents while evolving upon the process of selection, prescribed the principle of reservation in favour of 33% women to mean that all who come within the zone of consideration, they were to first consider the 66%

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posts for male candidates and then decide the reservation of 33% quota meant for women.

In short, the controversy is that the respondents did not adhere to the proper procedure for applying horizontal reservation, as has been determined in various judicial pronouncements. This matter therefore, is no longer res integra. A Division Bench of this Court while referring to various judicial pronouncements of the Hon'ble Supreme Court, laid down the manner in which such horizontal reservation is to be effected. The relevant extract of the said judgment of this Court in C.W.P. No.12275 of 2000 decided on 8.1.2000 is as below :-

“However, in respect of the posts which are said to be meant for men category, we are of the opinion that women cannot be excluded from competing against the posts specified to be filled up from amongst men. Neither Article 15 nor Article 16 contemplates reservation of posts in favour of men. Such posts are required to be filled in on the basis of merit alone and if on the basis of merit women are meritorious, they are entitled to be appointed against the posts described as reserved for men to the extent of posts meant for women.

As per the judgments mentioned above, a combined merit list of all the candidates is to be prepared. If on such merit, women candidates are not selected to the extent of posts reserved for them, only then women lower in merit will be selected and appointed to fill up the requisite posts meant for women candidates. Such course alone will be an act of horizontal reservation and in accordance with the mandate of Articles 14 to 16 of the Constitution of India.”

The decision of the Haryana Public Service Commission was at

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variance with the dictum of law as settled by the Hon'ble Supreme Court and followed by the Division Bench of this Court.

Upon notice of motion having been issued, the Haryana Public Service Commission filed its reply and during the course of proceedings, reconsidered its decision to say that all female candidates in their respective categories shall be called for interview who have secured more cut off marks fixed for the male candidates and that further, such decision would be applied across the board irrespective of the fact as to whether any candidate has approached this Court by way of filing writ petition and also, that all the male candidates who have been short-listed for the interview, shall be retained in the zone of consideration.

This did not satisfy the learned counsel for the petitioner who stated that this would result in the enlargement of the zone of consideration and would also result in violation of the stipulation in the advertisement issued by the Haryana Public Service Commission regarding the selection which stipulation contemplated calling of three times the number of candidates. To demonstrate, he stated that if for the post of English Lecturer, the total number of posts advertised is 133, then the candidates required to be called would have been 399, but now by virtue of the decision, the number would go up manifold by 5 to 6 times and this will greatly prejudice the process of selection as the petitioner would unnecessarily have to compete with more number of candidates.

The respondent/Commission then went on to file an affidavit of Shri I.C.Sangwan, Secretary of the Haryana Public Service Commission and has produced a tabulated chart for various categories. It was pointed out that the change would be only in a few categories and not in all the categories specified. It was stated in the affidavit that the enlargement of zone of consideration would effect the following categories :-

(1) In advertisement No.3, in the subject of Hindi, the candidates in

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excess of three times the advertised posts in general, backward classes and physically handicapped categories would vary between 3.5 to 5.1 times approximately in relation to the advertised posts.

(2) In the subject of English, the variation would be 3.1 to 4.6, whereas in the remaining categories, there would be no change at all.

Sensing the acute opposition to their decision, the learned counsel for the Haryana Public Service Commission placed reliance upon a Division Bench judgment of this Court in Dr.Lovekesh Kumar and others v. State of Punjab and others 1998(1) R.S.J. 566, wherein paras 21,22 and 23, it has been held as follows :-

“21. At the cost of repetition, we deem it necessary to observe that in the absence of any statutory prohibition of the Commission has the right to devise appropriate procedure consistent with the constitutional code of equality for making selection for recruitment to public service. In a given case the Commission may adjudge the suitability/merit of the candidates by holding a competitive test. In another case it may hold a written test as well as viva voce test for evaluating the comparative merit of the candidates. In a third case it may make selection only by interviewing the candidates. Where the number of applications received in pursuance of the advertisement is very large, it is legitimate for the Commission to devise appropriate criteria to reduce the number of candidates to be called for viva voce test. This can be done by calling only those candidates who possess qualification higher than the prescribed one or who are having a particular length of service or experience. This can also be done by holding he

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screening test. The limited element of selection involved in the method of screening test is that a candidate is required to achieve a particular percentage of marks so as to be called for viva voce test. If the Commission finds that the number of candidates passing the screening test by securing a specified percentage of marks is also very large it can fix a cut-off point and limit the number of candidates to be called for viva voce. These methods cannot be frowned upon by the Court unless it is shown that the Commission has acted arbitrarily or that the method devised by it is unfair, irrational or unreasonable.

We can draw support for the above stated principles from the various judicial precedents.

22. In *Jayant Kumar Chavhan v. Public Service Commission, M.P.Indore and another, 1979(1) S.L.R. 316, a Division bench of Madhya Pradesh High Court interpreted Rule 21 of the M.P.Judicial Service (Classification, Recruitment, and Conditions of Service) Rules, 1955* in the context of the challenge to the method adopted by the Commission to limit the number of candidates who were called for viva voce. The facts which are borne out from the report show that against the 33 posts, 2367 applications were received by the Commission. The Commission laid down certain criteria and the candidates fulfilling the said criteria were alone called for interview, Jayant Kumar Chavhan, who was one of the applicants, challenged the criteria adopted by the Commission for short listing on the ground that in terms of Rule 21 every candidate was entitled to be interviewed. The

Division Bench of the High Court referred to the relevant rule and held as under :-

“It will make the task of the Commission extremely difficult, if not impossible, if all the candidates are to be called for interview. The Commission may then have to spend years before interviews are over. The procedure adopted by the Commission to make a preliminary selection for restricting the number of candidates to be called for interview is the only practical method for completing the selection within reasonable time. If the criteria laid down by the Commission for calling candidates for interview are reasonable, no objection can be taken to the course adopted. Indeed, this point is covered by a Full Bench decision of this Court in *Omparkash v. State of M.P.*, 1978 MPLJ 136, where it was observed as follows :-

“Once the Public Service Commission is asked by the Government to make a selection, it is entirely in the wisdom and discretion of the Commission what mode or method it would adopt. This is subject to statutory provisions, if any. Where minimum qualifications for eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications. However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus

qualifications and/or experience and call for interview only those candidates who fall within those categories, eliminating others who do not satisfy those criteria. Such classification does not tantamount to any hostile discrimination. Practicability may also require such categorization. For instance, if for three posts there are 3000 applicants, all eligible, the Commission cannot afford to spend months together in selecting three out of 3000.”

23. In *Ashok Kumar Yadav and others v. State of Haryana and others*, AIR 1987 SC 454, a Constitution Bench relied on the practice adopted by the Union Public Service Commission to call for interview candidates representing not more than twice or thrice the number of available vacancies as well as the Kothari Committee's report on the “Recruitment Policy and Selection Method for Civil Services Examination” and observed that when there is a composite test consisting of written examination followed by a viva voce test, the number of candidates to be called for interview on the basis of the marks obtained in the written examination, should not exceed twice or at the highest thrice the number of vacancies to be filled.”

Reliance was also placed another Division Bench judgment of this Court in *Chattar Pal v. State of Haryana and others* R.S.J. 1999(2) 22, to say that the competent selecting authority has to evolve its own mechanism to call the limited number of candidates for selection.

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Similarly, reliance was also placed on a decision of the Hon'ble Supreme Court in Govt. of Andhra Pradesh v. P.Dilip Kumar and another 1993 (3) R.S.J.27 and M.P.Public Service Commission v. Navnit Kumar Potdar A.I.R. 1995 S.C.77.

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

As observed earlier, the issue regarding applicability of horizontal reservation is no longer res integra, as the same has been conclusively answered in numerous judgments including the Division Bench judgment of this Court whose observations have been extracted above.

In the considered opinion of this Court, it was the bounden duty of the respondents to subscribe and submit to the observations of various decisions of the courts and as a consequence thereof, limit the number of candidates being called for interview to three times the number of advertised posts which is in accordance with their own decision as well and reflected in the advertisement. The respondents plea that no prejudice would be caused to the petitioner, if the zone of consideration is enlarged and that the petitioner at best has a right to be considered, if she is involved in the inclusive process, and she cannot make a grievance out of it, simply on the ground that the zone of consideration is going to be enlarged, has to be questioned seriously and the Court is not enamoured of the argument that has been raised, because on the face of it, it looks simple enough, but is fraught with danger of including in the zone consideration the persons who necessarily would have been excluded, if the decision of calling three times the number of posts had been adhered to and had the process and applicability of horizontal reservation been applied to the facts of the case with equal seriousness. Even in the observation relied upon by the learned counsel for the respondents in Dr.Lovekesh Kumar and others v. State of Punjab and others

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1998(1) R.S.J. 566 (supra), the Court has observed in para-21 as under :-

“Where the number of applications received in pursuance of the advertisement is very large, it is legitimate for the Commission to devise appropriate criteria to reduce the number of candidates to be called for viva voce test. This can be done by calling only those candidates who possess qualification higher than the prescribed one or who are having a particular length of service or experience. This can also be done by holding the screening test. The limited element of selection involved in the method of screening test is that a candidate is required to achieve a particular percentage of marks so as to be called for viva voce test. If the Commission finds that the number of candidates passing the screening test by securing a specified percentage of marks is also very large it can fix a cut-off point and limit the number of candidates to be called for viva voce.”

They had rightly taken a conscious decision at the time of the issuance of the advertisement limiting the number of candidates to be called for interview to three times the number of advertised posts, and it would be fallacious therefore, to permit the respondents to transgress upon their own decision and in the process, grant an opportunity to those who would have got no chance of consideration, but for the erroneous application of law by the respondents.

The writ petition is thus allowed. The respondents are directed to apply the principles of reservation as determined by the Division Bench judgment of this Court in C.W.P. No.12275 of 2000 and re-determine the list of candidates to be called for interview. The exercise shall be concluded by the and intimation

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be given to all the candidates who are now in the zone of consideration for the selection. In case there is some over-lapping i.e. some of the persons who might have come in the previous list, they would also be issued intimation afresh. The candidates who have been excluded in the new exercise, be also intimated likewise.

May 24, 2011
GD

(MAHESH GROVER)
JUDGE

WHETHER TO BE REFERRED TO REPORTER? YES/NO



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