
(2019) 01 P&H CK 0207

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 26808 Of 2017

Dr. Madhvi Sharma

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Haryana Affiliated Colleges (Security Of Service) Rules, 2006 — Rule 7

Citation : (2019) 01 P&H CK 0207

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Lalit Rishi, Kiran Pal Singh, B.L. Gupta

Final Decision : Allowed

Judgement

Ritu Bahri, J

By this petition, the petitioner is seeking quashing of letter dated 11.04.2016 (Annexure P-8) endorsed on 17.08.2016 and the action of the Maharishi Dayanand University (hereinafter referred to as 'the University') in not approving the proceedings of the Selection Committee dated 26.03.2016 (Annexure P-7) vide which the petitioner has been recommended for the post of Principal of respondent no. 3-R.D.S. Public College, Kala Ka Road, Rewari.

Respondent No. 3-College is affiliated to Maharishi Dayanand University, Rohtak and an advertisement has been issued by respondent No. 3 on 12.12.2015 (Annexure P-1) for appointment against the permanent post of Principal on regular pay scale. The eligibility condition for the post of Principal is as under:-

"Principal against permanent post in regular pay scale qualification/age/experience/minimum score 400 (API) & reservations as prescribed by UGC/MDU/ Haryana Govt."

The petitioner was working as Principal in D.B. College, Kehrli (Alwar) Rajasthan and fulfilling the requisite qualifications, applied for the said post vide application

dated 27.12.2015 (Annexure P-2). The selection to the post of Principal by direct recruitment was to be made a duly constituted Selection Committee of eight persons as per Rule 7 of the Haryana Affiliated Colleges (Security of Service) Rule, 2006 (Annexure P-3). These eight persons included Chairperson of the Governing Body as Chairperson, one member of the Governing Body to be nominated by the Chairperson, two nominees of Vice Chancellor out of which one should be subject expert, Director nominee and three experts persons comprising Principal of a College, a Professor and an accomplished educationist not below to the rank of a Professor (to be nominated by the Governing Body). The petitioner was sent interview letter dated 14.03.2016 (Annexure P-4) and another letter dated 21.03.2016 (Annexure P-5). The interview was held on 26.03.2016 and the name of the petitioner figured at Sr. No. 5 as per Annexure P-6. When petitioner did not hear anything from College, she sought information from respondent No. 3-College and was informed that the petitioner was selected for the post in question and the Selection Committee had recommended the name of the petitioner at Sr. No. 1 having obtained 56.44 marks and another candidate at Sr. No. 2 having obtained 44.5 marks. The Vice Chancellor of the University did not approve the proceedings of the Selection Committee and requested to re-advertise the said post. The petitioner was provided the report of the Selection Committee dated 26.03.2016 (Annexure P-7) and the letter dated 11.04.2016 (Annexure P-8).

Learned counsel for the petitioner has placed on record the letter dated 02.07.2013 whereby respondent No. 2-University had adopted the selection criteria for recruitment to the post of Principal and Assistant Professor (Annexure P-9 collectively) which reveals that there is no requirement of having three eligible candidates with API score of 400 points. The Vice Chancellor had not approved the Selection Committee proceedings dated 26.03.2016 (Annexure P-7) on the ground that there were not three eligible candidates having API score of 400 points. The petitioner sought the information under RTI Act, 2005 and was informed the criteria/letter dated 02.07.2013 is being followed by the University and hence the present writ petition.

As per the interim order dated 24.11.2017, proceedings to advertise the post afresh were stayed.

On notice, written statement has been filed by respondent No. 2-University. The stand taken by the respondent No. 2 in the written statement is that as per advertisement dated 12.12.2015 (Annexure P-1), a candidate for the post of Principal was required to have minimum API score of 400 points and nine candidates had made applications and thereafter two nominees of the Vice-Chancellor were appointed on 03.02.2016 and a panel of subject experts was also made. Finally the interview was conducted and out of nine candidates, only two candidates namely Madhvi Sharma-petitioner and Geeta Yadav on merit No.2 had more than 400 API score in category No. III. A xerox copy of the statement prepared by the Selection Committee has been placed on record as Annexure

R-2/2. The candidatures of other seven candidates were rejected being ineligible. A further stand is taken that as per instructions dated 07.08.2003 (Annexure R-2/3), there should be atleast three candidates against one post for selection to the post of Principal. Keeping in view instructions dated 07.08.2003, the University has issued a letter dated 17.06.2015 (Annexure R-2/4) to all the Directors/Principals of all the affiliated Colleges of the University that in future there must be three eligible candidates against one post (Teaching and Non-Teaching). In the letter dated 17.06.2015 (Annexure R-2/4), there is a condition of relaxation purely on merit by furnishing proofs of efforts undertaken to elicit a good response, e.g. issuance of advertisements at least twice in well circulated newspapers, one of which must be of a National Daily, posting advertisement on website and intimation to the University.

A further clarification has been given that the post of Principal was earlier advertised by respondent No. 3-College on 04.02.2015. The interview could not be conducted and this advertisement was allowed to lapse. The petitioner was not a candidate and she did not apply for the said post. Subsequently this post was re-advertised on 11.06.2015 after getting approval from Director General Higher Education Haryana after appointing subject experts being members of the Selection Committee. After getting application forms, the Selection Committee held a meeting on 06.08.2015 (Annexure R-2/5) and took a decision that none of the candidates has secured minimum API score of 400 points which is mandatory for the Principal/Professor and hence the Selection Committee was unable to conduct the interview and finally stand taken is that the petitioner has not challenged the instructions dated 07.08.2003 (Annexure R-2/3) which lays down that there should be minimum three eligible candidates for conducting the selection to teaching/non-teaching one post in any affiliated college.

Learned counsel for the petitioner has argued that there is no occasion to challenge the instructions dated 07.08.2003 (Annexure R-2/3) as in subsequent instructions issued by the University dated 17.06.2015 (Annexure R-2/4) the Selection Committee can relax condition of calling three candidates for interview against one post. However this relaxation is purely on merit by furnishing proofs of efforts undertaken to elicit a good response. He has further argued that prior to this advertisement 12.12.2015 (Annexure P-1) the College had issued two advertisements earlier. One advertisement was issued on 04.02.2015 and this advertisement was allowed to lapse. Subsequently second advertisement was issued on 11.06.2015 and the Selection Committee met on 06.08.2015 and after interacting with the candidates, found that none of the candidates had given their API based performance for direct recruitment nor they have secured minimum of 400 API points and this fact is evident from the proceedings of the meeting of the Selection Committee dated 06.08.2015 (Annexure R-2/5). Keeping in view that in prior two advertisements, no selection could be made and there was sufficient ground to give relaxation from calling three qualified persons for selection to the post of one post of Principal as per instructions dated 17.06.2015 (Annexure R-2/4).

Learned counsel for respondent No. 2 has vehemently argued that against the advertisement dated 12.12.2015 (Annexure P-1), nine candidates had applied and were called for interview and out of these seven were ineligible as they did not have 400 API score and only two candidates i.e. the petitioner and Geeta Yadav were eligible. After interviewing them, the petitioner has been awarded 56.44 marks and Geeta Yadav has been awarded 44.5 marks. The University was bound by the instructions dated 07.08.2003 (Annexure R-2/3) and hence has rightly disapprove the selection made of the petitioner for the post of Principal.

After hearing learned counsel for the parties, this petition deserves to be allowed. The University has placed on record letter dated 17.06.2015 (Annexure R-2/4) whereby they have reiterated that when selection is to be made against one post, there must be three eligible candidates. However in these instructions, there is a provision of relaxation purely on merit by furnishing proofs of efforts undertaken to elicit a good response. The fact that there were two eligible candidates, is not in dispute. However keeping in view that no selection could be made in the earlier two advertisements, the benefit of relaxation is to be given for making appointment to the post of Principal as per instructions issued by the University dated 17.06.2015 (Annexure R-2/4).

A further reference can be made to the Division Bench judgment passed by this Court in CWP-10280-1998 Dr. Bhim Singh Dahiya V/s. Chaudhary Charan Singh Haryana Agricultural University, Hissar 1999(2)S.C.T.538. In this case also, the post of Director Research was in question, the Selection Committee had recommended two names for approval of the Board in consultation with the Deans. In that case the Selection Committee had recommended two names and had also stated that a person at serial no. 2 was either not eligible or was not suitable. In that situation, the appointing authority had no choice but to appoint person at serial no. 1 in order of merit. As per the rules in this case finally 2 names in order of merit for appointment could be sent. However the Selection Committee had recommended the name of only one candidate who was eligible the selection was upheld and this writ petition was dismissed.

In the present case, nine candidates were called for interview and seven candidates were found ineligible, the Selection Committee recommended the name of the petitioner at sr.no. 1 with 56.44 marks and the second candidate Geeta Yadav at sr. no. 2 with 44.5 marks. Condition of relaxation has been rightly exercised as per instructions dated 17.06.2015 (Annexure R-2/4).

This writ petition is allowed and the respondents are directed to issue appointment letter to the petitioner for the post of Principal forthwith.