
(2009) 07 SHI CK 0003
In the High Court Of Himachal Pradesh

Dr. Shikha Sood

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 07 SHI CK 0003

Hon'ble Judges : Jagdish Bhalla, C.J.;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Respondent No. 4 had issued an advertisement bearing No. III/2009 dated 14.3.2009 whereby applications were invited for various posts in different Departments of Himachal Pradesh on the proforma by 12.4.2009. The petitioner submitted application to respondent No. 4 for considering her candidature for the post of Assistant Professor in the Department of Radiology in Indira Gandhi Medical College, Shimla. Her candidature has been cancelled by respondent No. 4 on 25.6.2009 on the ground that she was not possessing essential qualification No. (iii) for the post in question.

2. Ms. Vandana Kuthiala has strenuously argued that the action of the respondents of cancelling the candidature of the petitioner is violative of Articles 14 and 16 of the Constitution of India. She then contended that the eligibility of the petitioner for the post in question was to be seen at the time of interview.

3. Mr. R.K. Bawa, learned Advocate General and Mr. D.K. Khanna, Advocate have argued that the petitioner was not in possession of essential qualification on the last date of receipt of application i.e. 12.4.2009.

4. We have heard the learned Counsel for the parties and have carefully perused the pleadings.

5. The last date for receipt of application was 12.4.2009. The petitioner has

admitted in para 12 of the petition that she had not completed three years tenure as Registrar on the last date of receipt of application i.e. 12.4.2009. She had completed three years tenure as Registrar towards the end of May, 2009 as per the representation made by her. The date of viva voce examination is 14.7.2009.

6. The essential qualifications have been prescribed in the advertisement published on 14.3.2009. It will be apposite to take note of the essential qualification No. (iii), which reads thus:

(iii) At least three years teaching experience as Lecturer/Registrar/Demonstrator/ Resident after doing post graduation in the concerned specialty in any recognized medical college.

7. It is settled law by now that the cut-off date for eligibility requirements to be fulfilled by the candidate can be the date appointed by Recruitment and Promotion Rules or as the case may be prescribed in the advertisement calling for the applications and if there is no date appointed either under the rules or in the advertisement, in that eventuality, the eligibility requirement criteria is to be applied by reference to the last date appointed by which the applications are to be received by the authority. In the present case, the petitioner has failed to point out any cut off date prescribed under the rules. In these circumstances, the cut-off date with reference to the eligibility requirement criteria will be the date appointed i.e. 12.4.2009 by which the applications were to be submitted.

8. This question is no more res integra in view of the definitive law laid down by their Lordships of the Hon''ble Supreme Court in Bhupinderpal Singh and Others Vs. State of Punjab and Others, Their Lordships have held as under:

13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, ; A. P. Public Service Commission v. B. Sarat Chandra (1990) 4 SLR 235 (SC); Dist. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram v. M. Tripura Sundari Devi (1990) 4 SLR 237 (SC); Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, ; Dr. M.V. Nair Vs. Union of India (UOI) and Others, ; and U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, , the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of

the Constitution vested in this Court so as to advance the cause of justice.

9. In a recent judgment in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, their Lordships of the Hon'ble Supreme Court have held that in the absence of cut-off date specified in the advertisement or in the rules, the last date of filing the applications must be considered as cut-off date. Their Lordships have held as under:

11. The question as to what should be the cut-off date in absence of any date specified in this behalf either in the advertisement or in the reference is no longer *res integra*. It would be last date for filing application as would appear from the discussions made hereinafter.

12. The question came up for consideration, *inter alia*, before a 3-Judge Bench of this Court in Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, wherein Thommen, J. speaking for himself and Ramaswami, J. opined :

13. It is true Rule 37 is in terms applicable only to Public Service Commission candidates and due notice of provisional entertainment of their application, subject to their passing examination before the date of interview, is a requirement peculiar to Rule 37 and is not applicable to the present case.

14. If the principle of Rule 37 is by analogy applicable, the fact that notice of provisional entertainment of applications, subject to passing of the examination before the date of interview, is a requirement in the interests of candidates who fell within that category. The appellants are by analogy persons of that category, but they have no complaint on any such ground.

15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect and the view expressed by the learned Single Judge was, on the facts of this case, the correct view. Accordingly, we set aside the impugned judgment of the Division Bench and restore that of the learned Single Judge. In the result, we uphold the results announced by the recruiting authority. The appeal is allowed in the above terms. However, we make no order as to costs.

13. Sahai, J., however, gave a dissenting note, stating :

The notification, therefore, provided not, only, the conditions which a candidate was required to possess when applying for the post mentioned in the notification but he was also required to support it with authenticated certificate and if he failed to do so then the application was not liable to be entertained. In legal terminology where something is required to be done and the consequences of failure to do so are also provided then it is known as mandatory. The mandatory character of possessing the requirements as provided in the first part of the notification stands further strengthened from the third and last part of the notification which prohibited the candidates from applying if they did not possess the requisite qualifications. In view of these clear and specific conditions laid down in the advertisement those candidates who were not possessed of the B.E. qualifications were not eligible for applying nor their applications were liable to be entertained nor could they be called for interview. Eligibility for the post mentioned in the notification depended on possessing the qualification noted against each post. The expression, shall be possessed of such qualifications, is indicative of both the mandatory character of the requirement and its operation in praesenti. That is a candidate must not only have been qualified but he should have been possessed of it on the date the application was made. The construction suggested by the learned Counsel for the appellant that the relevant date for purposes of eligibility was the date of interview and not the date of application or July 15, 1982 the last date for submission of forms is not made out from the language of the notification. Acceptance of such construction would result in altering the first part of the advertisement prescribing eligibility on the date of applying for the post as being extended to the date of interview. If it is read in the manner suggested then the requirement that incomplete applications and those not accompanied by the requisite certificates shall not be entertained, shall become meaningless. Purpose of filing certificate along with application was to prove that the conditions required were satisfied. Non- filing of any of the certificates could have resulted in not entertaining the application as the requirements as specified would have been presumed to be non-existent. Fulfilment of conditions was mandatory and its proof could be directory. The former could not be waived or deferred whereas the defect in latter could be cured even subsequently. That is proof could be furnished till date of interview but not the eligibility to apply for the post. Any other construction would further be contrary to the last part of the notification.

14. A review application was filed which was admitted. The matter was again placed before a 3-Judge Bench of this Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, . One of the issues which fell for consideration of the Bench being Issue No. 1 reads as under :

(1) Whether the view taken by the majority (Hon"ble Dr Thommen and v. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the

applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission Rules to the present case by analogy?

15. It was held :

So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and v. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well- established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/ published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.

The said decision is, therefore, an authority for the proposition that in absence of any cut-off date specified in the advertisement or in the rules, the last date for filing of an application shall be considered as such.

16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-off date. He was, therefore, not eligible therefor.

18. Yet again in *Shankar K. Mandal and Others Vs. State of Bihar and Others*, this Court held that the following principles could be culled out from the aforementioned decisions:

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.

20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cutoff date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

10. Accordingly, it is clear that the petitioner was not eligible on the last date of receipt of application i.e. 12.4.2009 and there is no illegality or arbitrariness in the decision conveyed to the petitioner on 25.6.2009. Consequently, there is no merit in the petition and the same is dismissed. There shall, however, be no order as to costs.