

(2013) 02 P&H CK 0251
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18254 of 2011

Dr. Sneh Lata Sharma

APPELLANT

Vs

Haryana Public Service Commission and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2014) 1 ILR (P&H) 301

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner has filed the instant writ petition impugning the action of the respondent-Haryana Public Service Commission in rejecting her candidature for selection and recruitment to the post of Lecturer (College Cadre) HES-II (Group "B") in the subject of English.

2. A brief factual backdrop would be necessary. The Haryana Public Service Commission issued an advertisement dated 28.10.2009, Annexure P1, inviting applications from eligible candidates for recruitment to 475 temporary posts of Lecturers (College Cadre) in various subjects in the Haryana Education Department. A total of 65 posts of Lecturers were advertised pertaining to the English subject. Out of such 65 posts advertised, five were reserved for backward class category. The essential qualifications stipulated in the advertisement for the post of Lecturer covering all subjects except Mass Communication were to the following effect:

4. Essential Qualifications:

Lecturer (all subjects except Mass Communication)

a) good academic record with at least 55% of marks or an equivalent grade of B in the 7 point scale with letter grades O, A, B, C, D, E and F at the Master's Degree level in the relevant subject from an Indian University or an equivalent

degree from a Foreign University.

b) Knowledge of Hindi/Sanskrit upto Matric standard.

c) Besides fulfilling the above qualifications, candidates should have cleared the National Eligibility Test (NET) for Lecturers conducted by the U.G.C., C.S.I.R. or similar test accredited by the U.G.C..

Note:

a) NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturer in Colleges.

Provided that the candidates who have acquired Ph.D. Degree upto 31st May, 2009 are exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment to the posts of Lecturers or equivalent positions in Colleges provided further that those candidates who were enrolled for Ph.D. Degree upto 31 May, 2009 shall also become eligible for exemption from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment to the posts of Lecturers or equivalent position in Colleges only on acquisition of Ph.D. Degree.

3. Subsequently, a public notice dated 25.7.2011 was issued by the respondent-Commission in the following terms:

THE TRIBUNE DATED 25.7.2011

HARYANA PUBLIC SERVICE COMMISSION

Bays No. 1-10, Block B, Sector 4, Panchkula.

ANNOUNCEMENT

It is hereby announced for general information of the candidates those who have applied for the posts of Lecturer (College Cadre) for various subjects in response to Advertisement No. 7(1) published on 28.10.2009 in the Hindustan Times, The Tribune, Dainik Bhaskar and Amar Ujala and subsequent corrigenda published on 22.12.2009 & 29.1.2010 that the Commission has considered the issue and decided that those candidates who were enrolled for Ph.D. Degree on or before 31.05.2009 will be considered eligible for exemption for requirement of minimum eligibility condition of NET/SLET for recruitment to the posts of Lecturers (College Cadre) who acquire Ph.D. Degree upto the date of conduct of interview in the particular subject.

Sd/- Secretary Haryana Public Service Commission Panchkula.

4. It has been pleaded that the petitioner belongs to the backward class category and being eligible for the post of Lecturer (English) had submitted her application within the stipulated time-frame. Towards such assertion, it has been submitted that in the advertisement, NET/SLET was the minimum eligibility condition for recruitment and appointment to the post of Lecturer, and candidates having

acquired Ph.D. Degree upto 31.5.2009 or having been enrolled for the Ph.D. Degree upto 31.5.2009 were exempted from the requirement of such minimum eligibility condition of NET/SLET. It is asserted that the petitioner on account of having enrolled for Ph.D. Degree in English on 13.5.2008, was eligible to be considered for the post. The respondent-Commission had resorted to a process of short-listing in terms of holding a screening test on 12.9.2010 in which the petitioner had duly appeared and had scored 79 marks as against the cut-off--67 marks fixed for the backward class category. The petitioner was called to appear in the interview on 10.8.2011 but on such date she was not permitted to participate in the interview process on the reasoning that she had not acquired the Ph.D. Degree as on the date of the interview i.e. 10.8.2011, and as such, her candidature for the post could not be accepted. It has been pleaded that the petitioner was awarded the Ph.D. Degree on 12.9.2011 and, accordingly, she had approached the respondent-Commission in the light of a written request dated 14.9.2011 duly received in the office of the Commission on the same date and had prayed that since the interviews for the post of Lecturer in English were still going on, accordingly, her claim for selection and appointment be considered in the light of the public notice dated 25.7.2011 at Annexure P8.

5. Mr. Subhash Ahuja, learned counsel appearing for the petitioner has vehemently argued that the petitioner was vested with a right to be considered for selection to the post of Lecturer (English) in the light of the terms and conditions stipulated in the initial advertisement dated 28.10.2009 in terms of which, the selection process to the post had been initiated. Learned counsel would argue that all such candidates who acquired Ph.D. Degree upto 31.5.2009 were exempted from clearing the NET/SLET and even such candidates like the petitioner who were registered for acquiring Ph.D. Degree upto 31.5.2009 were also exempted from clearing NET/SLET but were to be given appointments only upon acquisition of the Ph.D. Degree, if selected for the post. It has been argued that the process of selection having been initiated, the rules of the game could not have been changed in terms of subsequent public notice dated 25.7.2011 issued by the respondent-Commission whereby a new condition had been imposed that only such candidates would be considered eligible for exemption of clearing the NET/SLET who have been enrolled for the Ph.D. Degree on or before 31.5.2009 and who acquired the Ph.D. Degree upto the date of conduct of interview in the particular subject. In the light of such submission, a prayer for quashing of public notice dated 25.7.2011 issued by the respondent-Commission has also been raised in the present petition.

6. In the alternate, Mr. Ahuja, learned counsel for the petitioner has raised a submission that even in terms of the public notice dated 25.7.2011, the petitioner cannot be held to be ineligible for consideration and selection to the post of Lecturer (English). Learned counsel would submit that the petitioner was awarded Ph.D. Degree on 12.9.2011 and in this regard would refer to the notification and provisional Degree, both dated 12.9.2011 issued by Maharshi Dayanand University, Rohtak, Annexure P4. Learned counsel would even advert

to the notices placed on record at Annexures P11 and P12 issued by the respondent-Commission whereby interviews for the post of Lecturer (English) pertaining to General as also Reserved Category candidates had been fixed for 16.9.2011, as also for 26.9.2011. The argument raised by the learned counsel is that even in terms of the public notice dated 25.7.2011, candidates who acquired Ph.D. Degree upto the date of conduct of interview in the particular subject were exempted from passing the NET/SLET, and the petitioner having acquired the Ph.D. Degree on 12.9.2011 and the interviews for the post of Lecturer (English) having continued upto 26.9.2011, the petitioner was to be considered as eligible for selection to the post of Lecturer (English). It has been argued on behalf of the petitioner that the action of the respondent-Commission in rejecting the candidature of the petitioner and not even permitting her to participate in the interview process is arbitrary and discriminatory.

7. Per contra, Mr. H.N. Mehtani, learned counsel appearing for the respondent-Commission would submit that a bona fide decision had been taken by the Commission in its meeting held on 18.7.2011 and it had been decided that candidates who were enrolled for Ph.D. Degree on or before 31.5.2009 would be considered eligible for exemption from the requirement of the minimum eligibility condition of NET/SLET for recruitment to the post of Lecturer (College Cadre) who have acquired Ph.D. Degree upto the date of conduct of the interview in a particular subject. The categoric stand taken on behalf of the Commission in the written statement filed is that the petitioner had been called for the interview on 10.8.2011 and since on such date, she had not acquired the Ph.D. Degree as regards claiming exemption of clearing NET/SLET, accordingly, the petitioner had been rightfully considered as ineligible for the post. Learned counsel for the respondent-Commission has further argued that since the process of selection stands completed, the writ petition has been rendered infructuous and no relief could be granted to the petitioner at this stage. Learned counsel would pray for dismissal of the writ petition.

8. It would require notice that the petitioner had impleaded private respondents No. 4 to 11 being the selected candidates in a representative capacity. In spite of service having been effected, respondents No. 4 to 6, 8 to 11 had chosen not to join contest. Even though, learned counsel has appeared on behalf of respondent No. 7, but no reply has been filed.

9. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

10. There would be no quarrel with the proposition that the candidates who apply and subject themselves to the process of selection for a particular post in response to an advertisement, acquire a vested right for being considered for selection in the light of the terms and conditions contained in the advertisement itself. Even though a candidate does not get any right to the post merely on account of being eligible and submitting an application in response to an advertisement, but right is created in his favour as per existing terms and

conditions and such stipulations and conditions of eligibility spelt out in the advertisement cannot be changed mid-way through the process of selection. Reference in this regard can be made to the decisions of the Hon'ble Apex Court in N.T. Devin Katti versus Karnataka Public Service Commission 1992 (1) RSJ 630 and P. Mahendran and others Vs. State of Karnataka and others, .

11. Adverting back to the facts of the present case, in the initial advertisement dated 28.10.2009 wherein the minimum eligibility condition of having cleared the NET/SLET had been laid down, an exemption from the same had been granted in favour of candidates who had acquired the Ph.D. Degree upto 31.5.2009, and also for such candidates who were enrolled for the Ph.D. Degree upto 31.5.2009 but were to be given appointments, if selected, only upon acquiring the Ph.D. Degree. As such, there was no specific cut-off date prescribed for acquisition of the Ph.D. Degree insofar as the candidates like the petitioner, who had enrolled themselves for such qualifications prior to 31.5.2009 were concerned. It was towards clearing such uncertainty that the respondent-commission took a decision and issued a public notice dated 25.7.2011, Annexure P8, clarifying that all those candidates who enrolled for the Ph.D. Degree on or before 31.5.2009 and were seeking exemption from clearing the NET/SLET for purposes of recruitment to the post of Lecturer (College Cadre), were to acquire the Ph.D. Degree upto the date of conduct of interview in the particular subject. No exception to the decision of the respondent-Commission in this regard can be taken.

12. Certain facts which are glaring in nature and on which there is no dispute, are that the petitioner had enrolled for the Ph.D. Degree prior to 31.5.2009. She was called for the interview on 10.8.2011. The petitioner was awarded the Ph.D. Degree on 12.9.2011. The categorical averments in the petition that vide notices at Annexures P11 and P12, candidates had been called by the respondent-Commission for interviews for the post of Lecturer (English) on 16.9.2011 and 26.9.2011, have been specifically admitted in the reply filed on behalf of the Commission.

13. The short question that would require examination is as to whether in the light of the public notice dated 25.7.2011, could the petitioner be considered ineligible for selection and recruitment to the post of Lecturer (English) on account of the fact that she acquired the Ph.D. Degree on 12.9.2011, whereas interviews for the post of Lecturer (English) admittedly were held even upto 26.9.2011?

14. The language employed in the public notice dated 25.7.2011 was clear and unambiguous. Candidates who were enrolled for the Ph.D. Degree on or before 31.5.2009 were to be considered eligible only upon acquiring the Ph.D. Degree upto the date of conduct of interview in the particular subject. The entire objective of issuance of public notice dated 25.7.2011 issued by the respondent-Commission was to crystallize the matter as regards the date of acquiring eligibility. The stipulation as contained in the public notice dated 25.7.2011 will

necessarily have to be read from the view point of a candidate that to be eligible, the Ph.D. Degree would have to be acquired upto the last date of conduct of interview in that particular subject. The Commission has admitted the factum of the interview for the post of Lecturer (English) having been held even upto 26.9.2011. As such, it was not open for the Commission to take a stand in terms of treating the petitioner as ineligible on the date of interview i.e. 10.8.2011 on the ground that she acquired the Ph.D. Degree only on 12.9.2011. Accepting such a stand on the part of the Commission would make the cutoff date for acquiring Ph.D. Degree candidate specific and as such, it would be a variable date. Such course of action would certainly leave a scope for manipulation. Rejection of the candidature of the petitioner inspite of her having acquired the Ph.D. Degree on 12.9.2011 and on the other hand, conducting of interviews for the post of Lecturer (English) upto 26.9.2011 would be in clear conflict of the specific stipulation contained in the public notice dated 25.7.2011. The action of the respondent-Commission is, thus, wholly unreasonable and unfair and would not pass the test of reasonableness and fair play if tested on the touch-stone of Articles 14 and 16 of the Constitution of India.

15. Even though the power of selection vested with the respondent-Commission ought to be left unfettered as regards adoption of the procedural aspect is concerned, but that would not mean that the same would be available to the Commission at the cost of fair play, good conscience and equity. The petitioner had approached the Commission on 14.9.2011 itself in terms of the written request stating unequivocally that she has acquired the Ph.D. Degree on 12.9.2011 and the interviews for the post of Lecturer (English) are still going on. The action of the respondent- Commission in being adamant and in not acting upon its own decision as contained in the public notice dated 25.7.2011 in letter and spirit has clearly worked to the prejudice and detriment of the petitioner. The action of the respondent-commission, a constitutional body and the premier recruiting agency of the State does not inspire confidence.

16. This Court having recorded a finding that the action of the respondent-Commission suffers from the vice of arbitrariness, it would be open for this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India to intervene in the matter.

17. Accordingly, the present writ petition is allowed and the action of the respondent-Commission in holding the petitioner as ineligible for the post of Lecturer (English) is held to be bad in law. Directions are issued to the respondent-Commission to interview the petitioner for the post of Lecturer (English). In pursuance to such exercise and in the eventuality of the petitioner securing a merit position higher than the last candidate selected, consequential steps to facilitate the appointment of the petitioner to the post in question would also be taken by the respondent-authorities by following the due process of law.

18. The petition is allowed in the aforesaid terms.