
(2015) 08 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3032 of 2014

Gurtej Singh Sahota

APPELLANT

Vs

Sant Longowal Institute of Engineering and Technology and
Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 08 P&H CK 0054

Hon'ble Judges : Deepak Sibal, J

Bench : Single Bench

Advocate : Aashish Chopra, for the Appellant; Gautam Pathania, Advocates for the Respondent

Judgement

Deepak Sibal, J—Through advertisement dated 23.02.2012 (hereinafter referred to as - the first advertisement), the respondent Sant Longowal Institute of Engineering and Technology, Longowal (hereinafter referred to as - the Institute) invited applications for filling up several posts including the posts of Assistant Engineer (Electrical). The prescribed qualifications, as given in the advertisement, were as under:--

"B.E./B.Tech Degree in Electrical Engineering with at least 60% marks or equivalent with atleast 5 years experience in Government Department/Public Undertaking/Construction Agency of national repute not below the rank of Junior Engineer or equivalent."

2. The above quoted qualifications were as per the qualifications prescribed in the Regulations of the respondent Institute.

3. The petitioner, who was fully eligible, applied for consideration of his candidature for appointment as Assistant Engineer (Electrical), but in pursuance to the above referred advertisement, no selection took place. Instead, the respondent Institute got published another advertisement dated 15.01.2013

(hereinafter referred to as - the second advertisement). Through this advertisement also, applications for several posts including the posts of Assistant Engineer (Electrical) were invited.

4. As per the second advertisement, an applicant was required to visit the given website of the respondent Institute to know about the qualifications prescribed for the advertised posts.

5. In response to the second advertisement, both the petitioner and respondent No. 2, along with others, applied for consideration of their candidature for appointment as Assistant Engineer (Electrical).

6. As a result of the selection process, which ensued, respondent No. 2 was selected and appointed.

7. Through the present petition, the petitioner, challenges the appointment of respondent No. 2 as according to the petitioner, respondent No. 2 was ineligible for consideration of his candidature. The petitioner further prays that after setting aside the appointment of respondent No. 2, this Court may issue directions for his appointment as according to him, he was the most meritorious eligible candidate.

8. I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

9. Learned counsel for the petitioner has argued that the qualifications, as prescribed in the first advertisement dated 23.02.2012, were as follows :--

"B.E./B.Tech Degree in Electrical Engineering with at least 60% marks or equivalent with atleast 5 years experience in Government Department/Public Undertaking/Construction Agency of national repute not below the rank of Junior Engineer or equivalent"

10. So far as the second advertisement dated 15.01.2013 is concerned, it was submitted that for knowing the prescribed qualifications, a candidate was required to visit the website of the respondent Institute. It is the case of the petitioner that when the petitioner visited the website of the respondent Institute, he found the prescribed qualifications to be the same, as given in the first advertisement. Later, on an application filed by the petitioner under the Right to Information Act, 2005 (hereinafter referred to as - the Act) seeking from the respondent Institute the prescribed qualifications for the post of Assistant Engineer (Electrical), at the time of issuance of the second advertisement, the petitioner was informed that the prescribed qualifications for the post of Assistant Engineer (Electrical) in the second advertisement were the same as given in the first advertisement, as have been quoted above. The relevant portion of the information, as supplied to the petitioner by the respondent Institute, is reproduced below :--

"NON-TEACHING POSITIONS : Qualifications and Experience :

NOTE :

1. The Candidates who had applied against earlier advertisement notification No. 02/2012 dated 23/02/2012 (Non-Teaching Posts) will have to apply afresh but they need not remit fresh application fee."

11. Counsel for the petitioner further submitted that even on date, if one was to visit the website of the respondent Institute, the qualifications prescribed for the post of Assistant Engineer (Electrical) would be found to be as quoted above.

12. It was thus submitted that the prescribed qualifications for the post in question was at least 60% marks in the qualifying examination with at least 5 years experience and as respondent No. 2 admittedly did not have 60% marks in the qualifying examination with at least 5 years experience, he was not eligible. On the basis of the above, the appointment of respondent No. 2 was sought to be set aside.

13. The attention of the Court was then drawn to the proceedings of the Selection Committee, where the petitioner was shown at Serial No. 2 in merit and on the strength thereof, it was submitted that after setting aside the appointment of respondent No. 2, this Court may direct the appointment of the petitioner to the post in question as he was the most meritorious eligible candidate.

14. Per contra, counsel for the respondent Institute has submitted that after the first advertisement dated 23.02.2012, there was a proposal to amend the recruitment rules both - for promotion, as also for direct recruitment. The proposed qualifications for the post of Assistant Engineer (Electrical) were 55% marks in the qualifying examination with at least 2 years experience in Government Department/Public Undertaking/Construction Agency of National repute and not below the rank of Junior Engineer or equivalent. It is the case of the respondent Institute that after the issuance of the first advertisement, the above referred proposal with regard to amendment in the prescribed qualifications for the post of Assistant Engineer (Electrical) was accepted and accordingly, the rules were amended and on the basis of such amendment, qualifications were prescribed in the second advertisement.

15. So far as the supplying of information by the respondent Institute to the petitioner under the Act revealing that the prescribed qualifications for the post of Assistant Engineer (Electrical) in the second advertisement were 60% marks in the qualifying examination with 5 years" experience is concerned, it was stated to be by way of a mistake on the part of the officials of the respondent Institute.

16. Counsel for respondent No. 2 submitted that after having taken part in the selection process and failed, the petitioner was estopped from challenging the appointment of respondent No. 2. It was further submitted that the petitioner having not challenged the advertisement, could not maintain the present petition

before this Court. It was further submitted that selection and appointment of respondent No. 2 was on the basis of rules amended by the Institute and even if the rules had not received the final approval, they were, at best, to be considered as draft rules and as per the law settled by the Apex Court, as also this Court, appointments made on the basis of qualifications prescribed in the draft rules, were valid. In support of his submissions, counsel for respondent No. 2 relied upon the following judgments of the Apex Court in :--

"1. Chandigarh Administration vs. Usha Khetarpal reported as 2011 (9) SCC 645;

2. State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, (2007) 6 SCALE 593 : (2007) 10 SCC 402 : (2008) 2 SCC(L&S) 377 : (2007) 6 SCR 8 : (2008) 1 SLJ 37 ;

3. State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, AIR 2011 SC 3182 : (2011) 130 FLR 973 : (2011) 8 JT 203 : (2011) 7 SCALE 420 : (2011) 13 SCC 383 : (2011) 7 SCR 748 : (2011) AIRSCW 4442 ."

17. A judgment of a Division Bench of this Court in Kulmohan Singh vs. Union Territory, Chandigarh and others - CWP 9640-CAT of 2004, decided on 20.02.2014 was also cited by counsel for respondent No. 2.

18. The first question that arises for consideration is whether respondent No. 2 with 58.70% marks in the qualifying examination was eligible to be considered in pursuance to the second advertisement for the post of Assistant Engineer (Electrical)?

19. As per the first advertisement, the prescribed qualifications for the post of Assistant Engineer (Electrical), which is the post in question, were that a candidate should have secured at least 60% marks in the qualifying examination with 5 years experience in Government Department/Public Undertaking/Construction Agency of National repute and not below the rank of Junior Engineer or equivalent. These qualifications were as per the qualifications prescribed in the regulations of the respondent Institute. Being eligible, the petitioner applied for consideration of his candidature for the post in question. However, no appointment was made as selections qua the first advertisement were not finalised. Instead, the respondent Institute got published a second advertisement dated 15.01.2013 through which the post of Assistant Engineer (Electrical) was re-advertised.

20. It is the specific stand of the respondent Institute that in the second advertisement, the prescribed qualifications for the post in question were at least 55% marks in the qualifying examination with 5 years experience in Government Department/Public Undertaking/Construction Agency of National repute and not below the rank of Junior Engineer or equivalent and this was on the basis of re-consideration of the qualifications prescribed earlier and simultaneous amendment in the recruitment rules. In this regard, the relevant portion of the written statement of the respondent Institute is as under :--

"7 & 8. That in reply to para 7 it is submitted that after the issuance of advertisement No. 2/2012 dated 23.2.2012 (Annexure-P/1), and before the applications for the post of Assistant Engineer (Electrical) could be scrutinized, the recruitment process underwent review, necessitating reassessment of requirement of various posts. Simultaneously the recruitment rules were also amended and modified. On reconsideration, the actual requirement of posts to be filled up was worked out to be 5 instead of 10, as advertised earlier, vide advertisement No. 2/2012. It is with this background that the earlier advertisement for the abovementioned post could not be effected and a fresh advertisement No. 2/2013 dated 15.1.2013 was issued by the respondent Institute. As per the fresh advertisement the candidates, who had applied for the said post against the earlier advertisement were required to apply afresh without remitting any application fee. It is pertinent to mention here that vide Agenda Item No. 11.5 of the minutes of the meeting of the Board of Management (BOM) held on 21.9.2012, the amended recruitment rules for non-teaching staff were placed before the BOM for approval. An extract of Item No. 11.5 together with the annexure containing 02 pages having proposal for the amendment of recruitment rules for the post of Assistant Engineer (Electrical) are attached as Annexure R-1. The details of said old recruitment rules existing then and after the proposed amendment are tabulated below :--

The Board of Management considered the abovementioned proposal and decided that detailed comparison of existing and amended rules be put up before the respondent Institute's Chairman to given final approval of the rules. The minutes of the meeting of the Board of Management dated 21.9.2012 is attached as Annexure R-2.

The Chairman in the Board of Management's 13th meeting dated 12.7.2013 approved the recruitment rules for non-faculty members. An extract of Agenda item No. 13.10 of the Board's meeting dated 12.7.2013, consisting of two pages is attached as Annexure R-3. The Board as per the decision recorded vide item No. 13.10 ratified the decision of the Chairman. A copy of the extract of the said decision is attached as Annexure R-4.

The respondent Institute vide advertisement No. 2/2013 dated 15.1.2013 invited fresh applications for the post of Assistant Engineer (Electrical). The qualifications and experience as mentioned in the said advertisement are provided hereinbelow :

A copy of the complete details of the advertisement No. 2/2013 dated 15.1.2013, consisting of 03 pages which had been uploaded on the Institute's website are attached as Annexure R-5.

It is specifically denied that the qualification and eligibility conditions for the abovementioned post mentioned in second advertisement No. 2/2013 available on the Institute's website were same as in the earlier advertisement No. 2/2012 dated 23.02.2012 (Annexure-P/1). The earlier advertisement No. 2/2012 for the

post of Assistant Engineer (Electrical) had not been effected and vide advertisement No. 2/2013 new eligibility qualifications were required. The petitioner and respondent No. 2 again applied for the abovementioned post pursuant to Notification No. 2/2013."

[Emphasis supplied]

21. The above quoted portion of the written statement clearly shows that it is the unequivocal stand of the respondent Institute that the qualifications prescribed for the post in question in the second advertisement were on the basis of amendment made in the recruitment rules.

22. A perusal of the record summoned by me shows that the recruitment rules were never amended. In fact, the counsel for the respondent Institute and the Registrar of the respondent University, who was present in the Court on 24.07.2015, admitted that the regulations of the respondent Institute before the first advertisement, before the second advertisement and till date, prescribe the qualifications for the post in question to be at least 60% marks in the qualifying examination with 5 years experience. In fact, on going through the website of the respondent Institute, which was shown to me in the Court, and admitted by the counsel for the respondent Institute, the prescribed qualifications for the post in question, as available on the website, even on date, were - at least 60% marks in the qualifying examination with 5 years experience.

23. Thus, the stand of the respondent Institute that the qualifications so prescribed in the second advertisement were on the basis of the amendment in recruitment rules can be held to be nothing but false.

24. It is the stand of the respondent Institute that the qualifications, as prescribed in the first advertisement, were changed in the second advertisement in view of the amendment to the rules. As observed earlier, the recruitment rules were never amended. Even the proposed amendment sought for in the rules to the prescribed qualifications of the post in question was 55% marks in the qualifying examination with at least 2 years experience, whereas admittedly the qualifications prescribed by the respondent Institute in the second advertisement were 55% marks in the qualifying examination with at least 5 years experience. The same cannot be reconciled.

25. Prescribing of minimum qualifications of 55% marks in the qualifying examination with at least 5 years experience is neither based on the qualifications prescribed in the Regulations nor on the proposed amendments to amend the same. On a query by the Court to reconcile the same, counsel for the respondent Institute drew a complete blank.

26. It is the admitted case between the parties that on an application filed by the petitioner under the Act seeking the prescribed qualifications in the second advertisement for the post in question, the officials of the Institute had supplied the following information, the relevant portion of which is as under :--

"NON-TEACHING POSITIONS : Qualifications and Experience :

NOTE :

1. The Candidates who had applied against earlier advertisement notification No. 02/2012 dated 23/02/2012 (Non-Teaching Posts) will have to apply afresh but they need not remit fresh application fee."

27. As per the information supplied by the respondent Institute, the prescribed qualifications in the second advertisement with regard to the post in question were 60% marks in the qualifying examination with at least 5 years experience. Counsel for the respondent Institute submitted that this information was given by mistake as the concerned official had merely cut, copied and pasted the qualifications, as prescribed in the first advertisement and supplied the same to the petitioner. This stand of the respondent Institute is to be considered only to be rejected. "Note 1" as contained in the information supplied to the petitioner is reproduced below :--

"NOTE :

1. The Candidates who had applied against earlier advertisement notification No. 02/2012 dated 23/02/2012 (Non-Teaching Posts) will have to apply afresh but they need not remit fresh application fee."

28. The above "Note" clearly shows that the information supplied to the petitioner was not cut, copied and pasted from the first advertisement. Had that been so, the above quoted "Note" would not have been there.

29. Further, in the first advertisement, as also in the second advertisement, one of the posts advertised was that of a Medical Officer. The qualifications so prescribed for the post of Medical Officer in the first advertisement and the second advertisement are tabulated below :--

30. A comparison of the above shows that the prescribed qualifications for the post of Medical Officer in the first advertisement is different from the prescribed qualifications of Medical Officer in the second advertisement. Admittedly, in the information supplied to the petitioner, the prescribed qualifications for the post of Medical Officer are the one which had been prescribed in the second advertisement. If the qualifications, as given in the first advertisement were cut, copied and pasted, while supplying the information to the petitioner under the Act, then the above change would have not been there.

31. Further, the Court is not informed of any action taken against the official of the respondent Institute for supplying wrong information to the petitioner.

32. Still further, the so called corrected information having been supplied to the petitioner only after filing of the present writ petition also puts a question-mark on the bona fides on the part of the respondent Institute.

33. As observed earlier, the recruitment rules have not been amended. Earlier,

and even till date, the prescribed qualifications in the recruitment rules for the post in question are 60% marks in the qualifying examination with at least 5 years experience. Though there was a proposal to amend the recruitment rules, the same was never finally approved. The intention of the respondent Institute to make the amendments in the recruitment rules is also not found to be there as even after the passage of over 2 1/2 years, the Regulations remain un-amended. Had the respondent Institute any serious intentions to amend the recruitment rules, the same would have been done at least by now. In fact, the proposal was allowed to lapse by the respondent Institute.

34. The qualifications on the basis of which respondent No. 2 has been selected and appointed are also against the qualifications prescribed in the recruitment rules existing at the time of his appointment.

35. At this stage, it would be useful to refer to the following paragraph of a judgment of this Court passed in *Vimal Kumari Vs. The State of Haryana and Others*, (1998) 79 FLR 147 : (1998) 2 JT 111 : (1998) 2 SCALE 31 : (1998) 4 SCC 114 : (1998) SCC(L&S) 1018 : (1998) 1 SCR 658 , which is as under :--

"In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the respondent and their other colleagues would be regulated by the "Draft Rules" prepared in 1983, it was not open either to the Government or to any other authority nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those Rules particularly as the Government has not come out with any explanation why the Rules, though prepared in 1983, have not been notified for the long period of more than a decade. The delay, or, rather inaction, is startling."

36. Same was the position in the case of *Punjab State Electricity Board vs. Narinder Singh and others* reported as 2009 (1) S.C.T. 704, wherein a Division Bench of this Court, while following the law laid down by the Apex Court in *Vimal Kumari's* case (*supra*), has held as under:--

"10. Learned Single Judge, by noticing above said position has rightly held that unless approved by the State Government, appointment under the provisions of draft service regulations could not have been made. In that regard, it was opined as under:

"The regulations/rules were framed vide resolution No. 280 dated 12th March, 1981 in exercise of the power under Section 398(1). However, these regulations could only be enforced after approval by the Government as required under Section 398(2) and notified in the Government Gazette. It is admitted by the respondents that these regulations/rules were never approved by the Government and there is nothing on record to Letters Patent Appeal No. 80 of 2008 6 show that these were ever notified by the Government. This issue is covered by a judgment of the Apex Court reported as *Vimal Kumari v. State of Haryana and others*, 1998(2) SLR 230 wherein the Apex Court has made

following observations:--

"8. In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the respondent and their other colleagues would be regulated by the "Draft Rules" prepared in 1983, it was not open either to the Government or to any other authority, nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those rules particularly as the Government has not come out with any explanation why the Rules, though prepared in 1983, have not been notified for the period of more than a decade. The delay or rather inaction is startling."

By observing as above, learned Single Judge has rightly held that respondent No. 1 being senior to respondent No. 5, should have also been considered for promotion to the post of Junior Engineer-II. As per averments made in the writ petition, electrical wing of respondent No. 2 was taken over by the appellant on 1.4.1995 and thereafter, respondents No. 1 and 5, both became its employees. By taking note of a fact that dispute pertains to the period, when both of them were employees of respondent No. 2, directions were rightly issued to respondent No. 2, to consider claim of respondent No. 1 from the date when respondent No. 5 was appointed against the post of Junior Engineer-II. No direct/effective relief was granted Letters Patent Appeal No. 80 of 2008 against the appellant, as such, we feel that probably, there was no cause with the appellant to file this appeal."

37. Counsel for respondent No. 2 has sought dismissal of the writ petition on the ground of estoppel. He argues that the petitioner, having taken part in the process of selection and failed, cannot be allowed to turn around and challenge the same. It is further submitted on behalf of respondent No. 2 that the present petition deserves to fail as the petitioner has not challenged the second advertisement.

38. The petitioner challenges the appointment of respondent No. 2 on the ground that he is ineligible to hold that post. According to the petitioner, an ineligible person has been appointed. That being so, the principle of estoppel would not be attracted to the facts of case in hand.

39. Counsel for respondent No. 2 has further vehemently argued that respondent No. 2 has been appointed on the basis of qualifications as contained in the amended recruitment rules. In the alternative, he argues that even if the amendments were not approved, then the selection on the basis of draft rules, was valid.

40. The submission made by counsel for respondent No. 2, though attractive on first blush, does not stand scrutiny. As observed earlier, the amendments were never finally approved. The facts of the case show that the respondent Institute never had any serious intentions to carry out the amendments as even after the passage of over 2 1/2 years, no such amendments have been made. I am

informed that as on date, there is also no proposal for any amendment. No document was shown to me, wherein the amendment in the recruitment rules was approved. Counsel for respondent No. 2 relied on the decision of the respondent Institute dated 12.07.2013 on Item No. 13.10, which is reproduced below :--

41. The above quoted item and the decision thereupon clearly shows that the same pertains to promotional posts and not to the posts to be filled up by direct recruitment as the post in question. It is the admitted position that Sarangi Committee Report which is referred to in Item No. 13.10 has not been implemented by the respondent Institute.

42. Once the proposed amendment to the recruitment regulations was never finalised and that the stand of the respondent Institute to this effect, as observed earlier, has been found to be false, I am not inclined to agree with the submissions raised on behalf of respondent No. 2.

43. Counsel for respondent No. 2 has relied upon a judgments of the Apex Court in Usha Khetarpal (supra). In that case, the draft rules had been made after consultation with the Union Public Service Commission and in that case, only the notification in the name of President of India was awaited. The intention of the employer with regard to the amendment was clear.

44. In the case in hand, the amendment to the rules was never finalised. The proposal, if any, was made to lapse by the respondent Institute. No intention to amend the recruitment regulations is borne out from the facts of the case in hand as even after the passage of over 2 1/2 years, no amendment has been carried out. The appointment of respondent No. 2 is against the qualifications prescribed in the rules which existed at the time of his selection and appointment. Further, the stand of the respondent Institute has been found to be fake and contrary to the record.

45. Even otherwise, the proposed rules laid down the qualifications of 55% marks in the qualifying examination with at least 2 years experience, whereas the prescribed qualifications in the second advertisement, in pursuance of which respondent No. 2 has been selected and appointed, prescribes the qualifications of 55% marks in the qualifying examination with at least 5 years experience. In the second advertisement, the qualifications are thus not even on the basis of the proposed rules as they differ from the same. Thus, the judgment in the case of Usha Khetarpal (supra) is distinguishable from the facts of the case in hand and Kul Mohan Singh's case (supra) would also be distinguishable on the same lines.

46. In Arun Kumar Aggarwal's case (supra), the issue decided by the Apex Court was with regard to filling of vacancies before and after the amended rules. The facts of the case in hand, as noticed above, are completely different.

47. So far as the judgment of the Apex Court in Ashok Kumar Dangi's case

(supra) is concerned, in that case, certain rules under Article 309 of the Constitution of India were framed by the Governor of Jharkhand which gave power to the Public Service Commission to invite applications for filling up the posts of Primary School Teachers. However, consequent upon some amendment in the rules, the Commission published corrigendum, as a result whereof, candidature of the writ petitioners was restricted only to the vacant posts of Physical Trained Teachers, whereas their demand was for consideration of their candidature against the entire vacancies of Primary School Teachers. The facts of that case cannot be considered to be at par with the facts of the case in hand and consequently, the judgment in Ashok Kumar Dangi's case (supra) would have no application.

48. In view of the above, after declaring respondent No. 2 to be ineligible, his appointment is ordered to be set aside and the petitioner, being the most meritorious eligible candidate in the relevant selection, is ordered to be appointed with effect from the date when respondent No. 2 was appointed, with all consequential benefits.

No costs.