
(2013) 04 P&H CK 0046
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8962 of 2013

Jasbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Consumer Protection Act, 1986 — Section 10, 10(1A)

Citation : (2013) 171 PLR 471

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Sukhwinder Singh Nara, for the Appellant;

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The State Consumer Disputes Redressal Commission, Haryana issued a public notice dated 22.12.2011 inviting applications for filling up five posts of Presidents in the District Consumer Disputes Redressal Foras in the State of Haryana (subsequently increased to ten posts in the light of notice dated 11.2.2013). Amongst the candidates who could apply and were eligible to be considered for the post in question were Advocates having not less than ten years standing at the bar and not less than 35 years of age as on 31st January, 2012 (as per initial public notice dated 22.12.2011 and as on 28.2.2013 in terms of subsequent notice dated 11.2.2013). The present petition has been filed impugning the decision of the Selection Committee whereby only such candidates from amongst the Advocates are being called for the interview whose income from profession as reflected in the income tax returns was Rs. 3 lacs or more. The petitioner herein is aggrieved by such decision of the Selection Committee in holding him ineligible and thereby not being called for the interview for the post of President of the District Consumer Disputes Redressal Fora.

2. Learned counsel for the petitioner, who has been heard at length, would submit that such a decision amounts to challenging the selection criteria after the

process of selection stood already initiated in the light of issuance of public notices dated 22.12.2011 and 11.2.2013. It has been argued that insofar as the category of Advocates is concerned, the only stipulation in the notice was for such Advocates having not less than ten years standing at the bar and not being less than 35 years of age as on a stipulated date. Accordingly, it has been argued that determination of eligibility in the light of an income criteria i.e. reflection of professional income in excess of Rs. 3 lacs would be alien to the conditions stipulated in the advertisement and the same would not be permissible in law. In support of such contention, reliance has been placed upon the judgment of the Hon''ble Supreme Court in Hemani Malhotra Vs. High Court of Delhi, .

3. It has further been argued that the criteria adopted by the Selection Committee for calling the candidates from amongst Advocates for appointment to the post of President in the various District Consumer Redressal Fora is not based on any rational and objective basis and the fixation of the income criteria amounts to denial of opportunity to the petitioner as regards even consideration for appointment to the post and such action would be in violation of Articles 14 and 16 of the Constitution of India.

4. Having heard learned counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that there is no merit in this petition.

5. The composition of the District Forums would be governed in the light of Section 10 of the Consumer Protection Act, 1986. In terms of Section 10(1-A) of the Consumer Protection Act, 1986, every appointment to the District Forum shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely,

i) President of the State Commission - Chairman.

ii) Secretary, Law Department of the State - Member.

iii) Secretary, Incharge of the Department dealing with Consumer Foras in the State - Member.

6. It is the pleaded case of the petitioner himself that in response to the notice inviting applications for filling up ten vacant posts of Presidents in the District Consumer Disputes Redressal Fora in the State of Haryana, around 400 applications were received from amongst Advocates. In a situation where selection to a post is to be made only on the basis of interview as is the case in this petition, it shall always be open for the competent authority i.e. the Selection Committee as contemplated u/s 10 of the Consumer Protection Act to resort to a process of shortlisting so as to limit the number of candidates to be called for the interview.

7. The Hon''ble Supreme Court of India in Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, had recognized the process of shortlisting being resorted to by the appropriate authority in the light of a large

number of applications having been received in response to a limited number of posts advertised and wherein the selection was to be made only on the basis of interview. It had further been held that resorting to such process of shortlisting and thereby limiting the number of candidates to be called for the interview would not amount to change of the selection criteria.

8. A Division Bench of this Court in *Dr. Lovekesh Kumar and others v. State of Punjab and others*, 1998 (1) R.S.J. 566 while dealing with the competence of the appropriate authority to devise an appropriate criteria as regards shortlisting of candidates had observed in the following terms:

At the cost of repetition, we deem it necessary to observe that in the absence of any statutory prohibition 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 qualifications 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. 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.

9. The reliance placed upon the decision of the Hon'ble Apex Court in the case of *Himani Malhotra (supra)* on behalf of the petitioner is totally mis-placed. In such case, the issue was pertaining to direct recruitment to the Delhi Higher Judicial Service and the action of prescribing minimum marks for viva-voce even after the written test had been duly conducted, had been held to be bad in law. It had been held that if no minimum marks had been prescribed for the viva-voce prior to commencement of the selection process, the authority concerned could not either during the selection process or after the selection process add an additional requirement/qualification for the candidate to also secure minimum marks in the interview. In the light of the facts involved in the present petition, applications had been invited from amongst Advocates not having less than ten years standing at the bar. Such stipulation contained in the advertisement has not been diluted in the light of the process of shortlisting resorted to by the

Selection Committee in terms of the impugned decision to call only such Advocates who fulfill a certain income criteria.

10. The next question that would arise for consideration in this petition is as to whether the criteria adopted by the Selection Committee for limiting the number of candidates from amongst Advocates and resorting to the process of shortlisting by fixing an income criteria can be termed as irrational, arbitrary and having no nexus with the objective sought to be achieved i.e. to select the best from amongst the applicants?

11. The condition contained in the advertisement was for Advocates to have a minimum of ten years standing at the bar. The decision of the Selection Committee in fixing an income criteria i.e. minimum Rs. 3 lacs professional income cannot be held to be irrelevant and without any basis. Reflection of a certain quantum of professional income in the income tax returns would certainly reflect as regards the standing of such Advocates in the profession. Such criteria cannot be termed as irrational. In the case of Navnit Kumar Potdar (supra), an issue had arisen before the Apex Court regarding calling of candidates from amongst Advocates for appointment against the post of Presiding Officers of the Labour Court. In terms of Section 8(3)(c) of the M.P. Industrial Relations Act, 1960, an applicant to be eligible should have practised as an Advocate or a Pleader for a total period of not less than five years. While upholding the action of the Madhya Pradesh Public Service Commission in resorting to process of shortlisting and confining the consideration only to such candidates/Advocates who possess experience/practice of 7-1/2 years instead of five years as stipulated in the statutory Rules, it had been held in the following terms:

On behalf of the respondents, it was pointed out that there is no presumption that an advocate having seven and half years of experience will be more suitable for the post of Presiding Officer of the Labour Courts than an advocate having only five years of experience because it all depends on the personal merit of the candidate concerned. It is true that it has been found that sometimes the persons with lesser years of experience and practice have proved to be better advocates and they excel in profession. The success in profession is not necessarily linked with the years of practice. But that may be an exception. Normally, it is presumed that with longer experience an advocate becomes more mature. In any case, this fixing the limit at seven and half years instead of five years of the practice for purpose of calling the interview cannot be said to be irrational, arbitrary having no nexus with the object to select the best amongst the applicants.

12. For the reasons recorded above, I find no infirmity in the decision taken by the Selection Committee in calling only such candidates from amongst the Advocates for interview for filling up the post of Presidents in the District Consumer Disputes Redressal Foras who fulfill a certain income criteria as regards professional income reflected in their income tax returns. There is no merit in this petition and the same is, accordingly, dismissed.