
(2013) 10 P&H CK 0384
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17543 of 1997

Kanwal Singh Rana

APPELLANT

Vs

The Kurukshetra University

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 3 SCT 261

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharat Bhushan Parsoon, J.—Short question for answer in this petition is as to whether respondent No. 1, i.e. Kurukshetra University, Kurukshetra (hereinafter called, the University) was competent to relax qualifications prescribed for the post of Assistant Manager (Press) in the University Press? The petitioners and respondent No. 2 had applied for the post of Assistant Manager (Press) pursuant to an advertisement issued in July, 1997. Qualifications for this non-teaching post of Assistant Manager (Press) were as under:

2. It is averred that respondent No. 2, a candidate selected for the said post, does not have three years Diploma in Printing Technology and also lacked experience of three years of a large Printing Press in a supervisory capacity which were essential requirements. Appointment letter dated 21.10.1997 (Annexure P-5) of respondent No. 2 reveals that it was issued after relaxing the qualifications in his favour. Plea of the petitioners is that neither the condition of qualification nor of experience could be relaxed and that there was no such mention in the advertisement that any such "relaxation" could be exercised.

3. Setting out their case further, it is claimed that respondent No. 2 is simply a matriculate with one year certificate course of Off-set Printing. Having joined as a Copy Holder in the University Press, he was promoted as Proof Reader in Academic Branch in August, 1994 but was later brought back to the University

Press and was working there against a post of a Supervisor at the time of interview of Assistant Manager.

4. The petitioners, on the other hand, claim that they have the requisite qualification and experience and thus were suitable for the said post. In addition to his matriculation, petitioner No. 1 claims to be holder of three years Diploma in Printing Technology, averring further, that he has three years' experience in supervisory capacity in a large Printing Press. Petitioner No. 1 is a direct candidate.

5. Petitioner No. 2, on the other hand, claims that he also has the requisite qualification and experience. He is an internal candidate. Initially, he was appointed as a Compositor in the University Press in the year 1965. He became Senior Compositor on 21.11.1975 and was, promoted to the post of Supervisor (on Ad hoc basis) on 16.4.1987 and was regularised on this post on 3.4.1989 (Annexure (P-1)).

6. Though both the respondents have filed separate written statements but their stand is the same. It is pleaded by them that appointment of respondent No. 2 was made after relaxing the qualifications by the competent authority. It is averred that such relaxation qua qualifications and experience required for a non-teaching post could be done for internal candidates as per the Rules governing the Terms and Conditions of Services of the Employees (other than the University Teachers and the Registrar) (hereinafter mentioned as the Rules). In this regard, a reference has been made to the University calendar for the said purpose. Claiming that there is no violation of Articles 14 and 16 of the Constitution of India as claimed by the petitioners, dismissal of the petition has been sought.

7. Learned counsel for the parties have been heard while going through the paper book.

8. Contention of learned counsel for the petitioners is three-fold. First, relaxation in qualifications prescribed for a post could be made by competent authority only for such posts where provision of relaxation exists and not for posts where no power of such relaxation of qualifications etc. is there; secondly, not even a whisper had been made in the advertisement that condition of qualification and experience could be relaxed; and thirdly, respondent No. 2 had applied pursuant to an advertisement issued by the University and not as an internal candidate.

9. Though respondents No. 1 and 2 are represented by different counsel, their contention is the same. It is contended that for internal candidates, relaxation in qualifications is an accepted norm and hence, there was no requirement to mention it in the advertisement. It is also urged that petitioner No. 2 though was an internal candidate but since he did not possess the requisite qualification and experience, he was not selected. It is claimed that the Selection Committee had not found either of the petitioners suitable for the post and hence the choice had fell on respondent No. 2.

10. When rival claims of the parties are evaluated in the interface of facts and attending circumstances, it clearly emerges out that as per Rule 2 of Rules for Posts, Recruitment and Appointments, Chapter 1, qualifications for appointment to various posts in the University service are specified in Schedule-II annexed to the said Rules. Executive Council of the University has power to make additions/alterations in this Schedule. As per Rule 5 (Method of Recruitment) of the Rules for internal candidates, the qualifications prescribed for various posts are relaxable by the appointing authority wherever considered necessary on merits of each case. This Rule by way of a proviso attached to it, explains this aspect even further. This proviso for ready reference is appended as below:

Provided further that appointments may be made from outside through advertisement if internal candidates are not found well-experienced and suitable.

11. This proviso is of importance. On reading of this proviso, it becomes evident that appointments are to be made by issuing an advertisement, only if internal candidates are not available.

12. It is a conceded fact that advertisement for this post had been issued in July, 1997 pursuant to which the petitioners and respondent No. 2 had sent their applications. It is thus clear that the authorities fully cognizant of domain and scope of Rule 5 of the Rules had not found any internal candidate to be suitable and only then had proceeded to issue advertisement to have a candidate for the post from outside.

13. Perusal of Schedule-II which stipulates qualifications for various teaching and non-teaching i.e. technical and professional posts makes it clear that wherever qualifications are relaxable, there is specific mention of relaxability of qualifications against such posts. Absence of provisions of relaxation qua some posts which are mentioned therein is clearly indicative that no such relaxation qua such posts is permissible. Absence of facility of relaxation of conditions of qualifications etc. against the post of Assistant Manager (Press) makes it clear that qualification and experience prescribed for this post, was not relaxable.

14. One thing more becomes evident from the Schedule-II appended to the Rules that post of Assistant Manager was not a promotional post and was available only for direct recruitment. Qualifications, terms and conditions for promotion of technical staff of the University Press appended in Schedule-II of the Rules, leaves no manner of doubt that the post of Assistant Manager in the University Press neither could be filled by/promotion nor conditions of qualification and experience prescribed therefor could be relaxed. Note appended to this part of the Schedule-II for ready reference is also reproduced as below:

Note - The basic educational qualifications relaxable in the case of Senior Machinemen and Binders if internal candidates are otherwise suitable.

15. This Note makes the position even further clear that qualification is relaxable only in case of Senior Machinemen and Binders and not for any other technical

post.

16. Pleadings as also version of respondents No. 1 and 2 is clear that respondent No. 2 selected for the post of Assistant Manager (Press) did not fulfill the requisite educational and technical qualifications nor had the requisite experience in the capacity of a Supervisor.

17. A co-joint reading of the Rules and Schedule-II appended thereto in relation to pleadings of the parties, leaves no manner of doubt that respondent No. 2 neither had requisite qualifications and experience nor there was any power of relaxation with any authority of the University for making appointment to such post. Technical qualifications and experience of respondent No. 2 other than which is prescribed for the post, is of no relevance.

18. It also remains completely unexplained by the respondents that when petitioner No. 2, an internal candidate was available, why such benevolence had not been shown by the University for him though concededly he had requisite educational qualifications and experience as Supervisor though he was not possessed of three years' Diploma in Printing Technology. In any case, he was no less meritorious than the respondent No. 2.

19. So far as petitioner No. 1 is concerned, as per application form (Annexure P-2), he had educational qualifications as also technical qualifications of three years' Diploma in Printing Technology and was also having requisite experience in Supervisory capacity. When a candidate with requisite qualifications and experience fulfilling the requirement as stipulated in the advertisement was available, why non-eligible candidate was picked up and was brought in from the back-door particularly when it has abundantly become clear that no such relaxation could be done.

20. When the post was meant for a directee and was not a promotional post, ascribing to one of internal candidates against the Rules has no justification from the respondents.

21. In somewhat similar circumstances, Hon'ble Division Bench of this Court in *Jasbir Kaur v. Punjabi University, Patiala*, 1996 (2) S.C.T. 67 had clarified that relaxation of qualifications accorded by Vice-Chancellor of a particular university was not valid. Relevant portion of para. 8 of this judgment for ready reference is appended as below:

Therefore, a person having Matric 1st Division or Higher Secondary 1st Division alone is eligible for appointment. A person with Matric/Higher Secondary 2nd Division with 4 years' clerical experience is also eligible or a person Matric or Higher Secondary with 2nd Division having typing speed of 30 of W.P.M. in Punjabi is also made eligible in the above rules. These rules cannot be relaxed by the Vice-Chancellor either in the case of fresh candidates or in the case of persons appointed temporarily or on ad hoc basis in the University. It is the case of the petitioners that seven persons with Matric 2nd Division were already

working in the University and that the Vice-Chancellor permitted them to compete for the post as they are in the service of the University on ad hoc basis but admittedly they did not complete 4 years" service against the posts advertised. No rule has been brought to our notice which empowers the Vice-Chancellor to relax the qualifications. No authority shall have the power to relax the qualifications unless the rules provide for exercise of such power.

22. In *Umrao Singh Vs. Punjabi University, Patiala and Others*, change of criteria of selection was adversely commented upon para. 11 of the said judgment for ready reference is appended as below:

So far as appellant Kewal Krishan is concerned, though the University supported the selection, one thing is clear that the advertisement itself indicated that the applicant was required to pass the concerned examination before appearing for interview. Admittedly, this is not a case of that nature. The decision of the University subsequent to the last date of making the application and after the process of selection had started cannot, in any way, come to the assistance of appellant-Kewal Krishan. The eligibility criteria of passing the Punjabi examination was a condition which goes to the root of eligibility. By a subsequent decision that condition could not have been altered.

23. Reference may also be made to *Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others*, where in paras. 18 to 20, it was observed by the Hon"ble Apex Court as under:

18. The post advertised was meant for a person belonging to the pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Masters Degree in Industrial Chemistry should only apply or that a person holding such a degree could also apply along with other persons. It was not so mentioned in the advertisement and therefore, except for Merajuddin Ahmad, no other degree holder in Industrial Chemistry had applied for becoming a candidate as against the aforesaid post.

19. According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

20. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling

up the post of Lecturer Chemistry, for pure Chemistry and Industrial Chemistry are two different subjects.

24. More recently, in *Bedanga Talukdar Vs. Saifudaullah Khan and Others*, Hon"ble Supreme Court of India made it clear that there cannot be any relaxation in the terms and conditions published in the advertisement unless such a power is specifically reserved in the relevant statutory rules. It was further clarified that even if power of relaxation is provided in the Rules, it must still be mentioned in the advertisement. In short, it was held that if the power of relaxation is there and if is exercised, it must have been given due publicity. Paras. 28 and 29 of the judgment are relevant and for specific reference are appended as below:

28 We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

29. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent No. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

25. Apprising the facts of this case on the law so discussed, it is a clear case where selection of respondent No. 2 cannot be held to be valid. He neither fulfilled the requisite qualification and experience. Relaxation of such conditions in his case is also not backed by the rules.

26. Learned counsel for the respondents making reference to decision rendered in C.W.P. No. 11526 of 1994 titled *Raipal Singh and others v. State of Haryana*

and others decided by this Court on 11.2.2009 have urged that even though appointments were found to be tainted and thus selection was vitiated, still the Court had not interfered with the selection of selectees who had joined and were performing their duties. When contention of learned counsel for the petitioners is evaluated on merits, it transpires that in the cited judgment, it was not a case of want of essential qualifications and experience with the selectees and selection had been found to be wrong on other parameters. Since in the present case, respondent No. 2 did not fulfill the requisite education and technical qualifications as also experience and there could not be any relaxation qua the said requirements by any authority howsoever high in hierarchy, it could be, selection of respondent No. 2 having been made wrongly by way of back-door entry ignoring claim of legitimate candidates is set aside whereas petitioner No. 1 who fulfilled all the requirements of qualification and experience deserves to be considered for the post of Assistant Manager (Press).

27. Resultantly, appointment letter dated 21.10.1997 (Annexure P-5) whereby respondent No. 2 was appointed to the post of Assistant Manager (Press) is quashed. Respondent-University is directed to consider the case of petitioner No. 1 for appointment to the post of Assistant Manager (Press) if he is otherwise found suitable for the same.

28. Since petitioner No. 2 was not eligible for the said post, his petition is dismissed. The petition of petitioner No. 1 is allowed to the extent as indicated above.