

(2013) 06 SHI CK 0032
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 5764 of 2012-G

Manish Kumar

APPELLANT

Vs

H.P. Public Service Commission and Others

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Citation : (2014) LabIC 1137

Hon'ble Judges : S.S. Thakur, J; R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Notice was confined to respondent No. 1 in response to order dated 27.7.2012. It appears that for selection of 27 posts of Assistant Engineer (Electrical), Class-I, (Gazetted), advertisement was made and screening test was to be conducted. Thereafter, on the basis of the outcome of the screening test, the candidates were interviewed. Noticeably, the number in screening test was not added with the interview for making final selection. It appears that the petitioner has secured 44 marks in screening test in comparison to 45 marks secured by respondent No. 3, whereas in the interview both the petitioner and respondent No. 3 had secured equal marks. The relevant provision of the Rules of Business of the Himachal Pradesh Public Service Commission, 2007, reads as below:

Where selection is made by the interview of candidates qualified in the screening test, the candidate scoring more marks in the interview shall be placed above the candidates scoring less marks in the interview. If candidate score equal marks in interview, then the candidate scoring more marks in screening test will be placed above the candidate securing less marks in the screening test. In case the marks of screening test are equal than the candidate who is senior in age will be placed above the candidate junior in age.

In view of above provision, the person who has secured higher marks in

screening test was to be selected in case there is tie of marks in interview. In that condition, the age shall not be given preference.

2. On the other hand, learned counsel for the petitioner, has invited our attention to the Circular letter dated 11th July, 2005 issued by the Principal Secretary (Personnel) to the Government of Himachal Pradesh to the Secretary, Himachal Pradesh Subordinate Services Selection Board (Annexure P-6). The main contents of the observations are written here as below:

.....the final order of merit of candidates in the event of tie of marks shall be determined on the basis of the fact that the candidate higher in age will be ranked senior. If there is still a tie, the candidate who had secured more marks in written or screening test, as the case may be, shall be ranked senior to the one who got lesser marks.

3. It has been submitted on behalf of respondent No. 1 that the said Circular is only applicable to the services/posts recruited under the Himachal Pradesh Subordinate Services Selection Board and is not guiding factor in respect of the selection being conducted by the Himachal Pradesh Public Service Commission. Learned counsel for the petitioner has also invited our attention to the judgment of the Supreme Court in State of Punjab and Others Vs. Manjit Singh and Others, which reads as below:

11. In the case in hand, it was not for the Commission to have fixed any cut off marks in respect of reserved category candidates. The result has evidently been that candidates otherwise qualified for interview stand rejected on the basis of merit say, they do not have up-to-the mark merit, as prescribed by the Commission. The selection was by interview of the eligible candidates. It is certainly the responsibility of the Commission to make the selection of efficient people amongst those who are eligible for consideration. The unsuitable candidates could well be rejected in the selection by interview. It is not the question of subservience but there are certain matters of policies, on which the decision is to be taken by the Government. The Commission derives its powers under Article 320 of the Constitution as well as its limits too. Independent and fair working of the Commission is of utmost importance. It is also not supposed to function under any pressure of the Government, as submitted on behalf of the appellant-Commission. But at the same time it has to conform to the provisions of the law and has also to abide by the rules and regulations on the subject and to take into account the policy decisions which are within the domain of the State Government. It cannot impose its own policy decision in a matter beyond its purview.

We have heard learned counsel for the parties and also gone through the criteria and Rules of Business. In our considered view, also the Rules of Business prescribed by the Himachal Pradesh Public Service Commission shall carry force over the Circular issued by the State Government which is specifically not in respect of the selection to be made by the Himachal Pradesh Public Service

Commission. Paragraph 11 referred by the learned counsel for the petitioner in State of Punjab and Others Vs. Manjit Singh and Others, is rather helpful to protect the cause of the respondent No. 3. Undisputedly, the respondent No. 3 has secured higher marks in the screening test and equal marks in interview, as such, he has rightly been selected as Assistant Engineer in comparison to the petitioner. In the facts and circumstances, the writ petition is without any merit and is dismissed.