

(2023) 06 SHI CK 0085

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.3990, 3991, 4107 Of 2023

Manni And Another

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Himachal Pradesh Judicial Service Rules, 2004 — Rule 5, 5(a), 5(c)

Citation : (2023) 06 SHI CK 0085

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Ajay Mohan Goel, J

Bench : Division Bench

Advocate : Ishan Kashyap, Gobind Korla, Anup Rattan, Rakesh Dhaulta, Navlesh Verma, Pranay Pratap Singh, Gautam Sood, Arsh Rattan

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. Since all these petitions involve common questions of facts and law hence are taken up together for disposal.

2. In these writ petitions, petitioners have questioned rejection list Annexure P-5 rejecting the candidature of the petitioners for the Himachal Pradesh Judicial Service Competitive examination 2023 advertised vide advertisement No. 5/4/2023 dated 22.4.2023.

3. All the petitioners are law graduates and had enrolled with their respective Bar Council and had applied for the posts of Civil Judges (Junior Division) advertised pursuant to the above advertisement. The said recruitment is being done as per Himachal Pradesh Judicial Services Rules, 2004.

4. The 'Note' attached to Rule 5 as regards Civil Judges (Junior Division) stated as under:

"Every candidate applying for direct recruitment either for the post mentioned in © or post mentioned at 3 above shall submit alongwith the application,

certificate furnished by two respectable persons unconnected with him testifying to his character good behaviour as well as antecedents”

5. The submission of Credential Certificates by two persons unconnected with the candidate testifying his/her character good behavior and antecedents is thus necessary.

6. The advertisement issued by the HPPSC provided the format of such Credential Certificate also.

7. The list of Credential Certificates had to be up-loaded alongwith the application on the OTRS Portal of the HPPSC as per Clause 2 (vi).

8. Clause 12 (b) thereof directed the candidates to carefully read the instructions contained in the Judicial Service Rules, 2004 and the HP Judicial Service (Syllabus & Allocation of Marks) Regulations, 2005 as amended from time to time to ensure that they are eligible for this examination in terms of the said Rules Instructions and Conditions. It is specifically mentioned that the eligibility of a candidate will be determined on the basis of the aforesaid Rules and Regulations.

9. Clause 12 (e) of the advertisement states that the names of those candidates whose applications are rejected or not entertained, will be displayed on the website of the Commission and the candidates whose applications are not rejected shall be admitted provisionally for the examination.

List of such eligible candidates would be displayed on the website of the Commission. The decision of the Commission as to the eligibility or otherwise of a candidate for admission to interview or selection will be final and no correspondence/personal inquiries will be entertained.

10. The date of the preliminary examination was indicated as 9.7.2023 and the centers where the examination was to be held was also indicated, apart from the syllabus for the examination.

11. After noticing that some of the candidates were not uploading the two Credential Certificates on the prescribed format already made available in the advertisement furnished by two respectable persons, a Press Note dt. 28.4.2023 was issued by the HPPSC informing all concerned candidates to ensure such uploading of the two Credential Certificates.

12. This was reiterated by another Press Note on 10.5.2023 directing the candidates, who had not uploaded their Credential Certificates on the prescribed format, to send their Credential Certificates only on prescribed format on the official e-mail ID of the Commission on or before the last date of submission of the online recruitment application i.e., 12.5.2023; and it was warned that failure to do so, would result in the rejection of the application. The prescribed format already made available in the advertisement was also enclosed to the Press Note for ready reference.

13. On 12.6.2023, the HPPSC published a list of candidates with application

numbers whose applications had been finally rejected. The said list included the petitioners also. In the said list, it was indicated that the candidature of the petitioners was rejected on the ground that the Credential Certificates as uploaded were defective.

14. It is contended by the petitioners that the Credentials Certificates are only supplementary to the primary documents which can be taken into consideration to determine the eligibility of a candidate and the 'Note' contained in the HP Judicial Service Rules under Rule 5 referred to supra could not have been applied and the candidature of the petitioners cannot be rejected at the preliminary stage of the examination.

15. Reliance is placed on the HPPSC (Procedure and Transaction of Business and Procedure for Conduct of the Screening Tests/Examinations and Personality Tests etc.) Rules, 2021 dt. 24.3.2021 and in particular Clauses 5 (a) and 5 (c) thereof which say that the rejection of the candidature of the candidates for any reason, duly approved by the Commission, would only be provisional and the provisionally rejected candidates would be allowed 7 days' time for submitting their representations, alongwith requisite documents either through e-mail, in person or by post.

16. It is contended that the possession of the credential certificates on the prescribed format on the date on which the applications would close is not necessary and the HPPSC cannot reject the candidature of the petitioners for uploading incorrect credential certificates.

Events after filing of the Writ Petitions

17. This Court directed the respondent-HPPSC to point out the reasons for rejection of the candidature of the petitioners and in response, the counsel for the HPPSC produced Credential Certificates submitted by each of the petitioners which indicated that they had not submitted the Credential Certificates on the prescribed format by the HPPSC in the advertisement. In fact, in almost all the cases, instead of mentioning the petitioners name, the persons giving Credential Certificates has mentioned his or her name. In CWP.No.4107 of 2023, though the petitioners stated that Credential certificates were uploaded, in fact what were uploaded were only Aadhar card copies and not Credential Certificates.

Consideration by the Court

18. After seeing these documents, it was clear to the Court that the petitioners have been grossly negligent in following the instructions given in the advertisement and in particular Clause 2(vi) to submit the Credential Certificates as per format thereof annexed to the advertisement by uploading the same. This they had failed to do inspite of the commission cautioning them through the Press Notes on 28.4.2023 and 10.5.2023.

19. There is no explanation coming forth from the petitioners as to why such negligence on their part ought to be condoned by this Court and they be

permitted to appear in the examination on 9.7.2023.

20. Character, good behaviour and antecedents are very important qualifications for persons seeking public employment and in particular for the District Judiciary as Civil Judges (Junior Division).

21. So the submission of the said certificates has to be treated on par with the possession of essential qualifications by the candidates, and it cannot be contended that such certificates can be produced latter and need not be submitted before the date on which the application would close, as is being claimed by the petitioners.

22. It is not as if these Credential Certificates are to be issued by any Government Departments like SC, ST, OBC Caste certificates or the Economically Backward Category certificates or the Physically Handicapped certificates. Many a times it is difficult for persons seeking certain reservation either in the SC, ST, OBC, Physically Handicapped, Economically Backward categories to secure relevant certificate from the authorities in time before the cut off date for submission of the application and in such cases, the Supreme Court of India had held that they can be taken later (Ram Kumar Gijroya vs. Delhi Subordinate Selection Services Board and another) (2018) 4 SCC 754. There cannot be any practical difficulty for any candidate to get such certificates from two respectable persons not related to him at all. The petitioners therefore, cannot take the plea that it is not an important certificate to be produced before the cut of date.

23. In State of Rajasthan vs. Neetu Harsh (2021) 11 SCC 383 the respondent, who claimed to belong to differently abled category, had applied in the General category and remitted examination fee for that category.

Also she did not enclose the disability certificate alongwith the application or produce it till completion of the interview.

When she approached the Rajasthan High Court, it allowed the petition and directed consideration of her candidature for appointment to the post of Civil Judge-cum- Judicial Magistrate in the Civil Judge cadre against two vacancies reserved for disabled candidates in the Rajasthan Judicial Service Examination 2016 and provide appointment as per merit of the said category, if she is otherwise eligible.

This was challenged in the Supreme Court by the High Court and contention was raised that the respondent did not apply against the vacancy advertised for the physically challenged category but had applied as a general category candidate and as per merit list, she was not entitled to be appointed as there were more meritorious candidates in the general category, and the appointment having been made, the process has been completed.

Before the Supreme Court, the candidate contended that she inadvertently did not mention the category in the application form and for the previous year, she had appeared as a candidate under the category of persons with disability, and

so she should be considered against the vacant post in that category.

The Supreme Court rejected her plea. It held that disability certificate which is specifically relied upon had not been enclosed along with the application or produced till completion of the interview

It relied on the judgment rendered by it in J&K Public Service Commission vs. Israr Ahmad (2005) 12 SCC 498 and also Registrar General, Calcutta High Court vs. Shrinivas Prasad Shah and others (2013) 12 SCC 364.

24. In J&K Public Service Commission, (3 Supra), the Supreme Court held:

"The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs." (emphasis supplied)

25. Similar view has also been taken recently in Karnataka State Seeds Development Corporation Ltd. And another vs. H.L Kaveri and others (2020) 3 SCC 108. . The Supreme Court held :

"12. Under its advertisement dated 11-11-2013, it was specifically indicated that separate application should be submitted for each post accompanied with various requirements including qualification, experience, etc. and incomplete application, if any, is liable for rejection without assigning any reason. The first respondent applied for the post of Senior Assistant/Junior Assistant vide application dated 29-11-2013. After scrutiny of the applications, the select list of backlog vacancies was published on 16-1-2015 and it reveals from the record that impleaded third respondent in the writ petition (Smt Priyanka A. Chanchalkar) was provisionally selected as Senior Assistant securing 64.65% marks. At the same time, the first respondent secured 65.43% marks but since the first respondent failed to submit experience certificate along with the application form, her application at the stage of scrutiny itself was rejected.

13. The Corporation in IA No. 3457 of 2020 has indicated that total 31 applications for the post of Senior Assistant were rejected in view of not enclosing of self-attested documents and there are 7 women candidates listed as valid

applicants for Senior Assistant against the single post of female (Scheduled Caste) which remain unfilled because of the orders of the Court. At the same time, the Corporation rejected 106 number of applications for the post of Junior Assistant for not enclosing the documents required including self-attested copies of experience certificate/caste certificate/computer tally-sheet/graduation certificate/birth certificate, etc.

14. It remains undisputed as recorded by the learned Single Judge of the High Court in the order after perusal of the original records of which reference has been made that the first respondent had not enclosed her experience certificate along with the application and her statement on oath was found to be factually incorrect and the rejection of her application was indeed in terms of the advertisement dated 11-11-2013 for which the Corporation was not required to assign any reasons which although was disclosed before the Court and noticed by the learned Single Judge in its judgment.

15. In the given circumstances, we do not find any error being committed by the Corporation in its decision-making process while rejecting the application of the first respondent for non-fulfilment of the necessary experience certificate which was to be enclosed along with the application as required in terms of the advertisement dated 11-11-2013."

(emphasis supplied)

26. According to the counsel for the HPPSC, 1700 candidates have been disqualified by the Commission, including the petitioners for various reasons, including not filing essential certificates.

27. If these petitioners are allowed any leniency, it will open a Pandora's box and would cause inconvenience as the Commission, on the basis of the number of qualified candidates, had identified centers for conducting the examination and providing questions papers etc.

28. The reliance on HPPSC (Procedure and Transaction of Business and Procedure for Conduct of the Screening Tests/Examinations and Personality Tests etc.) Rules, 2021 by the petitioners is of no avail, because even the advertisement categorically states that the Rules which would apply would be HP Judicial Service Rules, 2004. Clause 12 (b) of the advertisement advises the candidates to carefully read the instructions contained in the said Rules and it was specified that the eligibility of a candidate would be determined on the basis of the said Rules only.

29. For all the aforesaid reasons, we do not find any merit in these petitions and the same are accordingly dismissed. No costs.