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(2025) 05 SHI CK 1039

In the High Court Of Himachal Pradesh

Case No : CWPOA No. 5620 Of 2020

Naresh Kumar — APPELLANT

Vs

Himachal Pradesh Staff Selection Commission And Ors — RESPONDENT

Date of Decision : 20-05-2025

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2025) 05 SHI CK 1039

Hon'ble Judges : Tarlok Singh Chauhan, J;Sushil Kukreja, J

Bench : Single Bench

Advocate : Prikshit Rathore, P. S. Goverdhan, Rakesh Thakur, Anup Rattan, Navlesh Verma, Sharmila Patial, Sushant Kaprate, Raj Negi

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive relief:

"It is therefore, respectfully prayed that the present original application may very kindly be allowed and the respondent No. 1 may very kindly be directed to declare the applicant successful and further may very kindly be directed to recommend the applicant for the post of Refrigeration Plant Operator, by further directing the respondent No. 2 to offer the appointment to the applicant against the said post in the interest of law and justice."

2. Respondent No. 1 conducted selection process for five posts of Refrigeration Plant Operator (on contract basis) for respondent No. 2. Out of five posts, three posts were for General (UR), 1 for SC (UR) and 1 for OBC (UR), categories. The prescribed essential qualification was as under: -

"Matric with ITI certificate in refrigeration and air conditioning trade with five years experience in the operation and/or maintenance of air conditioning plant/

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chilling plant/ refrigeration plant in a reputed concern.”

Emphasis added

3. After scrutiny only eleven candidates were found to be eligible including petitioner and respondent No. 3. Though, as per advertisement, a written test was to be conducted, however keeping in view the smaller number of eligible candidates respondent No. 1 opted to make selection on the basis of direct selection criteria. The marks were to be awarded from a total of 100 marks. 85% was allocated to the marks secured by the candidates in matriculation and ITI examinations and 15 marks were to be awarded on evaluation.

4. Total four candidates were selected against the post of General (UR) and SC (UR) categories. No selection was made against the category of OBC (UR) on the ground that no eligible candidate was found. Petitioner had also applied under the General (UR) category. His name did not find mention in the select list, hence, this petition.

5. First grievance of the petitioner is that his name figured at serial No. 3 of the merit list but one candidate named Rajesh Kumar with Roll No. 54500011, who had applied against OBC (UR) category, was wrongly selected against General (UR) category. As the second instance, petitioner has challenged the appointment of respondent No. 3, on the ground that he did not possess the essential required experience.

6. Respondent No. 1 has filed the reply. It has been submitted that the petition is bad for non-joinder of necessary parties. As per respondent No.1, Rajesh Kumar bearing Roll No. 54500011 had topped the overall merit list and hence, he was selected against General (UR) category instead of OBC (UR) category. The candidates with Roll Nos. 54500010 and 54500006 were next in the merit list and were selected against two left out posts of General (UR) category. Petitioner was at serial No. 4 of the merit list and hence, his name was not recommended for appointment.

7. In respect of the experience certificate of 3rd respondent, it has been submitted that the said candidate while appearing for evaluation had submitted an experience certificate issued by Malhotra Refrigeration Works, Hamirpur, H.P; according to which the 3rd respondent had worked as Technical Assistant for Air Conditioning and Refrigeration w.e.f. 2008 to 2013 and on the basis of such certificate, he was considered eligible.

8. Respondent No. 2, though has filed a separate reply, but has shifted the entire burden on the selecting agency i.e. respondent No. 1.

9. Respondent No. 3, in his reply has supported the decision of respondent No.1, whereby he was recommended for selection. He has also placed reliance on the same experience certificate regarding which reference has been found in the reply of respondent No.1.

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10. I have heard learned counsel for the parties and have also carefully gone through the record on file as also the original record pertaining to selection process undertaken by respondent No.1.

11. The grievance raised by petitioner with respect to selection of Rajesh Kumar cannot be considered for want of impleadment of the said Rajesh Kumar, who is the selected candidate. Admittedly the said Rajesh Kumar is not a party in the instant petition. He cannot be condemned unheard. No relief can be granted to the petitioner to that effect.

12. As regards the challenge to the selection of 3rd respondent, it is found from the records that he was at serial No. 3 of the merit list. His overall score was 60.61 marks whereas the petitioner being at serial No. 4 of the merit list had scored 59.87 marks. However, since, the challenge to the selection of 3rd respondent has been made on the ground of absence of eligibility, the facts are to be assessed in that context.

13. Learned counsel for 3rd respondent at the very outset has placed reliance on the judgments in Dr. M.C Gupta and others Vs. Dr. Arun Kumar Gupta (1979) 2 SCC 339 and Neelima Mishra Vs. Harinder Kaur Paintal and others (1990) 2 SCC 746 to assert that this court should not substitute the opinion of experts.

14. Keeping the above caution in view, I now proceed to examine the facts of the case at the touchstone of applicable legal principles.

15. The 3rd respondent has placed on record a certificate dated 01.05.2018 issued by Malhotra Refrigeration Works, which reads as under:-

"Certified that Mr. Vaneet Thakur, S/o Sh. Balbir Singh R/O Village Rudhan, P.O. Baloh, Tehsil Bhoranj, District Hamirpur, has worked with my firm. He jointed as Technical Asstt. for Air Conditioning and Refrigeration with us in September, 2008 and worked till December 2013. My firm do appreciate his association with us. He is a noble, hard working and performing individual. I wish him good luck for his future."

16. Undeniably, the 3rd respondent had used the above referred certificate in the selection process.

17. The essential qualification for the post of Refrigeration Plant Operator was possession of five years experience in the operation and/or maintenance of Air Conditioning Plant/Chilling Plant/Refrigeration Plant in a reputed concern, besides being matric and ITI qualified. The certificate produced by the 3rd respondent only mentions that he had worked as Technical Assistant for Air Conditioning and Refrigeration with Malhotra Refrigeration Works from September, 2008 till December 2013. There is no mention that respondent No. 3 had worked in the operation and/or maintenance of Air Conditioning Plant/Chilling Plant/ Refrigeration Plant . From the said certificate, it also cannot be made out as to what was the exact nature of the business of Malhotra Refrigeration Works. There is no mention that the said entity was running, operating or maintaining any of

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air conditioning / chilling /refrigeration plant(s).

18. From the record of selecting agency, it is clear that except for the above noted certificate of respondent No. 3, no further clarification was sought from him. The said certificate was considered as it is for the purposes of experience. There also is nothing on record of selecting agency to show that the experience certificates of the candidates were assessed by any expert in the field of refrigeration. Rather, it has been found that in the selection process only the ministerial and secretarial staff of respondent No. 1 was involved.

19. The second respondent could have been the best entity to decide as to whether the certificate Annexure R-3/A was meeting the requirements of the essential qualification prescribed for the post of Refrigeration Plant Operator. Interestingly, the second respondent has remained silent. As noticed above, the said respondent has shifted the entire burden on respondent No. 1 being the selecting agency.

20. It cannot be disputed that when a particular qualification is required as essential, the same cannot be digressed. In the case at hand, the requirement of experience was with respect to operation and/or maintenance of Air Conditioning Plant/Chilling Plant/Refrigeration Plant. The experience certificate produced by 3rd respondent nowhere shows it to be inconformity with the required experience. Nothing more can be inferred from the contents of the experience certificate of 3rd respondent than what has been written therein.

21. Thus, in peculiar facts of this case where there is no assessment by any expert body, the 3rd respondent cannot derive any benefit from the judgments in M.C Gupta and Neelima Mishra (supra).

22. Even during the pendency of this petition, the 3rd respondent has not been able to place on record better particulars as to the exact nature of his job and experience with Malhotra Refrigeration Works. Noticeably, this petition was heard in part on 13.03.2025. Learned Senior Counsel for petitioner had made his submissions raising a specific challenge to the experience certificate of 3rd respondent. Thereafter, the matter came to be adjourned on various dates. On 20.03.2025, learned counsel for respondent No. 3 had sought time to place on record additional documents. This request was made only for the purposes of clarifying the exact nature of job performed by 3rd respondent with Malhotra Refrigeration Works. However, the 3rd respondent could not improve his case and on 08.04.2025, a submission was made on his behalf that no additional document would be filed.

23. Learned counsel for respondent No. 3 has then made an attempt to persuade this court to believe that every type of air conditioner used in a premises will be included in the definition of air conditioning plant. He placed reliance on the dictionary meaning assigned to Air Conditioning Plant, according to which, ‘Air Conditioning Plant’ means the plant, machinery and equipment installed in the property for heating, cooling or circulating air in the premises and any alteration,

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addition or replacement of this plant, machinery and equipment. Another definition of 'Air Conditioning Plant' relied upon by learned counsel for respondent No. 3 reads that 'Air Conditioning Plant' means all the plants and equipments which is located anywhere in the premises on the land and which is associated with the ventilation, air conditioning, heating or cooling of the premises. However, I am not persuaded by the argument for the reason that the essential qualification clause is very clear. It relates to the experience in operation and/or maintenance of Air Conditioning/Chilling/ Refrigeration plants. The term 'Plant' in the context of subject herein will mean something more than a single air conditioning unit normally used in houses or work places. It has to be an integrated and well calibrated unit for looking after the refrigeration/chilling/air conditioning of entire building or the premises having different specifications. It cannot be ignored that the posts of Refrigeration Plant Operators were advertised by respondent No. 2, which is dealing with the marketing and processing of fruits and fruit products in bulk. Its requirement for employing five numbers of Refrigeration Plant Operators in the pay scale of 5910-20200+2400 G.P is a clear indicator of the job which was expected to be performed by selected incumbents. No sane organization will employ a number of Refrigeration Plant Operators for manning single air conditioning unit.

24. In contrast, the experience certificate produced by petitioner shows that it was issued by Dabur India Ltd. and read as under:-

"This is to certify that Mr. Naresh Kumar S/o late Shri Parkash Chand is working with us since 09.11.2011 till date and he is handling Refrigeration and Air conditioning plant at our unit located at Village-Manakpur, P.O. Lodhimajra, Baddi. As per our record his address is as below."

25. Learned counsel for respondent No. 3 made another submission that 3rd respondent has been employed for almost seven years now and in case his selection and appointment is interfered with, he will suffer adversely in terms of his career and family circumstances. He has placed reliance on the judgments passed by Hon'ble Supreme Court in Sivanandan C.T and Others Vs. High Court of Kerala and Others, (2024) 3 SCC 799 and Vivek Kaisth and Another Vs. State of Himachal Pradesh and Others, (2024) 2 SCC 269 to contend that in similar circumstances the Hon'ble Supreme Court has not interfered with the continuing job of incumbent. In my considered view the 3rd respondent is not entitled to the benefit of above judgments for distinction in facts. In Sivananda C.T. the contest between the successful and unsuccessful candidates was on the marks scored by them on merits otherwise both were held qualified for judicial service. In the instant case the question is as to the basic qualification, if any, held by the successful candidate. Sivananda C.T. has been followed in Vivek Kaisth also.

26. The absence of necessary experience will no doubt result in seizing the job from 3rd respondent, but he cannot claim equity because he has obtained the job without holding essential experience as per R &P Rules. It also cannot be forgotten that by doing so, the 3rd respondent has stepped over the rights of

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someone else, who could be even more needy than the 3rd respondent.

27. In light of above discussion, the petition is partly allowed. The selection and appointment of 3rd respondent to the post of Refrigeration Plant Operator is quashed and set aside. Respondent No. 1 is directed to recommend the name of petitioner for appointment to the post of Refrigeration Plant Operator and the second respondent is directed to offer appointment to the petitioner. The entire exercise shall be completed within four weeks from the date of the passing of this judgment. Since, the petitioner was divested of his right to be appointed without any fault on his part, his appointment shall be deemed to have taken effect on notional basis from the same date on which the 3rd respondent was appointed, however, the petitioner shall not be entitled to monetary benefits.

28. The petition, is accordingly, disposed of, so also the pending miscellaneous application(s), if any.

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