

(2010) 04 P&H CK 0291
In the Punjab And Haryana At Chandigarh

Om Parkash and Others, Ashwani Kumar Kaushik and Others APPELLANT
and Shri Krishan and Others

Vs

Haryana Public Service Commission
 Shamsheer Singh RESPONDENT
and Others and Daya Nand Sharma Vs Haryana Public
Service Commission and Another
 Dilbag Singh Vs
State of Haryana and Another

Date of Decision : 05-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 04 P&H CK 0291

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—In this batch of cases, all the writ petitioners have a common grievance that their candidature for reserved posts of Ex- serviceman Category have not been favourably considered for appointment to the post of Assistant Engineers. The recruitment is sought to be done through the Haryana Public Service Commission. The advertisement, which had been originally issued on 03.07.2009, set out the eligibility of the candidate to have a Bachelor of Engineering Degree in Electronics/Electronics and Communication/Electronics and Tele-Communication/ Electronics & Instrumentation or equivalent qualifications from any foreign University/Institution duly recognized by All India Council of Technical Education/Association of Indian Universities with minimum 60% marks (55% marks for SC of Haryana). A note accompanying the requirement for various posts read as follows:

Note: In degree examination where the aggregate marks have been awarded on the basis of CGPA/GPA/CPI, the candidate must attach the conversion formula for converting this into percentage of marks. In case the conversion formula is not available or the same has not been attached with the application form, the percentage of marks would be calculated on the basis of formula prescribed by

All India Council for Technical Education or as the commission may deem fit.

2. All the petitioners are persons, who are Ex-servicemen and who, though did not have Bachelor of Engineering Degree had qualified for Diploma Courses and by reference to a Government of India Circular dated 22.07.1977 under the Ministry of Education and Social Welfare Department of Technical Education that on the recommendation of the Board of assessment for educational qualifications and recommendation of Defence Director (Technical), the Government of India had decided to recognize a diploma in Engineering in appropriate discipline plus 10 years of technical experience in the appropriate fields as equivalent to Degree in Engineering.

3. The petitioners would, therefore, contend that all of them have been in service for more than 10 years and being candidates who had diplomas in the respective fields of study, they should be recognized as possessing degrees equivalent to a degree in engineering. By such a deeming provision, the contention of the petitioners is that the requirement of securing 60% or 55% for Scheduled Castes would not apply, for the deeming provision merely makes a diploma with 10 years experience to have an engineering degree and does not assign marks obtained in diploma any value nor does it translate the marks obtained in diploma course to be marks also obtained in the engineering degree.

4. In some of the petitions, the petitioners have also challenged the condition laid down in the advertisement itself as arbitrary, for it runs counter to their own practice in having recruited persons who held diplomas and who had a deeming engineering degree by virtue of the service for more than 10 years and when recruitment had been done by Haryana Bijli Vitran Nigam Limited and Haryana Vidyut Prasharan Nigam Limited in the year 2004 and when persons had been recruited merely on the basis of equivalence of a diploma with 10 years experience as holders of degree in engineering course, without reference to the percentage of marks, there was no reason to stipulate a minimum percentage now.

5. To the contention of the petitioners, there is a fundamental objection, which is taken on the behalf of the respondent that the Public Service Commission was merely carrying out the recruitment for HPGCL/UH BVNL/HV PNL and DHBVNL and the writ petitions filed without impleading the prospective employers, who had laid down the relevant criteria for recruitment is not maintainable. The further contention is that in the matter of fixation of eligibility criteria, it shall be ultimately the decision of the respective employers and there is no scope for judicial intervention, unless the prescription of eligibility criteria itself is wholly arbitrary which would fall foul of Article 14 of the Constitution. It is also the submission on behalf of the respondents that there had been occasions previously when some of the public sector electricity boards have gone through recruitment without laying down any minimum marks for Ex-servicemen, who had diploma courses and who were obtained equivalence to engineering degrees but that shall not fetter the rights for laying down such criteria for future

recruitment.

6. In my view, the whole case can be decided only on how the requirements in the advertisement are spelt out and how the equivalence of diploma courses with 10 years experience for Ex-servicemen as persons possessing graduate degrees in engineering could be seen to be eligible or not, depending on the terms of the advertisement. If there has been a prescription of marks of 60% for engineering graduates, the situation of consideration of persons claiming equivalence of diploma courses simply cannot arise. It just means that Ex-servicemen who had not themselves obtained Bachelor of Engineering Degree will stand excluded for consideration. To a query to the counsel appearing on behalf of the Public Service Commission whether there were at all any candidate from the Ex-servicemen category, who had actually secured engineering degree from a recognized institution, the learned Counsel gives to me a list of three persons in Roll Nos. 3331, 6341 and 7393 who had Bachelor of Engineering Degrees from recognized Universities. By having secured degrees, their candidature could be examined with reference to the marks that they had secured but the persons such as the petitioners, who had merely diploma courses and whose equivalence with degrees as provided through the Union's notification referred to above, cannot still help them to qualify for consideration, since there was no scope through a conversion formula to assign to them the minimum percentage. The conversion that the "Note" provided for were only the marks assigned on the basis of CGPA/ GPA/CPI.

7. Learned Counsel appearing for the petitioners refers me to the decisions of the Hon"ble Supreme Court in *Mills Douglas Michael v. Union of India* AIR (SC) 1905 that dealt with the situation of qualification and advertisement for recruitment to the post of Inspectors of Central Excise which had stipulated a cut off date by which a person ought to have obtained the necessary graduation status. This was sought to be applied also to persons in Armed Services, who had similar status of equivalence of 15 years service but were not graduates to be deemed to be graduates. The Hon"ble Supreme Court held that the candidate, who was not a graduate but who was an Ex-serviceman having 15 years of service by the last date of application shall be treated as eligible and the cut off date meant for other candidates could not be applied for Ex-servicemen. The reference to this judgment, in my view, does not help, for the Hon"ble Supreme Court in the above decision was dealing with the requirement in an advertisement that a person shall be a graduate before a particular date. The advertisement itself did not spell out any particular benchmark for a graduate and if all that was necessary was that the person shall be a graduate before a particular date. The Hon"ble Supreme Court was not dealing with the situation where there had been a stipulation of minimum marks. If there was such a stipulation, it is doubtful whether the same decision would apply.

8. Learned Counsel appearing for the respondents referred to the limited role of judicial interventions in cases where advertisements spelt out the eligibility

criteria for appointment to hold that such criteria shall not be laid down. Learned Counsel appearing for the respondents refers to a Full Bench decision of this Hon"ble Court in *Som Dutt v. State of Haryana and Anr.* 1983 (3) SLR 141 that held that as regards appointment/qualifications for post prescribed by statutory rules or by the employer or expressly advertised for inviting applications thereto, the Court shall not interfere and it would perfectly competent for a State to insist on a literal adherence thereto. A Division Bench of this Hon"ble Court held in *Jagjit Singh v. State of Punjab and Ors.* 2009(1) S.C.T. 744 that the subject of equivalence of educational qualification is invariably a technical question based on proper assessment and evaluation of the relevant academic standards. It further involved practical attainments of such qualifications and experts were required to decide such issues as a matter of policy. The Court adopted a hands off approach when it said that the Court cannot determine such issues in exercise of powers of judicial review under Article 226 of the Constitution.

9. In this case, an attempt was also made by the learned Counsel appearing for the petitioners who among the diploma holders had more than 60% marks and whose diplomas were with respective 10 years of experience and argued that they shall be considered as having passed with 60% in Bachelor Degree in Engineering. I am afraid such a kind of extension cannot also avail, for the issue is that an advertisement that requires a pass in Bachelor Degree in Engineering with specified marks of 60%, literally excludes from out of reckoning any possible claim from persons who had merely deemed graduate degrees. I cannot also accede to the plea that the employers were actually laying down an arbitrary condition specifying minimum marks as requisite qualification for consideration, because, for willy-nilly the system of assessing merits by marks have come to stay in all walks of life particularly in the matter relating to admission to higher courses and for appointment in open competitions.

10. There has been a fundamental objection with reference to the manner of framing of the writ petition itself by arraying only the Public Service Commission through which the advertisement had been issued and without impleading the employers for whom the recruitment process had been set in motion, I would have directed the petitioners to implead the persons for whom the appointments were sought to be made to obtain an effective adjudication in their presence but in the view that I have taken that the petitioners lack the requisite qualification, it is irrelevant that they have not been made parties, for even in their absence, the decision would have been just as well the same.

11. Only in two writ petitions, there are applications for impleadment but it is not sought against the respective Corporations or Boards on whose behalf the recruitment was made. On the other hand, attempt for impleadment is for the Public Utilities Department. The impleadment of Public Utilities Department has no meaning in this case and I dismiss the plea as not going to advance the case of the petitioners any better.

12. I had sought for information during the course of arguments whether any

candidates at all have been picked up amongst the quota reserved for Ex-servicemen. Whether the stipulation of minimum marks was asking for the impossible. I have already referred to the fact that three candidates had been so selected. The vacancies position was 25 and it appears that the respondent has given appointment to dependents of Ex-servicemen under this category, relying on the instructions of the Haryana Government that wherever vacancies for Ex-servicemen were not filled up due to non-availability of suitable candidates, the reservation of Ex-servicemen to the post could be extended to the dependents of Ex-servicemen. The choice of the dependents of Ex-servicemen even without specifying that those persons would obtain favourable consideration under the reservation quota is itself not challenged before me and I am not expressing my view on the validity of such appointment. The case has to be merely decided on whether the petitioners have made out a case for consideration for appointment and I have held that they have not.

13. Learned Counsel appearing for the petitioners in C.W.P. No. 171 03 of 2009 refers to a letter of communication from the Chief Secretary, Government of Haryana to all the Departments that in respect of appointments of Ex-servicemen in civil posts, some relaxation had to be given in the qualifications. The communication sets out that:

It is decided that for the post for which a particular division in M.A./B.A./Intermediate/metric is a necessary minimum qualifications, such division shall not be insisted upon while filling up vacancies reserved for ex-servicemen and the minimum qualifications in the cases of ex-servicemen may be deemed to have been relaxed to that extent.

The reference is to relaxation of conditions for M.A./B.A./Intermediate and Metric as necessary minimum qualifications and does not specifically address the situation of engineering qualification. Even otherwise, the issue of equivalence itself must be seen in the context of how the Government was prepared to treat diploma holders with 10 years experience as having secured engineering qualification. Cases where the Union itself is a party shall have to be seen differently from statutory bodies, since government instruction cannot ipso facto apply even to statutory bodies or corporations, unless they are so specifically adapted. A relaxation which is provided for certain posts ought not to be understood as relaxation available for all types of posts or applicable to statutory bodies as well. The plea of the petitioner for a claim on this basis, in my view, is also not sustainable in law.

14. The petition in C.W.P. No. 17276 of 2009 relates to candidates who had AMIE, which is equivalent to engineering degree but the ineligibility of the petitioners arises by the fact that they did not have minimum marks of 60% necessary in that course. The AMIE candidates have though less than 60% marks, have more than 55% marks and the contention is that by an office order, which was issued by the Haryana Power Generation Corporation on 26.08.2003, the qualification for direct appointment had been fixed at 60% for General

Category and 55% for reserved category candidates. The advertisement, which had been issued subsequently by the Public Service Commission provided for relaxation upto 55% marks only to Scheduled Castes Haryana and excluded from its purview other reserved categories. Learned Counsel appearing on behalf of the Public Service Commission would contend that the advertisement had been issued as per the requisitions made by the prospective employers and if they had themselves provided for the minimum of 60% marks for General Category and provided for relaxation only for Scheduled Castes category, it shall not be permissible for the Public Service Commission to make unilateral relaxation of such condition by reference to office order issued by the Haryana Power Generation Corporation. While a provision for relaxation of minimum marks for reserved category could be legally permissible (see *Haridas Parsedia v. Urmila Shakya* AIR 2000 SC 278) , in my view, the provision for relaxation relating to educational qualification itself is not in any way an enforceable right unless it is specifically provided by the employer. Hypothetically, if an employer chooses not to provide for any relaxation of marks with reference to even a reserved category, it cannot be said to be arbitrary. The reservation shall be only for number of posts and need not to provide for relaxation of marks, unless there is a specific directive by any government notification. The petitioners cannot have, therefore, the benefit of the office order dated 26.08.2003 also.

15. The writ petitions shall accordingly fail and they are dismissed.