

(2014) 04 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22887 of 2012 and Civil Writ Petition No. 22891 of 2012 (O & M)

Parampal Singh Bhasin

APPELLANT

Vs

Punjab State Transmission Corporation Ltd. and Another

 Sunil Gupta Vs Punjab State Transmission Corporation
Ltd. and Others

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2014) 04 P&H CK 0074

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Abhinash Jain, Advocate for Mr. B.R. Mahajan, Advocate in CWP No. 22887 of 2012 and Mr. V.K. Shukla, Advocate in CWP No. 22891 of 2012, Advocate for the Appellant; Vikas Chatrath, Advocate in CWP No. 22887 of 2012 and for respondents No. 1 and 2 in CWP No. 22891 of 2012, Mr. H.S. Virk, Advocate for Mr. A.S. Jattana, Advocate for respondents No. 3 and 4 in CWP No. 22891 of 2012, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J.—Vide this judgment, above mentioned two petitions would be disposed of as the controversy involved in both the cases, is the same. Learned counsel for the petitioners have submitted that as per the advertisement, qualification for the post of Upper Division Clerk ("U.D.C" for short) (General) was Graduate in Science/Commerce/Arts. Both the petitioners were graduates and were, thus, entitled to be appointed as U.D.C. Petitioners had appeared in the written test held on 1.4.2012 and their names were duly reflected in the merit list. However, the persons lower in the merit, had been called for selection and appointment. Petitioners were informed that so far as petitioner Parampal Singh Bhasin is concerned, he was Bachelor of Pharmacy whereas so far as petitioner Sunil Gupta is concerned, he was Bachelor of Technology (Computer Science) and they were, therefore, not entitled for appointment to the post of

U.D.C.

2. Learned counsel for respondent No. 1 and 2 has submitted that in the present case, only the candidates who were Bachelor of Science/Arts/Commerce were liable to be appointed as U.D.C. whereas the petitioners could not be considered for the post of U.D.C. as petitioner Parampal Singh Bhasin was Bachelor of Pharmacy whereas petitioner Sunil Gupta was Bachelor of Technology (Computer Science). Qualification of the petitioners could not be treated as Bachelor of Science. Learned counsel has further submitted that petitioners had submitted their applications online and were called for written test due to inadvertence. However, later it had transpired that petitioners were not having the requisite qualification for the post of U.D.C. In support of his arguments, learned counsel has placed reliance on District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, ", wherein it was held as under:-

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.

3. Learned counsel for respondents No. 1 and 2 has further placed reliance on Bihar Public Service Commission and Others Vs. Kamini and Others, wherein it was held as under:-

Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. The advertisement is explicitly clear and states that the candidate must be Honours in B.Sc. Zoology. It is not in dispute that first respondent has obtained B.Sc. Degree with First Class but her main subject was Chemistry of eight papers of 800 marks and in addition to Chemistry, she had two papers of Zoology and Botany. In pursuance of the advertisement, which was clear, the first respondent was not eligible for the appointment to the post of District Fisheries Officer. In spite of that, she applied for the said post. True it is that initially a letter was issued by the Commission on October 17, 2002 calling upon her to appear before the Commission for interview. It was, however, a mistake on the part of the Commission. As soon as the appellant-Commission realised that the first respondent was not having requisite qualifications for the post and was not eligible, her candidature was rejected. When a representation was made by the first respondent that cancellation of her candidature was not proper and that the decision should be reconsidered by the Commission, the Commission thought it fit to look into her grievance and an Expert Committee was appointed.

The Expert Committee considered the question and submitted a report on November 24, 2002, inter alia, stating that in its "considered opinion", a student would be called a Graduate in the subject if he/she has Honours in the subject at the Graduate level, meaning thereby that it must be the principal subject. In our opinion, such a decision could not be said to be contrary to law.

Again, it is well settled that in the field of education, a Court of Law cannot act as an expert. Normally, therefore, whether or not a student/candidate possesses requisite qualifications should better be left to educational institutions [vide *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*,]. This is particularly so when it is supported by an Expert Committee. The Expert Committee considered the matter and observed that a person can be said to be Honours in the subject if at the Graduate level, he/she studies such subject as the principal subject having eight papers and not a subsidiary, optional or side subject having two papers. Such a decision, in our judgment, cannot be termed arbitrary or otherwise objectionable. The learned Single Judge, in our opinion, was, therefore, right in dismissing the petition relying upon the Report of the Committee and in upholding the objection of the Commission. The Division Bench was in error in ignoring the well considered report of the Expert Committee and in setting aside the decision of the learned Single Judge. The Division Bench, while allowing the appeal, observed that the "litmus test" was the admission granted to the first respondent by the Central Institute of Fisheries Education, Mumbai. According to the Division Bench, if the first respondent did not possess Bachelor of Science Degree with Zoology, the Institute would not have admitted her to the said course. The Division Bench observed that not only the first respondent was admitted to the said course, she had passed it with "flying colours". In our opinion, the Division Bench was not right in applying "litmus test" of admission of the first respondent by Central Institute of Fisheries Education, Mumbai. The controversy before the Court was whether the first respondent was eligible for the post of District Fisheries Officer, Class II. The correct test, therefore, was not admission by Mumbai Institution. If the requirement was of Honours in B.Sc. with Zoology and if the first respondent had cleared B.Sc. Honours with Chemistry, it could not be said that she was eligible to the post having requisite educational qualifications. By not treating her eligible, therefore, the Commission had not committed any illegality.

4. Petitioners, in pursuance to the advertisement issued by the respondents, applied for the post of U.D.C. (General). Petitioner Sunil Gupta is Bachelor of Technology in the discipline of Computer Science and Engineering whereas petitioner Parampal Singh Bhasin is Bachelor of Pharmacy. Both the petitioners took the written test and their names were duly mentioned in the provisional merit list as well as the revised provisional merit list. However, they were not issued the appointment letters and, therefore, they have approached this Court by way of present writ petitions.

5. As per the advertisement, qualifications for the post of U.D.C. (General) read

as under:-

Full time regular Graduation in Sc./Commerce/Arts with minimum 60% marks with one year course equivalent to PGDCA Course (O level certificate) of department of Electronics & Accreditation of Computer Course (DOEACC) of Govt. of India or a Govt. recognized Institution which is ISO-9001 certified or Full time regular BCA with minimum 60% marks.

6. The facts are not in dispute in the present case. The question that requires consideration is as to whether the petitioners who are Bachelor of Technology/ Bachelor of Pharmacy, can be considered/treated as Bachelor of Science. Petitioners have got specialized degrees and have obtained the degree of Bachelor of Technology/Bachelor of Pharmacy. In my considered view, they cannot be equated with the persons who are graduate in science. Although, petitioners took the written test and their names appeared in the merit list but while checking the original documents/certificates, the sub committee noticed that the petitioners possessed the qualifications of Bachelor of Technology (Computer Science)/Bachelor of Pharmacy and were, thus, disqualified for the post of U.D.C. (General). So far as the petitioners are concerned, as per the reply submitted by respondents No. 1 and 2, the committee returned the original documents of the petitioners to them at the spot as they were not qualified for the post of U.D.C. (General). Petitioners who have attained the degree of Bachelor of Technology/Bachelor of Pharmacy, cannot be said to be possessing the degree of Bachelor of Science. So far as the post of U.D.C. (General) is concerned, the requisite qualification was Graduate in Science/Commerce/Arts. Since the petitioners were not holding the requisite qualification, they could not be appointed to the post of U.D.C.(General). In these circumstances, there is no merit in these petitions and, consequently, both the petitions are ordered to be dismissed.