
(2010) 05 SHI CK 0250
In the High Court Of Himachal Pradesh
Case No : CWP-T No. 1916 of 2008

Prem Prakash Sharma and Others

APPELLANT

Vs

The State of H.P. and Another

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Constitution of India, 1950 — Article 309
Recruitment and Promotion Rules, 2007 — Rule 18, 7

Citation : (2010) 05 SHI CK 0250

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Sharma, J.—By means of the present petition the Petitioners have laid challenge to the Rules known as the Himachal Pradesh, Horticulture Department, Horticulture Extension Officer, Class-III (Non-Gazetted), Recruitment and Promotion Rules, 2007, issued vide Notification dated 18.09.2007, Annexure A-12. These rules which shall hereinafter be referred to as "the new rules of 2007" govern recruitment to the post of Horticulture Extension Officer. Precisely, the grievance raised by the Petitioners is relating to the minimum educational and other qualifications required for direct recruitment to the said post. To be explicit, the matter fell within the domain of the earlier Rules, that is, Himachal Pradesh, Horticulture Department, Horticulture Extension Officer, Class-III (Non-Gazetted), Recruitment and Promotion Rules, 2002, wherein the following minimum educational and other qualifications were provided for direct/batch-wise recruitments for the aforesaid post vide Rule 7:

7. Minimum Educational and (a) essential qualification other qualifications should have passed required for direct/ Matriculation with 2nd Division batchwise recruits or 10+2 with Science or equivalent from a recognized Board of School Education University followed by one Year's Gardener's training Course/Vocational training in Horticulture Management Vocational Course

(Horticulture) from Dr. Y.S. Parmar University of Horticulture and Forestry. Or Should have passed 4 Years" (Horticulture) Degree or its equivalent from recognized University. (b) desirable qualification knowledge of customs and dialects of Himachal suitability for appointment in the peculiar corners prevailing in the Pradesh."

2. Now, by way of the new Rules of 2007, the minimum educational qualification required for direct recruitment to the above post has been provided as under vide the corresponding Rule 7:

7. Minimum educational and Educational qualification: other qualifications required Should have passed four year's for direct recruitment: B.Sc. (Horticulture) Degree or its equivalent from recognized University.

3. Thus, it is evident that whereas earlier the minimum essential qualification for direct/batch-wise recruitments was either matriculation with 2nd division or 10+2 with Science or equivalent from a recognized board of school education/university followed by one year's Gardener's Training Course/vocational training in Horticulture Management/Vocational Course (Horticulture) from Dr. Y.S. Parmar University of Horticulture and Forestry or the candidate should have passed four year's (Horticulture) Degree or its equivalent from a recognized university. Now, on the one hand essential qualification for direct recruitment has been restricted exclusively for the candidates having passed four years" B.Sc. (Horticulture) Degree or its equivalent from a recognized university and on the other the batch-wise recruitment has been all together done away with.

4. The Petitioners are either matriculate 2nd division or 10+2 with Science followed by one year's Gardener's Training Course (Horticulture) from Dr. Y.S. Parmar University of Horticulture and Forestry. Thus, in view of the enhanced minimum essential qualification provided under the new Rules of 2007 they have been excluded from consideration for the aforesaid post.

5. The Petitioners besides being aggrieved by and dissatisfied with the enhancement of minimum essential qualification for the post are also agitating their exclusion for appointment to the said post on batch-wise basis. They claim themselves to be a special class and have thus sought the following reliefs:

i) That the Recruitment and Promotion Rules (Annexure A-12) of H.P. Horticulture Extension Officer Class-III (Non Gazetted) Rules, 2007 (Annexure A-12) may kindly be quashed and set aside and the Respondents may kindly be directed to amend the same by including the category of the applicants as per Annexure A-4 i.e. earlier Recruitment and Promotion Rules, 2002 by providing suitable quota alongwith the category which has been mentioned in Annexure A-12.

ii) That Annexure A-14 the employment Notice may kindly be quashed and set aside and the Respondents may kindly be restrained from filling up the posts of Horticulture Extension Officer from amongst four years B.Sc. Horticulture Degree or its equivalent from the recognized University till the consideration of the claim

of the applicant who were having due share in the earlier Recruitment and Promotion Rules repealed Recruitment and Promotion Rules.

iii) That the entire record pertaining to the case may kindly be called for.

iv) That the Original Application may kindly be allowed with costs throughout.

v) That any such other suitable relief(s) as may be deemed just and proper in the given set of circumstances may also kindly be granted in favour of the applicant and against the Respondents in the interest of justice.

6. In support of their contention, the Petitioners are seeking support from the authorities reported as J.C. Yadav and others Vs. State of Haryana and others, , Ashok Kumar Uppal and Others Vs. State of Jammu & Kashmir and Others, and Sandeep Kumar Sharma Vs. State of Punjab and others,

7. The submissions made by the learned Counsel for the Petitioners are three fold. Firstly, it is submitted that at the time of framing of the new Rules of 2007 they had represented to the Respondents to keep their interests also in view and accordingly make a proper provision for them in the proposed Rules. However, neither it was done nor the representation has been disposed of even up till date. Secondly, as per the new Rules of 2007 age for direct recruitment has been specified between 18 to 45 years. It being so, no person of the age of 18 years can possess the minimum essential qualification of four years" B.Sc. (Horticulture) Degree which itself takes 16 years to complete. Lastly, it is submitted that even for the post of Additional Director, Horticulture, which is much higher in the hierarchy, the Respondents have amended the Recruitment and Promotion Rules by relaxing the minimum essential qualification from M.Sc. to B.Sc. vide a Cabinet decision dated 13.09.2007, Annexure A-15.

8. It shall be appropriate to take up the above submissions one by one, though not exactly in that order.

9. Insofar as the age for direct recruitment being between 18 to 45 years is concerned, suffice it to say that the minimum age of 18 years has been provided for the obvious reason that this is the age of majority and it is uniform in all recruitment and promotion rules that none who is below the age of 18 years is eligible for public employment. It does not mean that a candidate is required to possess a four years" B.Sc. (Horticulture) degree just at the threshold of attaining the age of 18 years. Thus, the contention, it appears, has been raised simply to be rejected.

10. Now, while adverting to the representation submitted by the Petitioners or say the Union to which they belong, it is for the Respondents to consider and decide the same in accordance with law and it is not within the domain of this Court to pass any direction in the matter and that too in the proceedings of the present nature and more so when even the learned Counsel for the Petitioners has conceded at the bar that it is open to the government to frame rules of the present nature under Article 309 of the Constitution of India. Here it shall be

pertinent to observe that once the minimum educational qualification has been raised, it is not only for the Petitioners but all prospective candidates who would offer their candidature for consideration for the aforesaid post and thus it cannot be said to be unreasonable, discriminatory or ultra vires of the Constitution.

11. Now, with regard to the surviving submission regarding amendment in the Recruitment and Promotion Rules for the post of Additional Director of Horticulture, vide Cabinet decision dated 13.09.2007, Annexure A-15, it would be seen that the government has relaxed the essential qualification for the said post from M.Sc. to B.Sc. in exercise of its power to relax.

12. In this respect, it shall be pertinent to observe that relaxation clause is also contained in the new rules of 2007 vide Rule 18 which is to the following effect:

18. Power to relax. Where the State Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing and in consultation with the H.P. Public Service Commission relax any of the provision(s) of these rules with respect to any Class or Category of person(s) or post(s).

13. Even otherwise the thrust of the authorities relied upon by the Petitioners is with regard to exercise of power to relax by the concerned governments taking into consideration the peculiar facts and circumstances of each case. There being a provision empowering the concerned authority to relax the rules and its exercise by the said authority is a different matter. However, providing of minimum essential qualification for a particular post in the recruitment and promotion rules is altogether a different matter. Both these cannot be considered on the same plank.

14. Even otherwise, recruitment/appointment is required to be made strictly on the basis of merit.

15. In view of the above, I see no merit in the present petition which is accordingly dismissed. However, dismissal of the petition would not preclude the Respondents from considering the pending representations, Annexures A-6 to A-10, submitted by the Petitioners/Union in accordance with law.