
(2014) 04 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 21309 of 2013

Radheshyam Kumar

APPELLANT

Vs

The Chairman-cum-Managing Director

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 2 PLJR 606

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Binay Kumar Singh, Advocate for the Appellant; Rajeev Ranjan Prasad, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—Heard learned counsel for the petitioners and learned counsel appearing on behalf of the Respondent-Life Insurance Corporation of India. Present writ application has been filed seeking quashing of the final result of candidates short-listed for pre-medical test and thereafter, for appointment to the post of Assistant Administrative Officer Life Insurance Corporation of India (hereinafter referred to as the "Corporation") mainly on the ground that no minimum qualifying marks for interview was prescribed at the time of advertisement whereas final selection list has been prepared fixing such minimum qualifying marks for interview.

2. Facts are not in dispute.

3. The Life Insurance Corporation of India uploaded an advertisement on its website in the month of February, 2013 inviting applications from eligible candidates for payment to the posts of Assistant Administrative Officer in the Corporation. Out of 750 vacancies, 114, 56, 201 seats respectively were declared reserved for Scheduled Caste and Scheduled Tribe and other backward class categories candidates whereas the rest vacancies were left open as unreserved seats. The said advertisement has been brought on record as Annexure-1 to the

writ application. Petitioners No. 1, 3 and 4 had applied against OBC seats whereas petitioner No. 2 had applied against SC seats.

4. As per the Advertisement, selection procedure laid in Clause 9 of the advertisement was divided into two parts; the "On-Line Test" followed by a Personal Interview. On-Line Test was to be of objective type in the subjects of Reasoning Ability (90), Numerical Ability (90), General Knowledge Current (60), Computer Knowledge (30) and English Language (100). It prescribed that a candidate must pass in each section separately and should also obtain minimum marks in aggregate to qualify for interview, which shall be decided by the Corporation. Minimum marks for these sections were not disclosed in the advertisement. However, the petitioners have no grievance in this regard. Clause 9 of the said advertisement to the extent it deals with interview for the present purpose reads as follows:--

The Corporation reserves the right to fix the minimum eligibility standards in order to restrict the candidates to be called for interview, commensurate with number of vacancies and also the minimum qualifying marks to qualify in the interview. Candidates who do not obtain the minimum qualifying marks as decided shall be excluded from further selection process. The decision of the Corporation in this regard shall be final and binding on the candidates and no correspondence will be entertained in this regard.

5. The petitioners applied against the post so advertised and they were selected for interview. They appeared before the Interview Board on different dates and according to them, they performed well. However, their names did not figure in the merit-list dated 1.10.2013 of candidates short-listed for pre-recruitment medical examination and their subsequent appointment to the post of Assistant Administrative Officer. It is the assertion in the writ application that Respondent-Corporation thereafter, posted details of scores and cut-off marks on the e-mail of candidates short-listed for interview. From the web-copy of the details of the scores of the petitioners and the statement showing cutoff marks of written and oral test, it would transpire that candidates with minimum scores of 225, 214, 199 and 175, 190 and 154 belonging to unreserved, OBC, SC, ST, OH and VI were short-listed for oral test. It would also transpire from the said webcopy, which have been brought on record by way of Annexure-5, that qualifying marks in interview was fixed for unreserved/other backward class candidates as 30 and that for Scheduled Castes and Scheduled Tribes as 27. It would further transpire that the candidates with minimum scores of 277, 255 and 242, taking marks obtained by them in the written test and interview together, belonging unreserved category, other backward class category and Scheduled Castes category respectively were finally selected. This is to be noted that English Language paper carrying 100 marks was shown as qualifying in nature and marks obtained in English Language was not considered for overall weighted score. In this backdrop, the merit-list was prepared on the basis of total 300 marks in the subjects, Reasoning Ability, Numerical Ability, General Knowledge,

Current Affairs and Computer Language. Cut-off to qualify in these papers are shown in the said Annexure-5.

6. In this background, it is case of the petitioners that petitioner No. 1 scored 275 marks out of 300 in the written examination and after adding 22 marks obtained by him in the interview his total would have come to 297 and thus, he scored 42 marks more than the last OBC candidate finally selected with the score of 255. Similarly, petitioner No. 2 who belongs to the Scheduled Caste category scored 239 marks in the on-line test and 25 marks in the interview and he thus scored 264 marks in all. According to the petitioners; he scored 22 marks more than the cut-off marks fixed for the S.C. category candidates. As regards petitioner No. 3, it has been stated that he belongs to OBC category and he scored 281 marks in the on-line test and 15 marks in the interview total 296 being 41 marks more than the last candidate selected against other backward class quota. Petitioner No. 4 also belongs to other backward class category who scored 237 marks at the written test and 22 at the interview totaling 259 marks and thus, he was four marks above the minimum benchmark set for the OBC category.

7. Apparently, the petitioners could not be declared finally selected because they scored less marks than the minimum qualifying marks shown to have been fixed in Annexure-5. In the backdrop of these facts, the petitioners challenge the selection on the ground that since no minimum benchmark for interview was declared in the advertisement itself, no such decision could have been taken after the process of selection had begun.

8. A counter affidavit has been filed on behalf of the Respondent-Corporation stating therein that in the advertisement inviting application itself it was made clear that the candidates must pass in each Section and should also obtain minimum marks in the aggregate to qualify in the interview. It has been stated that the petitioners failed to obtained minimum qualifying marks in interview as against minimum qualifying marks 30 for unreserved/OBC category and 27 marks for SC category candidates for interview; Petitioner No. 1 could obtain 22 marks, Petitioner No. 2, obtained 25 marks and Petitioner No. 3 obtained 15 marks whereas petitioner No. 4 scored 22 marks.

9. It has been stated in paragraph No. 6 of the counter affidavit that minimum marks for interview was fixed by the Respondents on 18.1.2013 whereas the process of selection for appointment to the post of Assistant Administrative Officer was initiated much thereafter. It has further been pleaded that it was made clear in the advertisement itself that the Corporation shall have right to fix the minimum qualifying marks for, interview. The maximum marks for interview was 60 and qualifying marks in interview for General/OBC candidates was fixed as 50% of the minimum marks for interview i.e. 30. 10% relaxation was given to Scheduled Castes and Scheduled Tribes candidates and thus, 27 marks was prescribed as the minimum qualifying marks for interview for Scheduled Castes and Scheduled Tribes candidates.

10. Dr. Vinay Kumar Singh, learned counsel appearing on behalf of the petitioners has contended that no minimum marks could have been adopted for interview for the purpose of final selection as no maximum marks for interview was prescribed in the advertisement. He has placed reliance upon judgments of Supreme Court reported in Hemani Malhotra Vs. High Court of Delhi, , Barot Vijaykumar Balakrishna and Others Vs. Modh Vinaykumar Dasrathlal and Others, , P.V. Indiresan Vs. Union of India (UOI) and Others, in support of his contention. He has contended with reference to judgments of Supreme Court as noted above that the petitioners could not have been disqualified from the process of selection on the ground of having scored less marks than the minimum marks for interview fixed by them.

11. Learned counsel appearing on behalf of the Respondents on the other hand has contended that there was clear stipulation in the advertisement inviting application that the Corporation reserved the right to fix minimum eligibility standards in order to restrict the candidates to be called for interview, commensurate with number of vacancies and also the minimum qualifying marks to qualify in the interview. The advertisement also contemplated that candidates who did not obtain the minimum qualifying marks as decided shall be excluded from further examination process and further that decision of the Corporation in this regard shall be final and binding on the candidates. He has contended that the petitioner participated in the process of selection and took chance of their selection. Now, having failed finally, they cannot raise a grievance against the action of the Corporation of fixing minimum qualifying marks to qualify in the interview.

12. After having heard rival submissions made on behalf of the parties and having gone through the respective pleadings, I find that the case of the petitioners is not covered by judgment of Supreme Court in case of Barot Vijaykumar Balakrishna vs. Modh Vinaykumar Dasrathlal (supra), Hemani Malhotra vs. High Court of Delhi (supra) and P.V. Indiresan vs. Union of India (supra). In the present case, it was specifically mentioned in the advertisement itself that the Corporation reserved right to fix minimum qualifying marks for interview. Reliance has been placed upon an order of this Court dated 12.8.2011 passed in C.W.J.C. No. 3866 of 2011 whereby relying upon the judgments of Supreme Court as noted above, while dealing with the process of appointment to the post of Assistant Administrative Officer in the same Corporation pursuant to an advertisement issued in 2009, this Court had held that the Corporation was not justified in refusing selection of the petitioner on the ground of having scored less marks than the cut-off marks in interview. The said order is distinguishable in the present facts and circumstances of the case as in that case, it was not mentioned in the advertisement that the Corporation reserved right to fix minimum qualifying marks for interview.

13. There being clear stipulation in the advertisement itself that the Corporation reserved right to fix minimum marks for interview, the petitioners, in my opinion,

cannot raise a grievance now after having participated in the process of selection as per the terms of advertisement. Fixing of 50% marks as the minimum qualifying marks cannot be said to be arbitrary. Further, the advertisement was issued in the month of February, 2013 and the minimum qualifying marks for interview was fixed by the Corporation on 8.1.2013 itself which has been uniformly applied to each and every candidate. The fact that minimum qualifying marks for interview was pre-determined is not in dispute. The petitioners have a grievance that this should have been disclosed in the advertisement. In my opinion, this would not vitiate the entire selection process on this ground alone for the reason that the petitioners cannot have a case that they did not know that there would be a minimum qualifying marks in the interview. It has been rightly submitted by learned counsel for the Corporation that order of this Court in case of Rohan Rai vs. Life Insurance Corporation of India (supra) was passed considering advertisement for appointment on the post of AAO in the year 2009 and the petitioner has falsely stated in the paragraph No. 8 of the rejoinder to the counter affidavit that Rohan Rai was a candidate for the appointment on post of A.A.O. (2010 batch) in the Corporation and the advertisement for that batch which contained identical conditions under "Sections* procedure" as in the present advertisement i.e. Annexure-1. It has been stated that Rohan Rai was a candidate of 2009 Batch and 2009 advertisement did not contain the provision that the Corporation can prescribe minimum qualifying marks for interview. 2009 advertisement has been brought on record by way of Annexure-"A" to the supplementary counter affidavit filed on behalf of the Respondent-Corporation.

14. The Court records its displeasure over the manner in which plea has been taken in paragraph No. 8 of rejoinder filed by the petitioner to the counter affidavit filed on behalf the Respondent Nos. 1 to 5, stating therein that Rohan Rai was a candidate for the post of A.A.O. (2010 Batch). This statement and submission to this effect is apparently misleading and false. The Court deprecates such conduct on the part of the petitioners.

15. In view of the reasons above, I do not find any infirmity in the process of selection and no reason to interfere on the grounds taken by the petitioner in the present writ application. This application is accordingly dismissed.

*Ed.--sic--Selection?