
(2020) 06 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 82 Of 2017(O&M)

Richa Mehta

APPELLANT

Vs

Avtar Singh And Others

RESPONDENT

Date of Decision : 03-06-2020

Acts Referred:

Drugs And Cosmetics Rules, 1945 — Rule 45, 71(4A)

Citation : (2020) 06 P&H CK 0076

Hon'ble Judges : Jaswant Singh, J;Sant Parkash, J

Bench : Division Bench

Advocate : D.S. Patwalia, Gaurav Rana, Shruti Jain Goyal, H.N. Mehtani,
Paramveer Singh

Final Decision : Dismissed

Judgement

Sant Parkash, J

The present intra-court appeal under Clause X of Letters Patent is directed against the judgment dated 05.10.2016 passed by the learned Single Judge

whereby the writ petition i.e. CWP No.9167 of 2013 filed by the appellant was dismissed.

Facts in brief are that an advertisement dated 14.08.2009 inviting applications for recruitment to one post of Assistant Director (Biology) at the

Forensic Science Laboratory, Madhuban (Karnal) was issued by the Haryana Public Service Commission (for short "the Commission") wherein

essential qualifications to the post in question were as under:

Essential Qualifications:

i) M.Sc. (at least 2nd Class) in Zoology/Botany/Physical Anthropology/ Human Biology/ Bio-Chemistry/ Forensic Science with specialization in

Forensic Biology or equivalent qualification in any of the above subject.

ii) Hindi/Sanskrit upto Matric.

Experience: 8 years research and analytic experience in relevant subject/discipline.â??

Pursuant to the aforesaid advertisement, having last date for submitting application form as 14.09.2009, the appellant being eligible and having

experience as required, submitted her application form for the post in question. The appellant was subjected to process of selection and she duly

appeared for the interview before the Selection Committee constituted for such purposes. In the said recruitment process, respondent No.4 was

declared as successful candidate vide final result dated 22.04.2010 leading to issuance of letter of appointment dated 4.6.2010 to her. Pursuant thereto,

respondent No.4 joined the post in question.

The appellant filed the writ petition being aggrieved of her non-selection to the post of Assistant Director (Biology) primarily on two counts; firstly on

the basis of the information being obtained under the Right to Information Act, whereby she was given one mark for experience which she claimed to

be of 11 years, 11 months and 17 days against the basic requirement of 8 years; and secondly, the experience certificate submitted alongwith the

application form of respondent No.4 was not a valid certificate.

Learned Single Judge, while dealing with both the claims of the appellant, dismissed the writ petition observing that though the appellant claimed to be

having/possessing 11 years, 11 months and 17 days of experience but no infirmity, as such, is found in the action of the official respondents in having

denied to the appellant weightage/marks towards experience and for the period when she had been on extra-ordinary leave while serving with the

Forensic Science Laboratory, Madhuban. With respect to the claim of the appellant that the experience certificate submitted alongwith the application

form of respondent No.4 was not a valid certificate, it has been observed by learned Single Judge as under:

â??The experience certificate dated 31.12.2003 issued by Venus Remedies Limited in favour of respondent No.4 as also the communication dated

8.7.2013 issued by the Company and duly verifying the issuance of such experience certificate is not a subject matter of challenge in the instant

petition. Under Such circumstances, there would be no occasion for this Court to

take a different view and to record a finding as regards respondent

No.4 lacking in the requisite experience and as such, to be ineligible to hold the post of Assistant Director (Biology).â??

Apart from the aforesaid claims of the appellant, learned Single Judge has noticed that the appointment letter was issued to respondent No.4 on

4.6.2010 whereas the writ petition was filed in the year 2013. Moreover, writ of quo-warranto to hold respondent No.4 to be usurper on the post of

Senior Scientific Officer (Scene of Crime), Forensic Science Laboratory, Madhuban has been sought. However, such appointment relates back to the

year 2010. Therefore, the writ petition was dismissed on account of delay and laches as well.

Dissatisfied with judgment dated 05.10.2016, the appellant filed the instant Letters Patent Appeal.

We have heard learned counsel for the parties and perused the case file very minutely.

The scope of the instant LPA is limited to the extent whether the judgment under appeal is permissible in law and in consonance with the settled

cannons of law.

The first issue raised on behalf of the appellant is with regard to her under assessment on account of the marks awarded under the head of

experience. The appellant claims that although she is having a total experience of research and analytic of 11 years, 11 months and 17 days yet she

has been awarded only one mark for 3 years 11 months and 7 days beyond the basic required experience of 8 years.

The Commission has laid down a criteria for assessing the relative merit of the candidates through viva voce for selection to the post of Assistant

Director (Biology). The criteria as disclosed by the Commission was as follows:

â??1. Personal Achievements 40 marks

a) Educational Qualifications: 25 marks

(i) Master Degree in Zoology/Botany/Physical Anthropology/Human Biology/Bio-Chemistry/ Forensic Science with specialization in Forensic Biology

or equivalent qualification in any of the above subjects:

Second Division 15 Marks

First Division 20 marks

(ii) Ph.D in any of the subjects mentioned in (i) above 05 marks

b) Experience: 10 marks

One mark per completed year of research and analytical experience after attaining the basic qualifications and required experience of 8 years and the same will be reckoned upto the closing date of receipt of application and maximum 10 marks will be awarded for experience.

c) Published works 5 marks Publication work of high standard published in journals of National or International Repute. One mark will be given for each publication in National level journals and two marks for each publication in International Journals.

2. Interview 60 marks

The interview will be conducted through oral discussion and questioning. The questions and discussion will be taken up to ascertain the personal

qualities, knowledge awareness, intelligence, presentation, expression, poise, bearing, articulation & adaptability etc. 60 marks are assigned for the

interview with the following break up:-

i) knowledge, awareness 20 marks outlook & general interest etc.

ii) Intelligence, initiative, decision 20 marks making, expression, presentation etc.

iii) Poise, bearing, behaviour, 20 marks adaptability, articulation & other qualities

For the convenience of awarding marks and realistic assessment, a candidate is to be categorized as under by the Expert Advisor and marks to be

awarded by the Commission as shown against such gradation for (i), (ii) and (iii) above:-

Very Good 14-20 marks Good 7-13 marks Average 1-6 marks Total marks of the Viva-voce: 100 Marks.â??

(Emphasis supplied)

If glanced through, the criteria would clearly show that a maximum of 10 marks had been assigned towards experience i.e. one mark per completed

year of research and analytical experience after attaining the basic qualifications and over and above the required experience of 8 years.

The respondents have tried to justify this act by submitting that after having joined the Forensic Science Laboratory on 25.11.1988 as a Scientific

Assistant (Biology), the appellant remained on extra ordinary leave for a total period of 886 days i.e. 677 days from 30.11.1998 to 5.10.2000, 100 days

from 1.7.2000 to 8.10.2002 and 109 days from 14.10.2002 to 30.01.2003. As per the respondents, the period spent by the appellant on extra ordinary leave was not to be counted towards research and analytical experience and as such, the appellant has rightly been denied extra weightage/marks for such period.

In our considered opinion, for a candidate to claim such extra weightage, the same has to be necessarily for a period spent on actual research and analytic experience. Such weightage would not be permissible only by way of deeming fiction and in respect of a period of time when such employee has actually been on leave, be it sanctioned. The objective as per criteria evolved by the Commission is to reward a candidate towards possession of actual research and analytical experience, which is over and above the minimum required 8 years experience.

In the given circumstances, it does not lie in the mouth of the appellant to claim weightage of three marks in respect of research and analytical experience while she was on extra ordinary leave. In this context, we are fortified by the judgment rendered by Hon'ble Apex Court in VB Prasad v. Manager, P.M.D. U.P. School and others; 2007 (3) RSJ 35.

Relevant observations as contained in para-14 of the judgment are as follows:

“Indisputably, Appellant was on study leave for the period 01.06.1991 to 28.02.1993. During the said period, he was not teaching. He did not gain any teaching experience during the said period. If the said period is excluded for the purpose of computing teaching experience as envisaged under Rule 45 of the Rules, the question of his being considered for promotion to the post of Headmaster would not arise. Eligibility condition must be satisfied before a person is considered for promotion/appointment in respect of a particular post.”

In such a scenario, we do not find any infirmity in the action of the respondents in having denied the petitioner weightage/marks towards experience and for the period when she was on extra ordinary leave.

Another argument of the learned counsel appearing for appellant is with regard to the authenticity and genuineness of the experience certificate submitted by respondent No.4, which according to him, is ex facie bogus. According to the learned counsel for the appellant, there is variance in the two forms submitted as Annexure P-26 and Annexure P-27 by respondent No.4

to the Commission for seeking appointment. A perusal of both these annexures would reveal that certainly there is variance with regard to the nature of experience, pay scales etc. He has further referred to the report of the expert committee at pages 357 and 358 wherein the presence of respondent No.4 has not been shown in Venus Remedies Ltd when the expert committee visited during the relevant period for which respondent No.4 was allegedly working with Venus Remedies Limited.

In order to appreciate the aforesaid submission, it would be necessary to look into the nature of experience required for the post of Assistant

Professor. For the sake of repetition, it would be necessary to reproduce the same as under:

Essential Qualifications:

i) M.Sc. (at least 2nd Class) in Zoology/Botany/Physical Anthropology/ Human Biology/ Bio-Chemistry/ Forensic Science with specialization in Forensic Biology or equivalent qualification in any of the above subject.

ii) Hindi/Sanskrit upto Matric.

Experience: 8 years research and analytic experience in Attested Sd/-

Supdt. (Office)

FSL (H) Madhuban

relevant subject/discipline.

(Emphasis supplied)

A perusal of the experience clause does not make any distinction as to whether the experience should be regular or provisional.

Had the intention of the official respondents been to require particular nature of experience, it would have been contained in the advertisement itself,

which as of now does not make any distinction. The certificate issued by the Venus Remedies Limited in favour of respondent No.4, duly verifying

issuance of the same would clinch the entire issue and would be sufficient to negate the contention of the learned counsel for the appellant.

The experience certificate dated 31.12.2003 reads as under:

To Whom So Ever It May Concern

This is to certify that Mrs. Anita Kadian w/o Sh. Ajay Kadian r/o H.No. 506 Sector 6 Panchkula (Haryana) was working with us from 27/04/1995 to

28.04.1999 as Analytical Chemist in Quality Assurance Deptt. She was working with great responsibility and enthusiasm and put on sincere efforts to learn maximum in the stipulated time. She was hard working, sincere and obedient performer. Her character and behaviour towards organization was excellent.

For VENUS REMEDIES LIMITED

Sd/- Seal

D.P. ARYA

MANAGER (PERS & ADMN.)

Learned counsel for the appellant has tried to make out a case of arbitrariness and mala fide on the part of the official respondent by arguing that the

provisions as contained under Rule 71 (4-A) of the Drugs and Cosmetics Rules, 1945 (for short "71 (4-1) Rule") were not complied with,

requiring compulsory registration of the person. 71 (4-A) Rule reads as under:

"The head of the testing unit referred to in condition (4) shall possess a degree in Medicine or Science or Pharmacy or Pharmaceutical Chemistry

of a University recognized for this purpose and shall have experience in the testing of drugs, which in the opinion of the licensing authority is

considered adequate."

Even this submission of the learned counsel for the appellant is devoid of any merit. For appreciating this submission, we have to go again to the

advertisement issued by the official respondents. It nowhere stipulates that a candidate applying for the post should have the said certification.

Otherwise also, it can only be a mere irregularity which cannot vitiate the appointment of respondent No.4. Above all, this issue was not even raised in

the petition and can be said to be beyond pleadings.

Learned counsel for the appellant has further argued that the learned Single Judge outrightly ignored the fact that arbitrariness and mala fide in the

selection of respondent No.4 came to her knowledge only in the year 2013 after obtaining the information under the Right to Information Act,

therefore, the learned Single Judge erroneously observed that the writ petition was bad on account of delay and laches.

Even this submission is totally misconceived. The appointment letter to respondent No.4 was issued in the year 2010, whereas the writ petition was

filed in the year 2013. The appellant herself participated in the selection process and was aware of selection of respondent No.4 and thus, it cannot agitate that she was not aware of issuance of appointment letter in favour of respondent No.4 in the year 2010 itself. Although a writ of Quo-warranto has been filed asking the writ court to hold respondent No.4 to be usurper on the post of Senior Scientific Officer, (Scene of Crime), Forensic Science, however, it was incumbent upon her to approach within reasonable time. However, such appointment relates back to the year 2010 and there is no reason to differ with the findings recorded by the learned Single Judge that there was delay and laches in raising the claim by appellant.

In view of the above facts and circumstances, we do not find any merit in the present appeal and the same is hereby dismissed.