
(2015) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 8966 and 8438 of 2014

Shakti Dan Charan and Others

APPELLANT

Vs

Raj. State Industrial Development and Investment
Corporation Ltd. (RIICO) and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : (2015) 09 RAJ CK 0014

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : G.S. Rathore, for the Appellant; Anoop Dhand, R.K. Paliwal and Amit Kuri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.

In I.A. No. 34704/2015:

1. Though the matters come upon an interim application(s) under Article 226(3) of the Constitution of India, seeking vacation of the ex-parte interim order dated 28th August, 2014, but having regard to the nature of controversy involved herein, the writ applications have been taken up for final disposal at this stage, with the consent of the learned counsel for the parties.

2. The petitioners, in the instant writ applications, are aggrieved of the action of the respondents, for they were not permitted to participate in the Phase-II of the recruitment process, for which an examination of Phase-I, was conducted on 3rd May, 2014, and Phase-II, was scheduled to be held on 28th July, 2014, and therefore, instituted the present petitions praying for the following relief(s):

"Prayer clause in SBCWP No. 8966/2014:

"a. By an appropriate writ, order or direction, action of the respondent, i.e.

changing/varying eligibility criteria i.e. minimum 40 marks in each section of paper-I & II of Phase-I Examination, for qualifying for and for appearing in, Phase-II examination, which has been changed at the time of holding examination of Phase-I and at the time of declaring result ignoring the condition in Explanation-5 of syllabus for the post of Junior Assistant (Annexure-4), may kindly be declared illegal, arbitrarily, unjustified and unconstitutional.

b. By an appropriate writ, order or direction respondent RIICO may kindly be directed to adhere to the qualification laid down earlier (in Explanation-5 of Syllabus for the post of Junior Assistant-Annexure-4) and consequently petitioner may kindly be treated as qualified for Phase-II Examination and thereby respondent may kindly be directed to conduct Phase-II Examination separately qua to the/for the petitioner for the post of Junior Assistant (Post No. 8).

c. Any other writ, order or direction which this Hon''ble Court considers just, fit and proper in the facts and circumstances of this case, may kindly be passed in favour of the Petitioner; and,

d. Costs of this writ petition may kindly be awarded in the favour of humble Petitioner."

Prayer clause in SBCWP No. 8438/2014:

(i) Issue a writ order or direction in the nature thereof thereby declare illegal to the action of the non-petitioners by which only the candidates who have secured 40% marks in each paper have been declared successful and consequently set aside the condition.

(ii) By further writ order or direction the petitioner who have secured more than 40% marks in phase-I in aggregate may kindly be held eligible for appearing in the examination Phase-II and further process and they may be held entitled for appointment.

(iii) Issue any other writ order or direction, which this Hon''ble Court deems fit and proper, may kindly be passed in favour of the petitioner.

(iv) Cost of the writ petition be also awarded in favour of the petitioner."

3. The skeletal material facts necessary for appreciation of the controversy are that the petitioners in response to an advertisement issued by the Rajasthan State Industrial Development & Investment Corporation Limited, Jaipur (hereinafter referred to as "RIICO", for short), submitted their applications for consideration of their candidatures for appointment to the post of Junior Assistant. It is pleaded case of the petitioners that they successfully participated in the Phase-I of the examination held on 3rd May, 2014, for the post of Junior Assistant (Post No. 8) in the advertisement. The examination which consisted of two papers i.e. (i) General Knowledge, Everyday Science and Mathematics and (ii) General Hindi and English. Result of the examination was declared on 10th June, 2014. Petitioner-Shakti Dan Charan secured 57.14% in Section A, 45.71%

in Section B and 35% in Section D, and thus, the total percentage was 46.5%. In the second part, he secured 74% in Section A and in Section B 42%, and thus, the total percentage was 58%. The petitioner-Suman Lata Dhakar secured 50% in Section A, 54.29% in Section B and 38.33% in Section D, and thus, the total percentage was 48%. In the second part, she secured 79% in Section A and 34% in Section B, and thus, the total percentage was 56.5%. However, the petitioners were precluded from participation in the second phase for the reason that they could not qualify the Phase-I by securing minimum 40% in each Section, as contemplated under Clause 3 of the Advertisement.

4. Learned counsel, reiterating the pleaded facts and grounds of the writ application, has emphatically, argued that the action of the respondents in depriving the petitioners from participation in the Phase-II of the examination to the post of Junior Assistant, is not only illegal and arbitrary but, is also contrary to the view already expressed in somewhat similar factual matrix in a batch of writ applications, lead case being SBCWP No. 2608/2012 (Devender Singh Chauhan v. Rajasthan Public Service Commission, Ajmer), decided on 2nd April, 2012.

5. The counsel further asserted that the petitioners could not have been precluded of their participation in the Phase-II of the recruitment process for there was no such condition stipulated in the advertisement, as would be evident from column No. 8, with reference to the post of "Junior Assistant", wherein the note, in no uncertain terms provided that the candidates securing minimum 40% marks in Phase-I, shall be admitted to the Phase-II.

6. According to the learned counsel, there was no condition of minimum 40% pass marks in each Section as detailed out in the general conditions of the Advertisement. Further, the Scheme and Syllabus of the competitive examination for the post of Junior Assistant did not make such a stipulation in the explanation notes as would be evident from note No. 5, which contemplated eligibility of minimum 40% marks only, in the Phase-I for the purpose of admission to Phase-II examination. Hence, the action of the respondent deserves to be declared illegal and invalid in the eye of law.

7. In response to the notice of the writ application, the respondent (RIICO) has filed its counter affidavit pleading that the condition of minimum 40% marks, as a criteria, in each Section, was specifically stipulated in the advertisement under the general guidelines, which unmistakably detailed out the fact that the minimum pass marks of 40% in each Section was the essential requirement.

8. Learned counsel for the respondent-RIICO, reiterating the stand in the counter affidavit asserted that the candidates were instructed to carefully go through the instructions/guidelines made available on the website of RIICO i.e. www.riicorecruitment.org, for Examination Fee, last date of submission of application forms, Educational Qualification and other eligibility conditions as well as other information.

9. According to the learned counsel for RIICO, the requirement of minimum 40% marks in each Section was specifically incorporated in Clause 3, which was very much loud and clear without any confusion and left no room for any misunderstanding. Moreover, Clause 2 spelt out in unequivocal terms that Part-I, will contain questions from different Sections, with the number of questions detailed out therein as well and the minimum pass marks of 40% for each Section, was the essential requirement to be eligible for further participation in the recruitment process in Phase-II.

10. Learned counsel for the respondent-RIICO, inviting the attention of this Court to the instructions for the candidates for examination 2014, specifically pointed out in Clause 6 and 7 of the instructions for each of the paper, also contemplated the fact that minimum pass marks for each section shall be 40% of the maximum marks of that section.

11. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

12. Indisputably, the petitioners participated in the recruitment process and wrote examination of Phase-I but, failed to secure minimum 40% marks in Section D, and for that they were precluded from participation in the Phase-II. At this juncture, it will be relevant to consider the Syllabus and General Guidelines of the recruitment examination for the year 2014, which reads thus:

"SYLLABUS & GENERAL GUIDELINES OF THE RECRUITMENT EXAMINATION FOR STAFF IN RIICO

1. For each post recruitment examination will be conducted as per scheduled declared.

2. The recruitment examination will consist of one MCQ of 200 questions comprising of two parts. (Part I: one and Half hours and Part II: one and Half hours)

Part-I will contain questions from Section A: Reasoning Aptitude (30 questions), Section B: Quantitative Aptitude (30 questions) and Section C: Language Comprehension (40 questions) which will include problems of sentence errors, synonyms, antonyms and passage questions

Part-II: Subject specific (100 questions)

3. There will be a minimum pass mark of 40% for each section.

4. There will be no negative marking.

5. Each question will carry 1 marks each. Total marks will be 200.

6. Questions will be set only in English for post 1 to 4 where as papers will be set both in Hindi and English for post 5 to 8. However, question paper for General Hindi will be set only in Hindi and that for English language will be set in English

only."

13. A conjoint reading of Clause 2 and 3, would reveal that the eligibility criteria of minimum pass marks required for each Section has been specifically detailed out in unequivocal terms to be 40%. The fact has been reiterated from the instructions, which have been placed on record with the reply to the writ application, wherein the instructions provides thus:

"Minimum pass marks for each section shall be 40% of the maximum marks of that Section."

14. The contention of the learned counsel for the petitioners for such a condition was not stipulated in the explanation notes with reference to the post of "Junior Assistant", as would be evident from note 5, which contemplated that candidates securing minimum 40% marks in the Phase-I, would be eligible for admission to the Phase-II of the recruitment process, subject to three times the number of advertised vacancies; and the note nowhere spelled out the requirement of securing 40% minimum marks in each Section, therefore, the recruitment for the post of "Junior Assistant" stood dispensed with. The argument is found to be without any factual foundation on a close scrutiny for the requirement of minimum 40% marks in each Section was specifically incorporated in Clause 3 in unequivocal terms without any confusion or misunderstanding. Furthermore, Clause 2 spelt out in unequivocal terms that Part-I, will contain questions from different Sections, with the number of questions detailed out therein as well as the minimum pass marks of 40% for each Section, was the essential requirement to become eligible for further participation in Phase-II of the recruitment process.

15. In the case of Banking Service Recruitment Board, Madras Vs. V. Ramalingam and Others, AIR 1999 SC 2861 : (1998) 8 SCC 523 : (1998) SCC(L&S) 1707 : (1999) AIRSCW 2395 , the Hon"ble Apex Court of the land held that there is nothing irregular about fixing different cut-off marks for each paper if they are unilaterally applied to all candidates. Moreover, the Cut-off marks fixed will depend upon examining body"s view and importance of the subject of which the examination is conducted. Higher cut-off marks may be well fixed for subjects which may have greater relevance than other subjects which may have relevance but not to the same extent. Be that as it may, it is for the examining body to fix cut-off marks. Thus, the condition of minimum pass marks of 40% in each Section as eligibility criteria for participation in the second phase of recruitment process cannot be faulted by any stretch of imagination.

16. In the case of Devender Singh Chauhan (supra), the Coordinate Bench of this Court, examined the controversy in the backdrop of the specific Rules under the Rajasthan Secretariat Ministerial Service Rules, 1970 (hereinafter referred to as the "Rules of 1970", for short), dealing with selection to the post of Lower Division Clerk (for short "the LDC"). While adjudicating upon the controversy, the Coordinate Bench of this Court recorded a finding of discrepancy between the conditions mentioned in the Advertisement and the Rules as well as the

Regulations and the Schedule appended thereto, and observed thus:

"Petitioners appeared in the selection in Phase-I taking note of the condition mentioned in the advertisement where compulsion to obtain 40% marks in each paper of Phase-I does not exist. The Rules and Regulations are having conflict inasmuch as rule 27, now amended, impose a condition to obtain 40% marks in each paper of Phase-I examination, whereas, schedule so amended does not caste aforesaid condition.

In the facts and circumstances, I am of the opinion that looking to the conflict in the Rules and keeping in mind the terms of advertisement, it should go to the benefit of the candidates. It is also for the reason that candidates have appeared in the selection taking note of the terms of advertisement whereby they were not asked to obtain 40% of marks in each paper of phase-I examination. The petitioners have otherwise appeared in phase-II examination pursuant to interim orders of this court thus I dispose of all these writ petitions with the following directions-

17. From a glance of the factual matrix of the instant case at hand and the controversy that fell for consideration before the Coordinate Bench of this Court in the case of Devender Singh Chauhan (supra), would reflect that controversy in the case at hand, is entirely different and distinct. Therefore, the opinion of the Coordinate Bench in the case of Devender Singh Chauhan (supra), is of no help to the petitioners.

18. In the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, AIR 2008 SC 1913 : (2008) 1 CLT 753 : (2008) 3 JT 611 : (2008) 3 SCALE 425 : (2008) 4 SCC 171 : (2008) 1 SCC(L&S) 1005 : (2008) AIRSCW 2158 : (2008) 2 Supreme 328 , the Hon'ble Apex Court of the land held in unequivocal terms that a candidate after having participated in the selection recruitment process unsuccessfully, is precluded from assailing the criteria of the recruitment process, relevant paras No. 7 & 8, reads thus:

"7. It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, AIR 1995 SC 1088 : (1995) 2 JT 291 : (1995) LabIC 1575 : (1995) 1 SCALE 494 : (1995) 3 SCC 486 : (1995) 1 SCR 908 : (1995) 2 SLJ 161 : (1995) 2 UJ 817 , this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only

because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

19. For the reasons and discussions hereinabove, the writ petitions are devoid of any substance and lack in merit, and therefore, deserve to be dismissed.

20. Ordered accordingly.

21. No costs.