
(2014) 11 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 21546 of 2014

Shiv Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 SCT 129

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Ashutosh Kaushik, Advocates for the Appellant

Judgement

Tejinder Singh Dhindsa, J.—The Haryana Staff Selection Commission issued an advertisement dated 8.7.2013 inviting applications for recruitment to various posts including 30 posts of Junior Coach Volley ball. Out of these, three posts were earmarked for the Special Backward Category (SBC). The present petitioner was an applicant to such process of selection for the post of Junior Coach Volley ball against the Special Backward Category initiated in terms of the advertisement dated 8.7.2013. The instant petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari for quashing the selection list dated 21.5.2014, Annexure P3, vide which private respondents No. 3 to 5 belonging to the Special Backward Category have been duly selected to the post in question. Suffice it to observe that the petitioner has remained unsuccessful and his name does not figure in the select list.

2. Mr. Ashutosh Kaushik, learned counsel for the petitioner would assail the selection list dated 21.5.2014 primarily on the ground that in the process of selection, a criteria had been followed in which 67% weightage was assigned for academic record and 33% marks were assigned for interview/viva voce and said marks are excessive in nature and have vitiated the selection process. Learned counsel would argue that allocation for marks for interview/viva voce to the extent of 33% is contrary to the law laid down by the Hon''ble SC in the case of

Ashok Kumar Yadav and Others Vs. State of Haryana and Others, and Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, . It has further been argued that the petitioner had secured the highest marks under the parameter of academic record but has been given extremely low grade in the viva voce and on such count, the selection process suffers from the vice of arbitrariness.

3. Having heard learned counsel for the petitioner at length, this Court is of the considered view that the petition is devoid of merit and deserves dismissal.

4. It has gone uncontroverted that the selection to the post in question i.e. Junior Coach Volley ball was based on weightage as per academic record and on interview/viva-voce alone and no written test had been conducted. It is by now well settled that the State Government/employer is empowered to lay down appropriate criteria for selection for the purpose of recruitment to various categories of posts in the different Departments. The ratio of the decision of Hon''ble Apex Court in Ashok Kumar Yadav's case (supra) cannot be invoked in a case like the present one.

5. In the case of Anjar Ahmad v. State of Bihar and others, 1994 (1) SCT 483, the Hon''ble Apex Court had reviewed a number of judicial precedents on the subject and had held that the principles laid down in Ashok Kumar Yadav's case (supra) cannot be applied to cases in which recruitment has been made on the basis of viva voce alone. The relevant observations of the Hon''ble Apex Court in Anjar Ahmad's case (supra) read as under:

"These observations would indicate that the matter of weight to be attached to interview and the allocation of marks for interview vis-a-vis marks for written examination can arise when written examination as well as viva voce test are both accepted as essential features of proper selection and there also no hard and fast rule regarding the precise weight to be given to the viva voce test as against written examination, can be laid down and the said weight must vary from service to service according to the requirement of the service. The question of weight to be attached to viva voce would not arise where the selection is to be made on the basis of interview only."

6. In Anjar Ahmad's case (supra), the Hon''ble Apex Court had even noticed its earlier judgment rendered in Sri Ashok Alias Somanna Gowda's case (supra) and held as follows:

"We are unable to construe the said decision to mean that the principles which govern the allocation of marks for interview in a selection based on written and viva voce test would also apply to a selection where no written test is held and the selection is based on interview only."

7. The ratio of the decision in Anjar Ahmad's case (supra) was subsequently applied in Subhash Chander Verma v. State of Bihar, 1995 (2) SCT 389 and Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief

Secretary and Others, in which allocation of 50% marks for interview for selection for direct recruitment had been upheld.

8. As regards the assertion made by learned counsel for the petitioner that the petitioner has been under-assessed at the stage of interview, it is held that in the absence of any specific averment with regard to favouritism and nepotism having been resorted to, this Court cannot infer any arbitrariness in the selection process merely because a candidate who has otherwise a good academic record, has fared poorly in the interview/viva voce.

9. Mr. Kaushik has raised one additional argument to the effect that the selection criteria adopted was not disclosed in the advertisement itself and the same was a mandatory requirement as per "doctrine of due notice." Even such submission is without merit. It shall be presumed that the petitioner had read the entire advertisement dated 8.7.2013, Annexure P1, at the stage of submitting his application for the post of Junior Coach Volley ball against the Special Backward Category. A grievance, if any, with regard to the criteria having not been disclosed in the advertisement was required to be agitated on all grounds that may have been available at that stage itself and at the threshold. The petitioner having applied for the post in response to the advertisement dated 8.7.2013, having subjected himself to the process of selection and having remained unsuccessful cannot now be permitted to turn around and raise such submission.

10. For the reasons recorded above, the instant petition is found to be bereft of merit and is, accordingly, dismissed. Petition dismissed.