

(2013) 01 P&H CK 0230
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1988 of 2011 (O and M)

State of Punjab and Others	Vs	APPELLANT
Priya Mahajan and Others		RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2013) 2 SCT 88

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : J.S. Puri, Addl. A.G., Punjab and Mr. R.S. Bajaj, for the Respondent

Judgement

Rakesh Kumar Jain, J.

C.M. No. 5302-LPA-2011

1. For the reasons mentioned in the application, which is supported by an affidavit, delay of 124 days in filing of the appeal is hereby condoned.

C.M. stands disposed of.

LPA No. 1988 of 2011

The brief facts of the case are that the appellants had issued an advertisement dated 04.12.2008 inviting applications for filling up various posts on contract basis including 14 posts of English Teachers in which 6 posts were meant for General category. The relevant context of the advertisement in this regard reads as under:-

- (i) Should be M.A. (English) or B.A. (with Hon''s in English); and
- (ii) Should be B.Ed. (with English as one of Elective subject); and
- (iii) Should possess at least 1 year teaching experience in the line in a Government Institution or an Institution recognized by the Government....

Note 8. Applicant must have acquired minimum qualifications and experience on or before the last date fixed for receipt of applications.

Note 9. The experience acquired after attaining the minimum academic/technical qualification will be considered and no experience prior to attaining the minimum qualification will be entertained.

Note 10. Regular pay scale or Salary per month must be mentioned in the experience certificate, experience certificate without pay will not be accounted for, which should be verified by the Labour Inspector/Shop Inspector in case of private organization and by District Level Officer in case of recognized/affiliated educational institutions. However, experience issued by the Polytechnic/Engineering College in Punjab should be verified by the Principal concerned, Only full time experience will be accounted for Application of candidate having experience as part time/hourly basis will be rejected and no correspondence will be entertained in this regard.

Respondent No. 1 passed her graduation in the year 2002, B.Ed. in the year 2004, M.A. English in 2005 and passed the additional subject of English in B.Ed. in April, 2008. She was stated to have served as English Mistress w.e.f. 01.04.2005 to 21.03.2007 at S.D. Phullarwan Girls Senior Secondary School, Jalandhar City and as English Teacher w.e.f. 01.09.2007 to 31.05.2008 at Government Industrial Training Institute for Women, Jalandhar. In the tentative list put up on the website on 23.09.2009, name of respondent No. 1 did not appear. Since objections were invited, she filed objections to the tentative merit list and the final merit list was notified on 24.11.2009 in which her name was conspicuously absent.

2. Her grievance was that though she had merit of 60.64%, yet respondent Nos. 2 and 3, who were in merit of 54.40% & 53.18% respectively, have been selected. The case pleaded by respondent No. 1 in the writ petition was that the post advertised by the appellant was governed by the Punjab Industrial Training (Class-III) Technical Services Rules, 2001 (hereinafter referred to as the "Rules"), according to which a candidate should be M.A. (English) or B.A. (with Hons in English) and should be B.Ed. with English as one of the elective subject and should also possess at least one year teaching experience in a Government Institution or an Institution recognized by the Government. According to respondent No. 1, she was in possession of all the qualifications but she was not selected because of Note-9 in the advertisement which prescribed the acquisition of experience after attaining the minimum academic qualification which, according to her, was contrary to the statutory Rule in which only one year experience was required without there being any stipulation that it has to be after attaining the minimum qualification for the post.

3. The learned Single Judge, after taking into consideration the facts and the precedents, allowed the writ petition observing that where any field is governed by statutory provisions, any condition to the contrary cannot operate. It was also

observed that Note-9 in the advertisement cannot be applied to decline appointment to respondent No. 1 who has got higher merit than respondent Nos. 3 and 4.

4. Aggrieved against this order, the present intra-court appeal has been filed by the appellants.

5. Learned counsel for the appellants has taken the same stand, as taken by them in the writ petition, that as per Note-9 in the advertisement, the experience has to be counted after acquisition of minimum qualification and as respondent No. 1 was not having the required experience after attaining the minimum qualification, therefore, she was not entitled to be selected and appointed. We have heard learned counsel for the parties, perused the entire record and are of the considered opinion that there is no error in the order of the learned Single Judge because the statutory rules do not provide for experience of one year after acquiring the minimum educational qualification and this condition has been prescribed only by way of a note in the advertisement but the fact remains that no new condition can be imposed in the advertisement in the presence of statutory rules framed under the proviso to Article 309 of the Constitution of India which would have supermacy as the Note-9 appended to the advertisement has no sanction of law.

In view of the above, we do not find any merit in the present appeal and hence the same is hereby dismissed, though without any order as to costs.