

(2018) 07 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21513, 25550, 24603, 25665, , 28080, 28622, 28768, 27515, 3223 of 2017

Vikas Goyal and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 12-07-2018

Acts Referred:

Constitution of India, 1950 — Article 315, 320

Citation : (2018) 07 P&H CK 0018

Hon'ble Judges : SUDHIR MITTAL, J

Bench : Single Bench

Advocate : Sunil K. Nehra, G.P. Singh, Alankait Bhardwaj, B.R. Mahajan, Shruti Jain Goyal, H.N. Mehtani, Kanwal Goyal

Final Decision : Dismissed

Judgement

1. A total of 1646 posts of Assistant Professor (College Cadre), HES-II in various subjects in the Higher Education Department, Haryana were

advertised by the Haryana Public Service Commission, Panchkula (respondent No. 2) vide advertisement dated 16.02.2016. Online applications were

to be submitted by 15.03.2016.

2. The petitioners in this bunch of writ petitions were candidates for the aforementioned posts but were unsuccessful in the selection. Their common

grievance is that the selection process adopted by respondent No. 2 is illegal and the same deserves to be quashed. Since common questions of fact

and law are involved in this bunch of writ petitions, the same are being decided by one judgment. The facts are being extracted from CWP No. 21513

of 2017.

3. In this writ petition, the petitioners are unsuccessful candidates who had

applied for the post of Assistant Professor (Computer Science). Vide Corrigendum dated 29.04.2016, the posts were increased to 275 inclusive of the posts for scheduled caste candidates, backward class candidates, Ex-serviceman and physically handicapped candidates. The petitioners belong to the general category. Respondent No. 2 published a public announcement dated 16.06.2016 whereby the mode of conduct of written test for the applicants was prescribed. The written test for different subjects was held on different dates and that for the subject of Computer Science was held on 04.04.2017. By then, the final result (after conduct of written test and viva voce) in more than 20 subjects had already been declared. Infact on 30.11.2016, the final result of candidates who had applied in the subjects of Geology, Punjabi, Tourism etc., had been published giving the break up of marks allocated for the written test and viva voce. The result of the written test of candidates who had applied in the discipline of Computer Science was declared on 01.06.2017 and the petitioners were called for interview which was held from 24.07.2017 to 03.08.2017. The final result was declared on 11.08.2017 and revised result qua category of BC 'A' and BC 'B' was declared on 17.08.2017. The petitioners did not find their names in the final select list and, thus, they preferred the present writ petition on 16.09.2017.

4. In the writ petition, the selection process has been challenged on various grounds, which are listed hereinafter:-

(a) the advertisement did not mention the criteria to be adopted for selection of candidates;

(b) for the subject of Computer Science the reservation provided exceeded 50% of the total posts;

(c) vertical reservation to the extent of 10% was provided for Economically Backward Persons in General Category EBP GC, which is illegal;

(d) out of 100 questions in the written test, only 86 questions were evaluated;

(e) the selection criteria adopted by Haryana Public Service Commission (HPSC) is contrary to the criteria recommended by

the Ministry of Human Resource Development, Govt. of India and the University Grants Commission (UGC) and adopted by the State of Haryana

vide letter dated 21.07.2011 (copy annexed as Annexure P-11).

5. Detailed written statement has been filed on behalf of HPSC-respondent No. 2.

The facts narrated in the writ petition are not in dispute except for the fact that the State of Haryana did not adopt the recommendations made by the Ministry of Human Resource Development and the UGC in toto.

Only the minimum qualifications prescribed/recommended were adopted but the selection criteria was not adopted. It is asserted that the HPSC is a

constitutional body and is autonomous in nature having the right to lay down its own selection criteria and is not bound by the selection criteria adopted

by the State Government. The principle of estoppel is also pleaded against the petitioners in as much as they challenged the selection process after

having participated therein and only upon finding themselves unsuccessful.

6. Various affidavits have been filed by the Secretary/Principal Secretary to the Government of Haryana, Higher Education Department, wherein it is

positively pleaded that vide letter dated 21.07.2011, only the minimum qualifications recommended by the UGC and Ministry of Human Resource

Development, Government of India, were adopted and that the selection criteria recommended had not been adopted by the State Government. A

complete copy of letter dated 21.07.2011 alongwith its Annexures has also been handed over as it alleged that the petitioners have not filed a complete

copy of the said letter.

7. The selected candidates - private respondents are also represented and they have by and large adopted the stand of the HPSC and the State

Government.

8. As mentioned hereinabove, number of grounds have been raised in support of the writ petition but at the time of arguments, the solitary ground that

has been pressed, is that the selection process is vitiated because the selection criteria adopted by the HPSC is contrary to that recommended by the

UGC and the Ministry of Human Resource Development, Government of India and adopted by the State of Haryana vide letter dated 21.07.2011. A

comparative table showing criteria followed by the HPSC - respondent No. 2 and that allegedly adopted by the State Government on the

recommendations of the UGC and the Ministry of Human Resource Development, Government of India is given below:-

Criteria adopted by HPSC Criteria allegedly recommended by UGC adopted by the State Government Marks obtained in the written test â?

Academic record and research 50% performance â?" 50% Marks for personal

achievement and Assessment of domain knowledge and interview â?

50% teaching skills â?" 30% Interview performance â?" 20%

9. It is not in dispute that the Department of Higher Education, Government of Haryana, had forwarded the posts of Assistant Professors in various

subjects by way of requisitions, to the HPSC for conducting the selection. The HPSC has been established by virtue of Article 315 of the Constitution

of India.

The functions of the said Commission are laid down in Article 320 of the Constitution. It is the duty of the HPSC to conduct examination for

appointment to the services of the State of Haryana. It is also required to be consulted in matters relating to methods of recruitment to civil services

and civil posts, principles to be followed in making appointments to civil services and posts and in making promotions and transfers, disciplinary matters

affecting a civil servant and award of pension in respect of injuries sustained while serving in civil capacity, according to the scheme of the

Constitution. The HPSC and similar State Commissions have been made autonomous and are not bound by the executive instructions issued by the

State Government. So far as selection to civil posts is concerned, it has been held in *State of U.P. vs. Mohammad Rafiqudin*, AIR 1988 SC 162 :-

The Public Service Commission is a constitutional and independent authority. It plays a pivotal role in the selection and appointment of persons to

Public Services. It secures efficiency in the Public Administration by selecting suitable and efficient persons for appointment to the services. The

Commission has to perform its functions and duties in an independent and objective manner uninfluenced by the dictates of any other authority. It is

not subservient to the directions of the Government unless such directions are permissible by law. Rules vest power in the Commission to hold the

competitive examination and to select suitable candidates on the criteria fixed by it. The State Government or the high level committee could not issue

any directions to the commission for making recommendation in favour of those candidates who failed to achieve the minimum prescribed standard as

the rules did not confer any such power on the State Government. In this view even if the Commission had made recommendation in favour of the

unplaced candidates under the directions of the Government the appointment of the unplaced candidates was illegal as the same was made in violation

of the rules

10. A Full Bench of this Court in *Harjit Singh vs. State of Punjab*, 1989(4) SLR 403, has observed as follows:-

The Commission has a distinct and distinguished status under our Constitution and cannot and rather should not identify itself with the Government

authorities. The powers of this Court under Article 226 of the Constitution of India cannot be invoked to make directions to the Commission for

recommending any candidate for appointment to a public service post as it would amount to interference in its working as an independent institution

having a peculiar and distinct status. The purpose behind giving this status to the Commission, is apparent and not hard to seek. The framers of the

Constitution wanted such an independent body to select such qualified persons as were expected to do their duties effectively and without any

interference therein. With that intention in view, the Commission has been given powers to recommend appointments of only those successful

candidates who were thought to be capable to fulfil the intention of the framers of the Constitution.

11. Relying upon the aforesaid observation, a Division Bench of this Court in *Dr. Lovekesh Kumar and others vs. State of Punjab and others*, 1998(1)

RSJ 566, has held as follows:-

In principle there cannot be any quarrel with the proposition that being a constitutional body entrusted with the task of making selection for recruitment

to public services the Commission enjoys substantial degree of autonomy in devising the procedure which is to be followed for judging the

suitability/merit of the candidates who seek recruitment to public services and the Government cannot issue administrative instructions which may

amount to interference with the working of the Commission. However, circular letters issued by the Government in exercise of its constitutional power

under Article 16(4) read with Article 46 cannot be treated as unconstitutional unless they directly impede the exercise of power by the Commission

under Article 320 of the Constitution.â??

12. In view of the above, the HPSC was competent to lay down its own selection criteria and the same can not be faulted unless it is shown to be

arbitrary or unreasonable. No arguments have been raised in this regard by the learned counsel representing the petitioners. Thus, it is held that the

criteria for selection adopted by HPSC - respondent No. 2 is legal and valid.

13. Having held that the HPSC was competent to adopt its own selection criteria while making selection to civil posts no further decision may be

called for. However, learned counsel representing the petitioners has placed strong reliance upon letter dated 21.07.2011 (Annexure P-11) in support

of his contention that the State Government had adopted selection criteria recommended by the UGC and the Ministry of Human Resource

Development, Government of India and, therefore, I deem it appropriate to deal with this argument as well. The categoric stand of the State of

Haryana is that only the minimum qualifications recommended were accepted and implemented by it and the selection criteria recommended was not

adopted. Memo No. KW-7/18-2009 C-IV(3) dated 21.07.2011 issued by the Financial Commissioner and Principal Secretary to Government of

Haryana, Higher Education Department, is reproduced below:-

â??In supersession of this office memo No. KW-7/18-2009 C-IV(3) dated 28.8.2009, 09.09.2009 and 29.04.2011, the State Government after re-

considering the recommendations of the Ministry of Human Resource Development, Govt. of India and University Grants Commission as conveyed

vide their letter No. 1-32/2006-U.II/U.I(i) dated 31.12.2008 and letter No. F.3-1/2009 dated 30.06.2010, has decided to issue a revised order on

minimum qualifications for appointment of teachers and other academic staff in the Universities and Colleges and measures for the maintenance of

the standards of Higher Education. The decisions taken by the State Government are incorporated in the enclosed Appendices.

Anomalies, if any, in the implementation of the scheme may be brought to the notice of Higher Education Department for clarification.â??

14. The language of this memo makes it clear that the Ministry of Human Resource Development, Government of India, issued a letter dated

31.12.2008 followed by UGC letter dated 30.06.2010, making recommendations for minimum qualifications for appointment of teachers and other

academic staff in the Universities and Colleges and measures for maintenance of standards of Higher Education. In supersession of earlier Memos

dated 28.08.2009, 09.09.2009 and 29.04.2011, the State Government had issued Memo dated 21.07.2011 and the decision taken by the Sate

Government notified vide the said Memo was incorporated in enclosed

Appendices. Appendix-I to the said Memo is regarding the minimum qualifications for appointment of teachers and equivalent cadres in universities and colleges and the measures to be adopted for the maintenance of requisite standards. Clause 3.0(b) of the said appendix relates to direct recruitment in Colleges and it states that Assistant Professors are to be appointed through merit based system and selections are to be conducted by HPSC and/or the selection committee constituted by the Government and duly constituted Selection Committees established under the rules/instructions of the State Government. This means that selections can be done either by HPSC by itself or in conjunction with a Selection Committee constituted by Government or through a Selection Committee constituted under the Rules/Instructions issued by the State Government. Thus, in the case of Government Colleges, selections can also be made through Selection Committees constituted by the State Government under the statute. Similarly in case of private aided colleges, a similar selection committee can do the job. In the case of private unaided colleges, the composition of the selection committee would depend upon the rules of affiliation and other instructions governing the subject. Clause 4.0 relates to qualifications for the post of Assistant Professor in Universities and Colleges. Clause 7.0 relates to selection committees and guidelines on selection procedures. Sub Clause 7.1(4) is regarding selection of Assistant Professors in Colleges including Private Colleges and it prescribes that such selections would be done as per prevalent practice and rules in force from time to time. Thus, this sub-clause clarifies that recruitment of Assistant Professors in Colleges is to be made through a process already in place including selection through HPSC. Clause 7.2 relates to selection procedures and sub clause 1 thereof stipulates that the selection procedure shall be transparent and that various qualities possessed by a candidate are to be evaluated on the basis of Academic Performance Indicators (API) as provided in tables I to IX of Appendix IV annexed with the Memo. It is, however, open to the State Government to revise the API from time to time. To make the selection process more credible, it is open to the selection committee to assess the teaching skills and research potential of candidates by adoption of innovative methods at the stage of interview. Sub clause 7.8 states that the API for selection of Assistant Professors in Colleges shall be in accordance with

Table I and III of Appendix IV. The rest of this Appendix i.e. Appendix-I deals with pay scales, career advancement scheme, leave, probation and confirmation, creation and filling up of teaching posts and certain other service conditions. Appendix-II deals with the revision of pay structures of teachers and equivalent cadres. Appendix-III relates to qualifications prescribed for appointment and Appendix-IV relates to API in recruitment and career advancement scheme. Certain tables are appended with Annexure-IV and the petitioners placed reliance upon the table under the heading Appendix-III Table-II(C)". In this table in the column of Assistant Professor/equivalent cadre, no minimum API scores are prescribed. It is only mentioned that the candidate must possess minimum qualification as stipulated. Thereafter, the selection criteria to be adopted is provided as academic record - 50%, assessment of domain knowledge - 30% and interview performance - 20%.

15. The claim of the petitioners is that the State Government has adopted the selection criteria mentioned above because the Memo dated 21.7.2011 specifically records that the recommendations adopted are contained in the enclosed Appendices. However, this argument can not be accepted for the simple reason that the tables are annexed with Annexure-IV, which deals with API scores only. Moreover, Appendix-I dealing with the selection procedures etc. only provides the minimum qualifications and the API scores for various posts. As per the table relied upon by the petitioners, API scores are not applicable to the selection of Assistant Professors in Colleges. This view is reinforced by the stipulation contained in sub-clause 7.1(4) of Appendix-I. Thus, the only possible conclusion is that the selection criteria mentioned in the table in the preceding paragraph has not been adopted by the State Government and its stand in the various affidavits submitted on its behalf is proved to be correct.

16. Strong reliance has been placed upon judgment of the Hon'ble Supreme Court in Kalyani Manivana vs. K. V. Jeyraj, 2015(6) SCC 633. However, the said judgment is not applicable in this case. It has been held therein that UGC Regulations 2010, are partly mandatory in respect of appointment of Teachers and other academic staff in Central Universities and Colleges under them and institutions deemed to be Universities, whose maintenance expenses are met by the UGC but such is not the situation in the instant case as selection is for appointment of Assistant Professors in Government

Colleges.

17. This brings me to the final submission made on behalf of the parties. Learned counsel representing the selected candidates as well as learned State

counsel have argued that principle of estoppel is applicable in the facts of this case and the petitioners are barred from challenging the selection

process after having participated therein. In this regard, the attention of this Court has been drawn to the fact that on 30.11.2016, the final result of 20

subjects including Geology, Punjabi and Tourism had been declared and published on the website of HPSC and in the same breakdown of selection

criteria adopted is clearly reflected which is 50% weightage for the written test and 50% weightage for personal achievements and interviews. Being

aware of the selection criteria, the petitioners took the written test on 04.04.2017 and thereafter appeared in the interviews held between 24.07.2017

and 03.08.2017. This argument is countered by the counsel representing the petitioners by submitting that there were serious lapses in the procedure

followed by the HPSC in as much as the selection criteria adopted by it could not have been followed in view of the decision of the State Government

communicated through Memo dated 21.07.2011 and, therefore, the principle of estoppel does not apply. Reliance is placed upon a judgment of the

Supreme Court of India in *Veerendra Kr. Gautam and others vs. Karuna Nidhan Upadhyay and others*, 2016(4) SCC 18.

18. It has already been held by me that the HPSC was competent to adopt a selection criteria at variance with that adopted by the State Government.

It has further been held that infact the State Government had not adopted the selection criteria recommended by the Ministry of Human Resource

Development, Government of India and the UGC. No other infirmity in the selection process has been argued or raised. Thus, the judgment of

Veerendra Kr. Gautam (supra) is not applicable in the facts of this case.

19. Keeping in view the fact that the petitioners participated in the selection process being aware of selection criteria adopted can not challenge the

same after being declared unsuccessful. The principle of estoppel is squarely attracted. There is a long line of judgments on this principle and I place

reliance upon judgment dated 21.10.2016 rendered by the Supreme Court of India in Civil Appeal No. 9092 of 2012 titled as *Ashok Kumar vs. State of*

Bihar. Paragraph 13 of the said judgment is reproduced below:-

13. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The high Court noted in the impugned judgment that the interpretation of Rule 6 was not free from vagueness. There was in other words no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.

20. For the aforementioned reasons, the writ petitions are merit-less and are accordingly dismissed. Needless to state that the interim orders staying the appointment of selected candidates, are automatically vacated. It is directed that in cases wherein stay of appointment, had been granted by this Court, appointment letters be issued to the selected candidates forthwith and in any case not later than four weeks from the date of receipt of a certified copy of this judgment.