(2013) LabIC 3843 : (2013) 4 SCT 616

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 2340 of 2013 (O and M)

Asha		APPELLANT
	Vs	
State of Haryana and Another		RESPONDENT

Date of Decision: March 20, 2013

Citation: (2013) LabIC 3843 : (2013) 4 SCT 616

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Anil Kumar Gahlawat, for the Appellant; H.N. Mehtani, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Tejinder Singh Dhindsa, J.
Petitioner in terms of filing the instant writ petition impugns the order dated 12.12.2012 (Annexure P-5) as also

order dated 14.1.2013 (Annexure P-7), whereby the Haryana Public Service Commission (hereinafter referred to as the Commission) has

rejected his candidature for the post of Assistant District Attorney. Facts in brief on which there is no dispute would require notice. The

Commission issued advertisement dated 2.11.2011 inviting applications for recruitment to 49 posts of Assistant District Attorney (Group-B) in the

Prosecution Department, State of Haryana amongst other posts. The essential qualifications prescribed for the post were in the following terms:--

Essential Qualifications:--

(i) Degree of Bachelor of Laws (Professional) of a recognized university.

(ii) Should have enrolled as an Advocate with Bar Council.

(iii) Hindi/Sanskrit up to Matric Standard or 10+2/B.A./M.A. with Hindi as one of subjects.

2. The closing date for submission of application forms was stipulated as 30.11.2011. A Corrigendum at Annexure P-2 was issued by the

Commission increasing the posts of Assistant District Attorney to 136 in number. As per Corrigendum the last date for submission of application

forms was extended to 15.6.2012. Still another Corrigendum dated 14.8.2012 was issued and the last date for submission of application forms

was further extended up to 30.8.2012.

3. The petitioner, who belongs to General Category possessed the essential qualifications, in the light of original advertisement dated 2.11.2011

issued by the Commission and accordingly applied for the post of Assistant District Attorney within the stipulated time frame.

4. On account of the fact that a large number of applications were received in response to the 136 advertised posts of Assistant District Attorney,

the Commission resorted to an exercise of shortlisting for the purpose of interview on the basis of percentage of marks obtained in the essential

academic qualification prescribed i.e. Degree of Bachelor of Laws (Professional) from a recognized university. Accordingly, a notice dated

9.11.2012 (Annexure P-3) was issued by the Commission affixing the minimum cut of percentage in the Degree of Bachelor of Laws

(Professional) for the General Category as also for the reserved categories in the following terms:--

5. In the light of such notice dated 9.11.2012 the Commission also apprised the candidates who had applied for the 136 posts of Assistant District

Attorney that in case a candidate belonging to the General Category possesses the higher qualification i.e. Degree of LL.M. with 60% marks, in

such eventuality, irrespective of the percentage of marks obtained in the Bachelor of Laws (Professional) by such candidate, he/she would be

considered for the interview. Likewise, weightage on possessing Degree of LL.M. was even granted in favour of the reserved category candidates.

6. The petitioner, who admittedly has secured less than the prescribed cut of percentage i.e. 60% in the Bachelor of Laws (Professional),

responded to the notice dated 9.11.2012 by informing the Commission that he has qualified the LL.M. qualification and has secured more than

60% marks therein. However, the candidature of the petitioner has been rejected by the Commission in the light of the impugned orders dated

12.12.2012 (Annexure P-5) and 14.1.2013 (Annexure P-7) on the ground that the LL.M. mark sheet placed reliance upon by the petitioner had

been issued on 7.11.2012, which is after the closing date for submission of application forms 30.8.2012.

7. Learned counsel for the petitioner has vehemently argued in terms of adverting to a Result-cum-Detailed Marks Card at Annexure P-4 that the

result of the LL.M. Examination in which the petitioner had secured more than 60% marks had been declared on 20.9.2011 itself i.e. much prior

to the closing date for submission of application forms. Accordingly, it has been argued that it is not the date of issue of such marks card that would

be relevant but the material date would be the date of declaration of the result and in the light of the fact that the petitioner has secured more than

60% marks in the LL.M. Examination the result of which having been declared on 20.9.2011, the petitioner could not have been denied his vested

right of consideration for appointment to the post of Assistant District Attorney merely on the ground that the marks card stands issued after the

closing date i.e. 30.8.2012.

8. Mr. H.N. Mehtani, learned counsel appearing for the Commission has referred to the written statement filed on behalf of the Commission and

would argue that the last date for submission of application forms that had initially been fixed as 30.11.2011 had subsequently been extended to

15.6.2012 and thereafter to 30.8.2012. Counsel would refer to the Result-cum-Detailed Marks Card (Annexure R-2) along with the written

statement and would argue that such document that had been supplied by the petitioner would in itself show that it just carries a date of issue i.e.

7.11.2012 and no date of declaration of the result. The action of the Commission in rejecting the candidature of the petitioner is sought to be

justified on the ground that the date of issue of the Result-cum-Detailed Marks Card was 7.11.2012, whereas the closing date for submission of

application forms was 30.8.2012. In support of such contention reliance has also been placed upon a Division Bench judgment dated 7.9.2011

passed in L.P.A. No. 1643 of 2011 titled as Vijender Kumar v. State of Haryana & others at Annexure R-3.

9. Having heard learned counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the

action of the respondent-Commission in rejecting the candidature of the petitioner for the post of Assistant District Attorney cannot be sustained.

10. The essential qualifications for the post of Assistant District Attorney had been prescribed in the advertisement dated 2.11.2011. The closing

date for submission of application forms was fixed as 30.11.2011. In the advertisement itself it had been clearly stipulated that the eligibility of

candidates with regard to the qualifications and experience would be determined as on the closing date for receipt of application forms. The closing

date, thereafter, was extended to 15.6.2012 and thereafter up to 30.8.2012. However, in the subsequent Corrigendum''s, whereby the last date

for submission of application forms had been extended no change as regards the essential qualifications prescribed for the post was made. There

would be no quarrel with the proposition that insofar as the essential qualification i.e. Degree of Bachelor of Laws (Professional) from a recognized

university is concerned, the last date for submission of application forms i.e. 30.8.2012 would be the relevant date. On such count the petitioner

clearly had qualified the Degree of Bachelor of Laws (Professional) prior to such date.

11. No exception can be taken as regards the process of shortlisting resorted to by the Commission in view of large number of applications

received in response to the limited number of posts advertised. However, a crucial and relevant factor that would require notice is that it is only on

9.11.2012, that a notice was issued by the respondent-Commission, whereby a minimum cut of percentage as regards the essential qualifications

was prescribed and still further candidates possessing the LL.M. Degree with a prescribed percentage were made eligible to appear in the

interview irrespective of the marks obtained in the Degree of Bachelor of Laws (Professional). It would be apposite to observe that in the initial

advertisement dated 2.11.2011 as also subsequent Corrigendum''s no weightage had been granted by the Commission for possessing a higher

qualification in the nature of LL.M. Even in the format required to be filled by the candidates applying for the post, there was no requirement to

even disclose the possessing of such higher qualification. In other words, as far as the candidates are concerned, it was only on 9.11.2012 the

qualification of LL.M. came into play for consideration for appointment to the post of Assistant District Attorney.

12. The closing date for submission of application forms i.e. 30.8.2012 would have relevance only in so far as the essential qualifications

prescribed in the original advertisement are concerned. Such closing date cannot apply in so far as the higher qualification of LL.M. is concerned

as it did not even find a mention in the initial advertisement or even the subsequent Corrigendums in the light of which the closing date for

submission of application forms had been extended firstly to 15.6.2012 and subsequently to 30.8.2012. The date i.e. 9.11.2012 on which notice

was issued by the Commission taking cognizance of the qualification of LL.M. possessed by the candidates with a certain percentage of marks

would be the relevant date insofar as such higher qualification is concerned. It is the case of the Commission itself that the Result-cum-Detailed

Marks Card showing the petitioner to have secured more than 60% marks in LL.M. had been issued on 7.11.2012 i.e. prior to 9.11.2012. The

action of the respondent-Commission in rejecting the candidature of the petitioner for the post of Assistant District Attorney in terms of applying

the closing date i.e. 30.8.2012 in relation to the LL.M. qualification introduced for the first time into the arena for recruitment to the post in

question on 9.11.2012 is held to be arbitrary. Such view is being taken without even considering the issue raised by the learned counsel for the

petitioner that even though, the Result-cum-Detailed Marks Card had been issued on 7.11.2012 but in fact the result stood declared on 20.9.2011

itself.

13. For the reasons recorded above, the impugned orders dated 12.12.2012 (Annexure P-5) and 14.1.2013 (Annexure P-7) are quashed. It is

further directed that the petitioner shall be interviewed for the post of Assistant District Attorney on the basis of his possessing the LL.M.

qualification with more than 60% marks and she as such be permitted to participate in the recruitment process for such post. Such directions are

also being passed by this Court on account of having been apprised by learned counsel appearing for the Commission that the process of

recruitment to the posts in question has not since been finalized. Petition allowed in the aforesaid terms.