

Before Sudhir Mittal, J.

KAPIL HOODA—Petitioner

versus

**HARYANA STAFF SELECTION COMMISSION AND
OTHERS—Respondents**

CWP No.15123 of 2007

December 11, 2020

Constitution of India, 1950—Art. 226—Petitioner had applied for appointment to the post of Deputy Superintendent Jails—Apart from the prescribed/essential qualification of Bachelors Degree and Hindi upto Metric—Petitioner also possessed Post Graduation Degree in Criminology—Two candidates were selected on the basis of essential qualification and interview—Petitioner not selected—Challenge to selection on the ground that Petitioner not given weightage for the preferential qualification—Petitioner further contended that had he been given such weightage, he would have been higher in merit than the two selected candidates—State took the stand that preferential qualifications come into play only if two candidates secure equal marks on reckoning of essential qualifications—Agreeing with the stand of the State, High Court dismissed the writ petition, holding that the said preference does not constitute reservation.

Held that, the issue regarding preferential qualification has been examined by the Supreme Court in a number of judgments. One such judgment is ‘*The Secretary, Andhra Pradesh Public Service Commission vs. Y.V.V.R. Srinivasulu & ors., 2003(5) SCC 341*. It has been held that if a candidate possesses a preferential qualification, the same will tilt the balance in his favour in case he has scored equal number of marks as scored by other candidates. Provision of a preferential qualification in the selection process does not entitle a candidate possessing the said qualification to be considered independent of his overall merit. The said preference does not constitute a reservation. If that were so, the sanctity of the selection process would be diluted as the same has been designed in a manner to permit candidates without preferential qualifications to show their superiority. Merit would be compromised in case candidates with preferential qualifications were considered as a separate block.

(Para 10)

Kapil Hooda
petitioner in person.

Sanjay Mittal, A.A.G., Haryana.

R.K. Malik, Senior Advocate with
Yashdeep Singh, Advocate
for respondents No.2 & 3.

SUDHIR MITTAL, J.

(1) The Haryana Staff Selection Commission published an advertisement dated 07.12.2006 (Annexure P-1) inviting applications for a large number of posts including 03 posts of Deputy Superintendent, Jail. Qualifications prescribed for the said post were (a) Degree of a recognized University in Arts or Science, (b) knowledge of Hindi upto Matric Standard, (c) minimum height and chest measurement standards and (d) preference to candidates holding Degree or Diploma in Criminology. The petitioner possesses a Bachelor of Art Degree from the Panjab University as well as a Post-Graduation Degree in Criminology from L.N.J.N. National Institute of Criminology and Forensic Science. He also applied for the said post and was called for physical measurement test on 29.03.2007 whereafter, he was called for interview. The interview was held on 30.03.2007. Final result was declared thereafter and the name of the petitioner did not figure amongst the list of selected candidates. Aggrieved, the present writ petition was filed.

(2) It also deserves mention that the petitioner was a candidate in the General Category and 02 out of the aforementioned 03 posts were for General Category candidates.

(3) A perusal of the averments made in the writ petition shows that non-selection has been challenged primarily on the ground that due weightage was not given to the preferential qualification of Post-Graduation in Criminology. The selected candidates i.e. respondents No.2 & 3 do not possess the preferential qualification and information obtained under the Right to Information Act, 2005 shows that they scored 43.90 marks and 43.10 marks respectively whereas the petitioner had scored 40.29 marks. If due weightage had been given to the preferential qualification, the petitioner would have scored more marks than the selected candidates.

(4) In the written statement filed on behalf of the State as well as the private respondents, it has been averred that a candidate

possessing preferential qualification would succeed only when two or more candidates scored equal marks. Possession of preferential qualification does not entitle a candidate to be considered over and above the other candidates irrespective of his merit position.

(5) A replication has been filed to the written statement filed on behalf of respondents No.2 & 3. Additional documents have been placed on record along with it as Annexure P-7 to P-15. Document Annexure P-7 is letter dated 23.10.2007 written by the Secretary of respondent No.1 to the petitioner informing the marks obtained by the selected candidates as well as the petitioner in the selection process. According to this information, the petitioner has been given 02 marks for higher qualification whereas no marks have been awarded to the selected candidates on this score. In the vive voce exam, the selected candidates have scored 23 and 20 marks respectively whereas the petitioner has scored 12 marks. For the educational qualifications possessed, the petitioner has been granted 26.29 marks out of 45 whereas, the selected candidates have been granted 20.90 and 23.10 marks respectively. In total, the petitioner has scored 40.29 marks whereas, the selected candidates have scored 43.90 and 43.10 marks respectively. Another letter dated 23.10.2007 received by the petitioner under the Right to Information Act, 2005 has been annexed as Annexure P-8 and according to the said letter total 05 marks were kept for higher qualifications. A candidate possessing a Ph.D. Degree was entitled to full 05 marks whereas candidates possessing M.Phil and Post-Graduation were entitled to 03 marks and 02 marks respectively.

(6) In the backdrop of the aforementioned factual matrix, the petitioner has argued that since he possessed the preferential qualification of a Degree in Criminology, he should have been preferred over the selected candidates. That apart, the petitioner was entitled to grant of 05 marks for possessing higher qualification but he has been granted only 02 marks. If full 05 marks had been granted to him, he would have scored a total of 45.29 marks and would have been number one in the order of the merit. Thus, he deserves to be appointed and respondent No.3 must vacate his post.

(7) Additional arguments regarding respondent No.2 not possessing the requisite minimum qualification of Graduation and that he was favoured in the selection process by being interviewed directly without undergoing the physical examination, have also been raised but the same are not being considered as no factual foundation for the same has been laid in the writ petition. The said arguments have been raised

on the basis of documents obtained under the Right to Information Act, 2005 at a later stage. Although, the said documents have been placed on record, the same could not be responded to by the selected candidates as no averment in this regard was made in the writ petition and the said documents were taken on record without notice to the selected candidates.

(8) Learned State counsel as well as counsel for the private respondents have raised arguments in accordance with their respective written statements. In addition, learned Senior counsel representing the selected candidates has argued that malafides have not been alleged in the writ petition and thus, arguments raised on the basis of documents annexed in the replication deserve to be rejected.

(9) Thus, the issues to be adjudicated are (a) whether the petitioner is entitled to be selected solely on the basis of preferential qualification and (b) whether he was entitled to 05 marks on account of possession of higher qualification.

(10) The issue regarding preferential qualification has been examined by the Supreme Court in a number of judgments. One such judgment is *The Secretary, Andhra Pradesh Public Service Commission* versus *Y.V.V.R. Srinivasulu & ors.*,¹. It has been held that if a candidate possesses a preferential qualification, the same will tilt the balance in his favour in case he has scored equal number of marks as scored by other candidates. Provision of a preferential qualification in the selection process does not entitle a candidate possessing the said qualification to be considered independent of his overall merit. The said preference does not constitute a reservation. If that were so, the sanctity of the selection process would be diluted as the same has been designed in a manner to permit candidates without preferential qualifications to show their superiority. Merit would be compromised in case candidates with preferential qualifications were considered as a separate block.

(11) In view of the aforementioned authoritative pronouncement, the petitioner is not right in contending that he should have been preferred for appointment.

(12) The submission of the petitioner that he was entitled to award of 05 marks for possession of higher qualification is also misplaced. Information provided vide letter dated 23.10.2007

¹ 2003(5) SCC 341

(Annexure P-8) shows that a total of 05 marks could be awarded for higher qualifications and full 05 marks were only to be granted to holders of Ph.D. Degree. Possession of a Post-Graduation Degree entitled a candidate to be granted 02 marks which have been granted to the petitioner.

(13) For the aforementioned reasons, the writ petition has no merit and is dismissed.

Ritambhra Rishi