

Before G.S. Sandhwalia & Vikas Suri, JJ.

**STATE OF HARYANA THROUGH ITS SECRETARY,
HARYANA STAFF SELECTION COMMISSION—Appellant**

versus

SUBHASH CHANDER AND OTHERS—Respondents

LPA No. 2207 of 2017

May 11, 2022

Constitution of India, 1950—Arts. 14, 226 and 227—Letters Patent Appeal—Haryana Electricity Reforms Act, 1997—Electricity Supply Act, 2003—Appointment to the post of shift attendants, UHBVNL/HVPNL/BHBVNL—Criteria of selection—Addition of marks for experience to marks obtained in the written examination—The Commission being an expert body is within its right to fix the criteria as reproduced in the advertisement—Petitioners having taken a chance and accepted the call for scrutiny of documents cannot allege that other candidates called had lesser experience—They are bound by the conditions of advertisement—Further, the writ petition was decided within a period of 25 days without calling response from the Commission—It being a policy matter, the order passed by the Writ Court not justifiable—LPA allowed.

Held that a perusal of the advertisement would also go on to show that the eligibility criteria of age was also from 18 years to 42 years and, therefore, even the persons with experience had been brought within the zone of consideration and the benefit of experience was to be granted, but it could not be said that it would be at the cost of merit. The view of the expert body was thus never taken into consideration, which in the opinion of this Court was not justified in the facts and circumstances.

(Para 24)

Further held that, we are of the view that the manner in which the matter was decided being a policy matter, is not sustainable in the peculiar facts and circumstances. Resultantly, for the reasons given above we are constrained to set aside the judgment of the learned Single Judge and dismiss the writ petitions, since the selection process has already been long completed. Accordingly, the appeals filed by the Commission are allowed and the order dated 14.09.2017 is set aside.

All pending civil miscellaneous applications, if any, also stand disposed of.

(Para 25)

Shruti Jain Goyal, DAG, Haryana.

Anu Chatrath, Senior Advocate with M.M. Pandey, Advocate, for all the respondents in LPA-393, 449 & 469-2018
for respondent Nos.3 to 6 in LPA-368-2018
for respondent Nos.5 & 9 in LPA-378-2018
for respondent Nos.1 & 3 in LPA-2207-2017.

Vivek Sharma, Advocate, for respondent No.2 in LPA-2207-2017.

Sunil Kumar Nehra 'Sirsa', Advocate, for the respondents in LPA-448-2018, for respondent Nos.1, 2, 6, 7 & 10 in LPA-378-2018.

Sunil Kumar Nehra 'Sirsa', Advocate, for Neeraj Sheoran, Advocate, for the applicant in CM-1021-LPA-2019 in LPA-500-2018.

Chanderhas Yadav, Advocate, for the respondent in LPA-631-2018.

Jatinder Kumar, Advocate, for the respondents in LPA-1386-2019.

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of above said 13 appeals i.e. **LPA-2207-2017, LPA-368, 378, 393, 448, 449, 469, 496, 500, 563, 630 & 631** of 2018 and LPA-1386-2019. Facts are being taken from LPA-2207-2017.

(2) Challenge in the present letters patent appeal is to the order of the learned Single Judge dated 14.09.2017 passed in a bunch of cases, lead case of which was ***CWP No.18921 of 2017 titled as Subhash Chander and others versus Haryana Staff Selection Commission***. The learned Single Judge directed the respondent-Commission to add marks obtained by candidates forexperience to the marks obtained in the written examination and if candidates are found to have obtained higher marks than those who had already been interviewed on the basis of marks obtained in the written examination, those number of candidates be called for interviews. Resultantly, it

was directed that for all posts advertised by the respondent-Commission, the criteria adopted by the Commission including assignment of fixed marks, on the basis of various certificates such as academic qualifications, experience etc., such marks be determined for the scrutiny of documents and they be added to the marks obtained in the written examination. Thereafter, a merit list be prepared for the purpose of calling the candidates for interviews.

(3) Counsel for the State has accordingly contended that the learned Single Judge is not justified in altering the criteria as such, which had been provided in the advertisement that the decision of the Commission, mode and criteria for selection etc. was to be binding on the candidates and they could not as such clamour for a different criteria of selection. It was submitted that if weightage is to be taken for the purposes of short listing the candidates, merit would be the casualty and no opportunity would arise to the candidates who got more marks in the written examination. It was submitted that in the advertisement itself it had been provided that it was for the Commission to take a call on the criteria and, therefore, short listing was rightly being done by holding the written test. Thereafter, interviews marks to be awarded and benefit of experience to be given for preparing the final merit list. It was further contended that no opportunity was given to the State to place on record its stand and the writ petition was decided in a short period of time without even taking the written statement on record. Therefore, the learned Single Judge did not have the benefit as such for balancing the two views possible. It being a policy decision as such and should have been left for the expert body and it was not for the Courts to substitute its views, in the absence of any allegations of malafide or malice.

(4) Counsel for the respondent-writ petitioners argued that experienced candidates were being left out from the zone of consideration and, therefore, the order of the learned Single Judge is well justified. It was submitted that experience marks should be added at the first instance to the written marks and the candidates who had to be then called would be twice as such and, thus, it was a more rational method as such.

(5) A perusal of the writ petition filed by the writ petitioner i.e. **CWP No.18291 of 2017**, facts of which had also been considered by the learned Single Judge, would go on to show that the writ petitioner had sought quashing of the notice dated 12.08.2017

(Annexure P-5), vide which candidates were being called for interview for the post of Shift Attendants, UHBVNL/ HVPNL/DHBVNL. A perusal of the said notice would go on to show that on the basis of written examination held on 29.05.2016 and on account of scrutiny of documents which had taken place between 05.05.2017 to 06.07.2017 for the said posts against Advertisement No.3/2016 under Category No.1, twice the number of candidates against 2426 posts advertised, were called for interview provisionally, subject to the fulfillment of their eligibility conditions. The cut-off marks obtained against the break-up of various reserved categories and the general posts were also mentioned. For example against the general posts, the cut-off was 74 and similarly for BCA and BCB the cut-off was also 74, for SC 70 and for EBPGC it was 50. The interview was to be held between 24.08.2017 to 29.08.2017 as per the schedule and candidates were directed to bring all original documents and only one opportunity was to be given.

(6) The advertisement in question was issued on 20.02.2016 (Annexure P-1) and the cut-off date was 04.04.2016, wherein 2426 posts of Shift Attendants had been advertised alongwith other posts. The essential qualifications and weightage of experience read as under:-

“i) Matric with 2 years ITI course in Electrician/ Electronics/Wireman Trade OR Lineman & Electrician (Maintenance & Repair of Electrical and Domestic Appliances) from VEI (Vocational Educational Institute) with a minimum 60% marks in respect of General-category candidates and 55% marks of sc category candidates of Haryana Domicile. The percentage marks required for other categories would be same as for General category candidates.

ii) Knowledge of Hindi/Sanskrit upto Matric Standard or higher education.

iii) The weightage of experience to the contractual workers engaged by any Power Utility would be given as under:-

Weightage of Experience

One percent mark for each completed year of service in the respective category be granted subject to a maximum of eight percent with the rider that the qualifying service

should have been in any Power Utility in the same capacity.

18-42 years Rs.5200-20200+ Rs. 2400 GP”

(7) The advertisement prescribed special instructions which specifically provided that the Commission was to shortlist the candidates by holding a written examination. It further provided that the decision of the Commission in all matters relating to acceptance or rejection of an application, mode and criteria for selection etc. was to be final and binding on all candidates. The same reads as under:-

Special Instruction:

The prescribed essential qualification does not entitle a candidate to be called for interview. The Commission will short list the candidates for interview by holding a written examination. The decision of the Commission in all matters relating to acceptance or rejection of an application, eligibility/suitability of the candidates, mode of, and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard.”

(8) In pursuance of the said special instructions of the advertisement, a notice was issued by the Commission on 01.05.2016 (Annexure P-3), wherein it was notified that the written examination was to be held on 29.05.2016 from 10:30 to 11:45 A.M. The total marks for the selection were prescribed as 200 and out of which 160 marks were for the written examination, which consisted of 80 multiple choice questions and each question was to carry 2 marks. For experience 16 marks were to be granted and for viva- voce/interview 24 marks were to be awarded. The relevant portion of the said notice reads as under:-

“2. Selection Criteria

Total Marks: 200.

1. **Written Examination** 160 marks

2. The Written examination for the above posts will comprise of 80 multiple choice questions of 75 minutes duration and further divided into two portions comprising:-

i. 75% weightage for General awareness, Reasoning, Maths, Science, English, Hindi and concerned or relevant

subject, which shall be bifurcated as:

- a) Approximately 50% questions out of 75% shall be allotted to the concerned or relevant subject, and;
 - b) Balance questions shall be allotted to General awareness, Reasoning, Maths, Science, English and Hindi.
- ii 25% weightage for History, Current Affairs, Literature, Geography, Civics, Environment, Culture etc. of Haryana.

Each question will carry two marks.

II. **Experience** 16 marks

(One percent marks i.e. 2 marks for each completed service of one year in the Respective category subject to a maximum of 8 percent i.e. 16 marks with the rider that the qualifying service should have been in any power utility in the same capacity)

III. **Viva-Voce/Interview** 24 marks

To assess the knowledge of subject, communication skill, General Knowledge, General awareness and intelligence.

Admit card of the candidates for written examination will be uploaded on the Commission Web-site i.e. www.hssc.gov.in. The candidates can download the admit cards from the Commission web-site from the date mentioned in the schedule above. No other chance will be given for download of the admit card later on. Candidates are advised to read the instructions on the admit card very carefully and follow the same strictly.

No separate call letters will be sent to the candidates by the Commission through post.”

(9) It is not disputed that the writ petitioners as such sat in the written examination and thereafter, were called for scrutiny of documents between 05.05.2017 to 06.07.2017. In pursuance of the notice dated 30.04.2017 (Annexure P-4) issued by the Commission thus was a provisional exercise to ascertain two times candidates against the advertised posts, subject to the fulfillment of their eligibility conditions as per the respective advertisement and service rules by scrutinizing the documents. Thereafter, the impugned notice dated 12.08.2017 (Annexure P-5) was issued, wherein twice the

number of candidates against the vacancies were called for interview on the basis of scrutiny of documents and after preparing the merit list. It was at that point of time the writ petition came to be filed before this Court and notice of motion was issued in the first case on 23.08.2017 and the matter was again kept for 25.08.2017 to be heard alongwith **CWP No.18307 of 2017 *Satish Kumar and others versus Haryana Staff Selection Commission.*** On the said date, counsel for the Commission had submitted that record could not be brought due to situation prevailing in Panchkula and accordingly, proceedings were deferred for 01.09.2017.

(10) It is to be noticed that at that time Panchkula was under seige on account of Gurmeet Ram Rahim Singh protestors having gathered since he had been convicted for life imprisonment. The matter was thereafter adjourned to 14.09.2017 and the writ petition was decided by giving the directions as discussed above in paragraph No.2 and allowing the same while rejecting the part of calling the three times the number of posts for interview, in view of the decision passed in **CWP No.18878 of 2017 *Sukhbir Singh and others versus State of Haryana and others.***

(11) It is, thus, apparent that the State never got an opportunity as such to put forward its case and project facts of its side of the picture, in spite of the fact that an policy issue was involved as to whether the weightage marks are necessary to be added for the purpose of calling the candidates for interview. While issuing notice of motion the operation of the order had been stayed by the coordinate Bench on 19.12.2017, in present appeal.

(12) An affidavit now has been filed by the Secretary of the Commission, wherein the stand taken was that the written examination is the first stage of entire process, which was open to the candidates, who have experience and no cut-off was fixed by the Commission for the written examination, as per the rules/essential qualifications, which has been reproduced above. The Commission did not fix the cut-off marks for ascertaining the eligibility, but the same was indirectly fixed by the number of posts advertised for recruitment on the basis of marks obtained by the last short-listed candidate for interview, since twice the number of actual vacancies for interview had to be called. The purpose was that few candidates, who have otherwise qualified the written examination, may not possess the requisite qualifications in as much as some of them could have passed the

examination after the cut-off date or qualifications are not equivalent to the required qualifications. It was held that if weightage of experience is given, it would amount to giving more marks as per the experience to the said person alongwith the marks obtained in the written examination. Therefore, there would be two different categories of persons i.e. experienced and inexperienced. The chances of person getting recruitment on the basis of his score in the written examination would get substantively reduced and, therefore, to keep the same level, the merit of the written examination was to be followed.

(13) In the affidavit it was further averred that against 2426 posts, 4852 number of candidates were needed to be shortlisted. The scrutiny of documents had been done and 4788 number of candidates had been called for interview. The highest marks were 122 and lowest were 70 and, therefore, candidates who were called for interview contained both candidates who had prior experience and those who did not. The weightage marks were to be 16 and the entire merit list thereafter would have to be re-worked and if the benefit of experience is to be given as such, candidates would obtain higher position in merit due to large volume of marks due to experience and would oust a large number of other candidates, who were otherwise meritorious, but did not have the relevant experience at the threshold. It was demonstrated that from the minimum marks obtained in the written examination who got 54, if 16 marks were to be awarded they would have to be called for interview having obtained 70 marks and would mean excluding more meritorious persons and having different criteria for two different sets of candidates.

(14) It is not disputed that the criteria as such which had been prescribed was in pursuance of the requisition sent by the Nigams, on the basis of which the advertisement was issued. The eligibility criteria had already been prescribed by the notifications dated 28.01.2016 and 29.01.2016, which was in pursuance of Section 56 (3) (vi) of the Haryana Electricity Reforms Act, 1997 read with Electricity Supply Act, 2003. The same provided that the interview marks weightage would be 12% of the total marks and the written examination was to be 80% of the total marks. The weightage of experience was to be to the extent of 8%.

(15) In pursuance of the said statutory provisions, the criteria had been notified on 01.05.2016 (Annexure P-3), which provided the break-up as such. The writ petitioners had sat in the written test being

fully aware that the Commission had granted 16 marks for the experience. Thereafter, they had submitted their documents for scrutiny, which were duly done and only on account of the fact that they were not called for interview for the first time raised the issue that the marks of experience is to be added for the purposes of scrutiny of candidates for interview.

(16) In the considered opinion of this Court, the Commission was within its right as such to fix the criteria and had made it clear in the advertisement itself, which has been reproduced above. Merely because the same was not suitable as such to the writ petitioners, would not as such give them the cause of action to challenge the same, in the absence of any malafide or malice on the part of the Commission. The same being an expert body was well within its right, which is the methodology to be adopted as to whether benefit of weightage is to be given specifically after the interview or not.

(17) The writ petitioners having taken a chance and accepted the call for scrutiny of documents would not then turn around and allege that candidates were being called, who had lesser experience. Apparently writ petitioners are those set of persons, who had not scored well in the written test, but were aggrieved and were wanting to come within the zone of consideration, on the basis of weightage for experience. The criteria has already been discussed in detail which was made public, the same provided that a written examination was to be held of 160 marks. The advertisement also talked about shortlisting of the candidates by interview. The candidates were thus bound down by the conditions of the advertisement and could not thus turn around to challenge the same having sat in the same, in view of the settled law laid down by the Apex Court in the case of *Madan Lal and others versus State of J&K and others*¹. The said view was followed in *K.A. Nagamani versus Indian Airlines and others*²; *Manish Kumar Shahi versus State of Bihar and others*³; *Madras Institute of Development Studies and another versus K. Sivasubramanian and others*⁴ and *Ashok Kumar and another versus State of Bihar and others*⁵.

¹ (1995) 3 SCC 486

² (2009) 5 SCC 515

³ (2010) 12 SCC 576

⁴ (2016) 1 SCC 454

⁵ (2017) 4 SCC 357

(18) The notifications also provide the minimum qualification of criteria, on the basis of which requisition was issued, which also provides for the written examination of 80% of the total marks and, thus, out of 200 marks, 160 were awarded to the written examination. In such circumstances, the learned Single Judge without even issuing notice to other candidates, who had done well in the written test, pushed them out of zone of consideration without even calling for a response from the State by way of written statement and keeping in view the fact that it is a policy decision and method of selection is best to be left to the experts.

(19) In the considered opinion of this Court, it has already been noticed that the writ petition was decided within a period of 25 days without even calling for a response in proceedings on the original jurisdiction. It being a matter of policy, same would prejudice the Commission and a large number of candidates, who were not even impleaded. It is settled principle that persons who are affected parties, need to be impleaded in the litigation, as their interest is affected. The writ petitioners had only a right of consideration and not an absolute right of appointment, as per the settled principle of law. In the absence of malice or malafides, it was not within the jurisdiction of the learned Single Judge to have passed such directions, which would upset the appercart of the selection process.

(20) Admittedly, a similar procedure was being applied to one and all and there was no different criteria for different sets of persons and a standard procedure was being adopted by the Commission. It was held by the Apex Court in *Haryana Public Service Commission versus Amarjeet Singh and others*⁶, that it would be inappropriate for the High Court to examine the matter regarding the allocation of marks for higher qualifications and specialized training. In *CWP No.15885 of 2000, Jawahar Lal Goyal and others versus State of Haryana and others and other connected cases* decided on 23.05.2000, it was held by the coordinate Bench that the written examination is a method as such to shortlist the candidates when number of candidates is too large and there is no fundamental right of the candidates for appointment.

(21) In *Rajya Sabha Secretariat and others versus Subhash Baloda and others*⁷, the Apex Court came to the conclusion that it was

⁶ (1999) SCC (L&S) 1451

⁷ (2013) 5 SCC 169

not for the Court to substitute what it thinks to be appropriate and also that once the same procedure was being applied to all candidates by the specialized agency as such, candidates could not complain of any prejudice. Relevant portion of the said judgment reads as under:-

“28. Having noted this factual and legal scenario, in our view there was nothing wrong in the method applied by the appellants in the Selection of the Security Assistants Grade-II. There was no discrimination whatsoever among the candidates called for the interview, nor any departure from the advertised requirements. One can always say that some other method would have been a better method, but it is not the job of the Court to substitute what it thinks to be appropriate for that which the selecting authority has decided as desirable. While taking care of the rights of the candidates, the Court cannot lose sight of the requirements specified by the selecting authority. What the High Court has proposed in the impugned orders amounts to re-writing the rules for selection, which was clearly impermissible while exercising the power of judicial review.”

(22) Similarly, in *Ramjit Singh Kardam & others versus Sanjeev Kumar & others*⁸, the Apex Court while dealing with the selection process of Physical Training Instructors (PTIs) also considered the special instructions and came to the conclusion that the Commission was empowered to devise the mode of selection and fix the criteria for selection of posts. Once there was power vested in the Commission to fix the criteria, the writ petitioners as such cannot have any grouse if the power has been exercised and it has not been in an arbitrary manner with the purpose to cut out a certain set of candidates. As noticed, this was not the case of the writ petitioners and therefore, the writ petition at their instance was also not maintainable as they were bound by the terms and conditions of the advertisement.

(23) The stand of the State has already been examined, which is now reiterated by filing of an affidavit by the Secretary of the Commission. It has been demonstrated by giving weightage as such of the experience, if it is to be considered at an earlier point of time, it would amount to exclusion of meritorious people from the zone of

⁸ 2020 (2) SCT 491

consideration, merely because of 8% of the marks to be awarded. In such circumstances, it was for the expert body and the recruiting agency as such to see whether they wanted persons with experience or they wanted one with merits.

(24) A perusal of the advertisement would also go on to show that the eligibility criteria of age was also from 18 years to 42 years and, therefore, even the persons with experience had been brought within the zone of consideration and the benefit of experience was to be granted, but it could not be said that it would be at the cost of merit. The view of the expert body was thus never taken into consideration, which in the opinion of this Court was not justified in the facts and circumstances.

(25) Resultantly, we are of the view that the manner in which the matter was decided being a policy matter, is not sustainable in the peculiar facts and circumstances. Resultantly, for the reasons given above we are constrained to set aside the judgment of the learned Single Judge and dismiss the writ petitions, since the selection process has already been long completed. Accordingly, the appeals filed by the Commission are allowed and the order dated 14.09.2017 is set aside. All pending civil miscellaneous applications, if any, also stand disposed of.

Dr. Payel Mehta