

“17. Validity or Otherwise of the Information Vs. State of Haryana and Another --respondents

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Court : Punjab and Haryana

Decided On : May-01-2013

Appellant : “17. Validity or Otherwise of the Information

Respondent : State of Haryana and Another --respondents

Judgement :

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CWP
No.9186 of 2013 (O&M) Date of Decision:

01. 5.2013.

Manjeet Rahtee --Petitioner Versus State of Haryana & another --Respondents
CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr.Sudhir Kumar Hooda, Advocate for the petitioner.

*** TEJINDER SINGH DHINDSA.J The petitioner has filed the instant writ petition being aggrieved of the action of the respondent-authorities, whereby his candidature for the post of Medical Officer, (H.C.M.S-II) has been rejected on the ground that his application was received after the closing date i.e.15.3.2013 as stipulated in the advertisement.

The facts of the present case lie in a very narrow compass.

The Department of Health, State of Haryana issued advertisement dated 22.2.2013 (Annexure P-1) for filling up 434 posts of Medical Officers (H.C.M.S.Class-II) on a regular basis.

Apart from laying down the eligibility conditions, there was a specific condition as regards the last date for submission of application forms i.e.15.3.2013.

The relevant condition contained in the advertisement read in the following terms:-
The last date of submission of application form is 15.3.2013.

The interview shall be started from 28.3.2013.

The place of the interview is office of the Director General Health Services, Health Services Bhawan, Sector 6, Panchkula (Haryana).The roll numbers and interviews list shall be displayed on the website of the department.

You may access the website for uptodates and for important announcement.

CWP No.9186 of 2013 (O&M) -2- The interview call letters will be not be sent separately.

Learned counsel for the petitioner has not disputed the fact that the application of the petitioner was received by the respondent-Department after the closing date i.e.15.3.2013 but would argue that the petitioner had dispatched the application through Speed Post on 12.3.2013 itself i.e.well in time and as such the delay that has occurred is on account of the postal authorities.

Counsel has vehemently argued that any delay for which the petitioner himself is not responsible but which would be attributable to the postal authorities cannot work to the prejudice of the petitioner and he cannot be denied consideration for appointment to the post in question on such ground alone.

Having heard learned counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that the present writ petition merits dismissal.

The question as regards last date of submission of application forms and such application having been received after the stipulated cut off date on account of delay at the hands of postal authorities is no longer res integra.

A Division Bench of this Court in case of Saurabh Aggarwal versus Kurukshetra University, 1994 (4) S.C.T 65.had taken a view that merely on account of the fact that an application is received after the last date fixed for the purpose and when it had been dispatched well in time, the candidate is not to be blamed and the candidature of such a candidate is not to be rejected on such count alone.

However, a Full Bench of this Court in case of Rahul Prabhakar versus Punjab Technical University, Jalandhar, 1997 (3) S.C.T 52.has taken a view that the law settled by the Division Bench in Saurabh Aggarwal's case (supra) does not lay down the correct CWP No.9186 of 2013 (O&M) -3- proposition and it was held in the following terms:- 17.

Validity or otherwise of the Information Brochure and its binding nature has to be examined by the generality of cases it covers and not by the inconvenience or resultant prejudice that may be caused to persons who could not strictly adhere to its terms.In this connection, we consider it appropriate to recall the observations made by Krishna Iyer, J., in R.S.Joshi versus Ajit Mills, AIR 197.Supreme Court 2279, A law has to be adjudged for its constitutionality by the generality of cases it covers not by the freaks and exceptions it martyrs.

If the argument advanced by the learned counsel is accepted, or if the principles stated by the Division Bench in Saurabh Aggarwal's case (supra) are followed then consequence will be to amend the provision contained in the Brochure.

If the provision contained in the Information Brochure is found to be unsustainable, the same can be struck down by this Court in exercise of the powers under Article 226 of the Constitution of India.

By striking down the provision in the Brochure, the petitioner will not be getting any benefit.

So this Court will have to amend the provision contained in the Brochure or in other words re-write the same.

This Court is not to venture such a course of action.

High Court cannot assume the role of rule making authority and re-write the rule not can this Court in exercise of the powers under Article 226 of the Constitution substitute its views to that of the competent authority which framed the Brochure.

18. In view of what has been stated above, we hold that the date and time for the receipt of the application forms by the Co-ordinator, CET 1997 is fixed in the Information Brochure.

It is not to be altered by that Court in exercise of the powers under Article 226 of the Constitution of CWP No.9186 of 2013 (O&M) -4- India.

We also hold that law settled by a Division Bench in Saurabh Aggarwal versus Kurukshetra University, 1995 (1) SLR 80=1995 (1) Rs.801 and the decision in Anurag Sharma versus Regional Engineering College Kurukshetra and others.1996 (1) Rs.795 do not lay down the correct law and we overrule the same.

It was held in Rahul Prabhakar's case (supra) that the stipulation contained in an advertisement/Information Brochure as regards the cut off date for receipt of application forms would have to be strictly adhered to and there would be no scope of deviation therefrom.

Such stipulation is applicable across the board and candidates whose applications are received after the stipulated cut off date would have to bear the consequences flowing therefrom.

For the reasons recorded above and in the light of the Full Bench judgement of this Court rendered in Rahul Prabhakar's case (supra).I find no infirmity in the action of the respondent-authorities in having rejected the candidature of the petitioner on the ground of his application having been received after the stipulated cut off date i.e.15.3.2013.

No merit, petition dismissed.

(TEJINDER SINGH DHINDSA) JUDGE 01 5.2013 lucky

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