



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

CWPOA No. 86 of 2019 a/w

CWPOA No. 137 of 2019

Reserved on: 10.9.2020

Decided on : 17.9.2020

CWPOA No. 86 of 2019

Amar Nath

...Petitioner

Versus

State of H.P. and others

...Respondents

CWPOA No. 137 of 2019

Rai Singh

...Petitioner

Versus

State of H.P. and others

...Respondents

Coram

Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting? Yes

**For the petitioner(s) : Mr. Karan Singh Kanwar,
Advocate.**

**For the respondents : Mr. Hemant Vaid, Addl. A.G.
with Mr. Vikrant Chandel, Dy.
A.G. for the respondent(s)**

**Mr. Vivek Singh Attri, Advocate,
for the private respondents.**

(through video conferencing)

Sureshwar Thakur, Judge

Since writ petitions, respectively bearing No(s). CWPOA No. 86 of 2019, and, No. CWPOA No. 137 of 2019, are directed against a common thereto notification, of, 1.10.2016, hence both the afore writ petitions, are, amenable for common verdict(s), being pronounced thereon(s).

2. The apposite advertisement, is, borne in Annexure, A-5, wherethrough the respondents concerned, strived to make recruitment(s), of, multi purpose workers, vis-à-vis, Nahan Circle. The last date, prescribed therein, for applications, being lodged, by the aspirants concerned, is, 1.12.2016. Through both the afore writ petitions, the writ petitioner(s), cast challenge(s), vis-à-vis, the awarding of marks, to the selected candidates, who become arrayed as, private respondents, in both the writ petitions. The challenge, as, made by the writ petitioner(s), vis-a-vis, the, unfortunate happening(s), of, erroneous awarding(s), of, marks, and, consequent therewith occurrence, of,

flawed selection(s), of, the private respondents, in both the writ petitions, is, focused upon, (a) the awarding of marks, to, each of the selected candidates, on anvil, of their apposite experience certificate(s), hence palpably contravening the mandate borne, in clause (k) and (kh), of, Annexure A-5, (i) wherein, vis-à-vis, the contested besides apposite experience certificate(s), qua wherewith, marks became allotted, to the arrayed hence private respondents, rather becoming, untenably meted to them, (ii) as, the apposite experience certificate(s) hence possessed, by the selected private respondents, emanated not from any, of, the government undertaking(s) or agencies, as become enumerated, in, clause (k) and (kh), of, Annexure A-5, rather all the experience certificates, emanated from purportedly prohibited private entities/institutions concerned. However, the afore made contest, vis-à-vis, awarding(s) of marks, to the arrayed herein private respondents, in both the writ petitions, has yet, to, withstand the test, of, the apposite rules, and also, the touchstones, borne in various Annexures, appended with the reply(s), filed to the writ petition(s), by the respondent(s) concerned.

Hence before proceeding to adjudge the meritworthiness, or otherwise, of, all the espousals, raised by the learned counsel, for, the writ petitioners, it is imperative, to, allude to the certified copy, of, the apposite Recruitment, and, Promotion Rules, of, 31.5.2016, as become placed on record, by the learned Addl. A.G. On a reading of clause 7 thereof, which stands extracted hereinafter:

<p>Minimum Educational & other qualification required for direct recruit(s)</p>	<p>a) Essential Qualifications (i) He/she should be 8th pass from an Institute recognized by the Government of HP (ii) <u>He/she must have an experience in Gardening for one year.</u> <u>OR</u> <u>He/she should have experience of housekeeping/cooking for at least one year.</u></p>
	<p>b) Desirable qualification Knowledge of customs, manners, and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.</p>

Conspicuously, of, the underlined portions thereof, does pointedly earmark, vis-à-vis, the contested experience

certificate(s), as relied upon, by the aspirants concerned, becoming amenable, for, allotment, of, marks, vis-à-vis, holders thereof, (iii) upon the experience certificate(s) concerned, making articulation(s), vis-à-vis, the aspirant(s) concerned, holding experience(s), either in housekeeping or cooking, and, the tenure, of, the afore experience, lasting upto one year. Significantly, the apposite recruitment, and, promotion Rules, came into force, prior to the issuance, of, Annexure A-5, and hence held vigor and sanctity, in contemporaneity, vis-à-vis, the issuance, of, Annexure A-5, and also, concomitantly, they also held legal force, in contemporaneity, vis-à-vis, the makings, of, advertised post(s), by the respondent-concerned. The afore extracted clause, of, the Recruitment and Promotion Rules, does visibly, at the very outset, hence benumb, the efficacy, of, the afore contentions, made by the learned counsel, for the petitioner(s), (iv) and its obviously becoming untenably rested, on the afore clause, borne in the apposite advertisement notice, hence embodied in Annexure A-5, (v) and its prescribing the necessity, of, possession, of, the, afore experience

certificate(s), vis-à-vis, housekeeping and cooking, by the selected candidates, besides, with a further necessity, becoming entailed upon, the aspirant(s) concerned, to seek allotment, of, marks, qua therewith, from the selection committee concerned, only upon the apposite experience certificate(s), emanating from government agencies, as become spelt therein, (vi) Reiteratedly, rather prominently with the afore necessities, as embodied in the advertisement notice, being graphically beyond the ambit, of, the afore clause-7, as becomes, embodied in the apposite recruitment, and, promotion Rules, clause whereof, does not, carry any evident underlining(s), hence supporting the making(s), of, the afore necessities, rather in the advertisement notice. Dehors the above, and, even if the afore clause (k) and (kh), are visibly, beyond the ambit, and, amplitude of, clause-7, of, the apposite Recruitment and Promotion Rules, yet the respondents concerned, appear to, prior to their receiving, the, apposite application(s), from the aspirant(s) concerned, (vii) inasmuch as, on 1.12.2016, hence subsequent to the issuance, of, Annexure A-5, proceeded to issue Annexure

R-5, wherein, the apposite experience certificate(s), appertaining, to, housekeeping/cooking, were, enjoined to unveil, the apposite experience, lasting for one year, and, also, therein a mandate, is, borne, vis-à-vis, the experience certificate(s), qua, housekeeping, and, cooking, being valid, upon, theirs being issued even, by, private institution(s)/entrepreneurs, (c) and, thereupon, through Annexure R-5, the respondent concerned, did mete compliance, with clause-7, of, the apposite Recruitment and Promotion Rules, clause whereof, as aforestated, does not, entail the necessity, of, the afore experience certificates, emanating from any government agency, or, government undertaking, rather the afore clause legitimizing, the holding(s), of, apposite experience certificate, even if, they became issued, by private agencies or entities concerned

3. The effect, of, the afore discussion, is, that this Court, holds with fullest aplomb, and, reiterates the afore inference, hence appertaining to the apposite experience certificate(s), as, held by the private/selected respondents concerned, hence not breaching the afore predominant clause-7, and, even if any purported

breaches, arise, qua clause (k), and, (kh), as become(s) borne in Annexure A-5, thereupon rather the afore purported breach(es), being wholly rudderless and, not meriting any validation, by this Court.

4. However, the learned counsel appearing for the petitioner(s), has, also proceeded to make, a, submission, before this Court, that, with the afore alluded corrigendum, borne in Annexure R-5, though hence bringing consonance, with clause-7, of, the apposite Recruitment and Promotion Rules, and, conspicuously, with its appertaining, to, experience certificate(s), relating to experience(s), of, house-keeping and cooking, and their tenure, lasting upto one year, besides therethrough(s) validation becoming conferred upon them, even if they became issued, by private organization(s), rather yet Annexure R-5, contravening clause (k) and (kh), of, Annexure A-5, (i) and, has also proceeded to submit that since Annexure A-5, became issued, on 1.10.2016, and, rather subsequent thereto, Annexure R-5, became issued, on 9.11.2016, (ii) thereupon, the respondents concerned, could not, issue Annexure R-5, as thereon(s), the

mandate, of, the Hon'ble Apex Court, rendered in case, titled as, Hemani Malhotra versus High Court of Delhi, reported in 2008 (7) SCC 11, becoming breached, (iii) especially when, it becomes voiced therein, qua, the apposite clause, or echoing(s), borne in the apposite advertisement notice, being un-amenable, for thereafter, theirs' becoming changed or altered. However, the afore submission also, does not, carry any weight, as, clause (k) and (kh), borne in Annexure A-5, were palpably, beyond the ambit, of, the apposite mentoring clause-7, of, the relevant Recruitment and Promotion Rules, and, (i) thereupon, when through Annexure R-5, the respondents concerned, strived to harmonize the essential necessities hence appertaining, to, the apposite experience certificate(s), obviously with the predominant clause-7, of, the, Recruitment and Promotion Rules, (ii) thereupon, there cannot be any invalid departures, of, transgression(s), by the contesting respondents concerned, in theirs through Annexure R-5 hence modifying clause (k) and (kh), as become borne in Annexure A-5. The reason, for, making the afore inference, is, grooved in the trite factum, qua none of,

the afore conditions, prevailing in Annexure A-5, neither predominating, nor, prevailing upon, mentoring clause-7, of, apposite Recruitment and Promotion Rules, hence containing the afore contra therewith, emphatic underlining(s), nor can, hence any valid striving(s), of, the respondent concerned, to bring interse harmony, hence interse clause-7, of, the Recruitment and Promotion Rules, vis-à-vis, the apposite canonized necessities when rather amiss in Annexure A-5, become deprecated, (iii) especially when the relevant selection process, would become, completely, validated through issuance, of, Annexure R-5. The further potent reason(s), for making the afore inference, is, deriveable from the evident fact, that, the afore corrigendum, emanating, prior to the initiation, of, the relevant section process, and, also, when all the participants recoured all the relevant selection process(es), hence they cannot merely in the garb, of, in-correctly entered necessities, in the advertisement notice, strive for invalidation, of, awarding, of, marks, to the private respondents, (iv) reiteratedly, when allotment, of, marks to the private respondents, on anvil, of their respective apposite

experience certificate(s), is, governed, and, regulated by the apposite clause-7, of, the apposite Recruitment, and, Promotion Rules, and, not by disconcurrent therewith necessity(ies), as, become borne in the Advertisement notice.

5. Be that as it may, even if the corrigendum, as, borne in Annexure R-V, does not, carry therein any ad-verbatim language, with the one, as borne in Clause 7, of, the apposite Recruitment and Promotion Rules, and, even if, the subsequent thereto language, as becomes employed, in Annexure R-6 and R-7, and appertaining, to, the purported valid holding(s), of, apposite experience certificate, also, does not, bear compatibility, vis-à-vis, the phraseology, borne in Annexure R-5, Annexure whereof became issued, rather to bring harmony, with, the peremptory apposite conditions, as become embodied in the relevant Recruitment and Promotion Rules, (i) thereupon, also none of the afore mis-matches, do not, either hold prevalences(s), vis-à-vis, the predominant Rule(s), as, become borne in the Recruitment and Promotion Rules, nor also, either Annexure R-6, nor Annexure R-7, though holding

enumeration(s), vis-à-vis, the experience certificate(s), in house-keeping and cooking, rather enjoining theirs' emanating, from, government agencies, likewise, hold no tenacity or vigor, nor therefrom any leverage can be drawn, by the learned counsel for the petitioner(s), for invalidating all the effects, of, experience certificate(s), as, held by the selected candidates.

6. In addition, the learned counsel appearing, for the petitioner(s), has not challenged, either Annexure A-5, nor Annexure R-6, nor, has he cast any challenge, upon, the afore extracted clause-7, of, the Recruitment and Promotion Rules, carrying therein, the afore underlined prescription(s), vis-à-vis, the aspirants concerned, becoming entailed with a necessity to possess, the, apposite experience certificate(s), hence holding a tenure of one year, and theirs' emanating from private organizations or entity(ies), (i) thereupon when rather the counsel for the petitioner(s), was enjoined, to, make challenge(s), to, the predominant, and, all prevailing clause-7, of, the apposite Recruitment and Promotion Rules, whereas, his making omission(s), qua therewith, (ii) thereupon, the afore omissions, obviously,

draw a conclusion, vis-à-vis, the legal potency, and the legal vigor, of, clause-7, becoming acquiesced by him, hence to remain both intact and undisturbed, (iii) and resultantly, this Court is enjoined, to, mete deference thereto.

7. Moreover, the learned counsel for the petitioner, has, neither attributed, any specific malafides, to, any of the members, of, the selection committee concerned, nor has attributed any specific malafides, to, any of the officers concerned, who influenced the selection process, whereas, casting, of, afore specific malafides, both, upon the member(s), of, the selection committee, or upon the persons, who influenced them, was, a dire necessity, (i) for this Court, to, thereafter, upon apposite material qua therewith becoming adduced, by the petitioner(s), to, make a conclusion, that awarding of marks, to the private respondents, on anvil, of, their experience certificates, or otherwise, on other parameters, being tainted with vice, of, malafides, (ii) and, thereupon, their selection becoming, concomitantly, stained, and hence warranting interference, by this Court. Sequelly, all the afore omissions, do garner an invincible conclusion, vis-

à-vis, the selection committee concerned, with, utmost transparency, and, also with optimal objectivity, hence allotting the marks, to, the private respondents, on anvils, of theirs, possessing, the, apposite experience certificate(s), and, hence, the allotments, or awarding, of marks, qua therewith, besides qua other parameters, being not stained with any vice, of, malafide(s).

8. Even otherwise, both the writ petitioners, participated in the selection process, and, only after their un-successful participation, in the selection process, they proceeded to cast a challenge, to selection, of, the private respondents, against the advertised posts. The participation, of, the selected candidates, in, the selection process, does, constitute estopping conduct against the petitioner, hence against theirs' at this belated stage, casting any challenge, vis-à-vis, the completed selection process, moreso, when no specific malafides, stand attributed, to, any of the members of the selection committee, nor vis-à-vis, any purportedly influencer concerned.

9. Lastly, the learned counsel for the writ petitioners, has, made a vehement contention, before

this Court, that the experience certificate(s), of, the aspirants concerned, as, become appended, with the writ petition, rather not, making any bespeaking(s) therein, hence in consonance, with, the norms, as become borne in clause-7, of, the apposite Recruitment and Promotion Rules, (i) and thereupon, also no marks, were, awardable to the private respondents concerned, rather, on anvil thereof. However, even the afore contention, is, rudderless, as a perusal of the apposite experience certificate(s), as become issued, by private entrepreneurs/private undertaking(s), who, as aforestated, were, through the mandate cast, in clause-7, of, the apposite Recruitment and Promotion Rules, hence authorized to issue, the, apposite experience certificate, does, disclose, vis-à-vis, the apposite experience(s) recited therein, lasting upto one year, and, also vivid echoing(s), become borne therein, vis-à-vis, the aspirants concerned, either being engaged in the apposite task of housekeeping or of cooking.

10. Consequently, when the voicing(s), occurring in the apposite experience certificate, do, fall in tandem or are in complete alignment, with the peremptory

mandate, borne in clause-7, of, the apposite Recruitment and Promotion Rules, (i) and, also, when no further evidence has become adduced, vis-à-vis, the experience(s), enumerated therein being fictitious, nor when evidence became adduced that rather the apposite experience certificate(s) vis-à-vis some purported minors, becoming untenably issued, as they were working for remuneration, thereupon, it is concluded, qua the purported minors, working gratuitously, as, apprentice(s), hence with the consent, of, their lawful guardian(s) (iii) whereupon, vis-à-vis, both one Abhishek, and one Kamal Chand Sharma, no iota, of, doubt, can be cast, vis-à-vis, their apposite experience certificate(s), inasmuch as their being issued, at a stage, when they were minors, nor it can be concluded that they were gaining experience(s) with remuneration(s), becoming tendered to them, by their employers concerned. Significantly, also when no challenge to the experience certificate, of, the afore Abhishek and one Kamal Chand Sharma, is anchored upon, the afore ground rather is anchored, upon, the afore parameter, vis-à-vis, their apposite experience

certificate(s), rather emanating, from, non-governmental undertaking(s), whereas, when for all the afore-stated reasons, the afore contention, has been rejected, (vi) thereupon also the learned counsel for the petitioner, is, incapacitated, to, raise the afore onslaught, against, the afore Abhishek, and, against Kamal Chand Sharma.

11. Consequently, there is no merit in the petitions, and, the same are dismissed. Also, all pending application(s), if any, are disposed of. No costs.

(Sureshwar Thakur)
Judge

17.9.2020
Kalpana