

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

OA. No. 060/00077/2016

This 23rd day of March, 2018

...
CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)
 ...

Shivinder Kang, S/o Sh. Inderjit Singh Kang, R/o The Mohali Employees Cooperative Society, Flat No. 166, Block 11, Sector 68, SAS Nagar, Mohali

.....Applicant

BY ADVOCATE: Sh. Arvind Galav

VERSUS

1. Union Territory Chandigarh through its Secretary, Department of Education, Deluxe Building, Sector 9, Chandigarh.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

.....Respondents

BY ADVOCATE: Sh. Arvind Moudgil for respdt. No. 1
 Sh. K.K. Thakur for respdt. No. 2

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER(A):-

1. The applicant is a person who has a BA Honours Degree in English from Punjab University. Applicant also has a Masters Degree in first division from Punjab University.

2. On 24.05.2007, applicant started working as Lecturer in the Regional Institute of English, Chandigarh. In March, 2012, applicant successfully completed online course in English as a Foreign Language Assessment from the University of Maryland. In August, 2012, applicant completed online teacher training programme from the University of Oregon. In 2014, applicant qualified the National Eligibility Test for Lectureship. Applicant has attended various workshops in different institutes in the above period. Applicant is a holder of Postgraduate Certificate in teaching of English from "The English and Foreign Language University, Hyderabad. On 09.05.2015, applicant appeared in the final examination of Postgraduate Diploma in the Teaching of English Programme at the English and Foreign Language University, Hyderabad in April, 2015. The result of the examination was announced on 27.05.2015. The applicant scored 6.80 OGPA in the examination.

3. Applicant submitted an application in response to UPSC advertisement inviting applications for the post of Assistant Professor in English in Regional Institute of English, Chandigarh. The essential qualification for the above post was a good academic record with at least 55% marks or an equivalent Grade 'B' in English from an Indian University or an equivalent degree from a Foreign University. Second essential qualification was Postgraduate Diploma in Teaching of English awarded by the Central Institute of English and Foreign Languages, Hyderabad. The third essential qualification is that

candidate should have acquired NET for Assistant Professor conducted by UGC. The applicant also placed on record an experience certificate certifying that the applicant has worked as Assistant Professor of English on contract since 01.08.2010.

4. Respondent No. 2, UPSC, placed on its website the short list of candidates and also the list of candidates not short listed. Applicant's name did not find a place among the short listed candidates. The prayer of the applicant is for quashing Annexure A-16 placed on the website of respondent No. 2 to the extent of not short listing the applicant for the post of Assistant Professor in English on the ground that he lacked the essential qualifications.

5. Vide Tribunal's interim order of 28.01.2016, respondent No. 2 was directed to provisionally interview the applicant on 29.01.2016 subject to final outcome of the OA.

6. The respondent UPSC confirms the essential qualifications for the post cited by the applicant. In response to the advertisement, 67 applicants submitted online applications. The short listing was done on the basis of essential qualifications (i), (ii) and (iii). After scrutiny of the applications, Commission short listed six candidates for the interview. Out of 6 candidates short listed, candidature of three candidates bearing Roll Nos. 7, 9 and 31 were provisional subject to production of wanting documents. The said three candidates did not attend the interview. The applicant's candidature was rejected on the ground that he lacked essential qualification (ii). Candidate has furnished to UPSC a notice for

awarding of PGDTE for the year 2014-15 for examinations conducted in April, 2015. The said notice is dated 27.05.2015, which the respondents point out is a date after the closing date. Thus, the applicant does not possess essential qualification (ii) before the closing date and his application was rejected on the above ground. The advertisement had clearly mentioned that the date of determining eligibility of the candidates shall be the closing date for submission of online application forms. Hence, the applicant who did not have essential qualification (ii) before the closing date was not considered eligible for the post. On the basis of the interim order, the applicant was interviewed for the post.

7. The respondent cites the case of **UPSC and Anr. Vs. S. Krishna Chaitanya, SLP o. 11779/2011** wherein the Apex Court had held that interim orders such as given to the applicant should be avoided so as not to give false hopes to the candidates approaching the court. Respondent also cites **1995(Suppl) 4 SCC 706 titled Smt. Harpal Kaur Chahal Vs. Director, Punjab Instructions, Punjab & Anr.** wherein the Apex Court has held that only such candidates who possess all qualifications on the closing date, are eligible to apply and be considered according to rules.

8. Heard the counsel for the applicant and respondents and perused the written submissions made. The result of the selection process was, on the directions of the Tribunal, produced by the 2nd respondent. On opening the sealed cover, the Bench is informed that the applicant has been selected for the post. Thus, the assessment

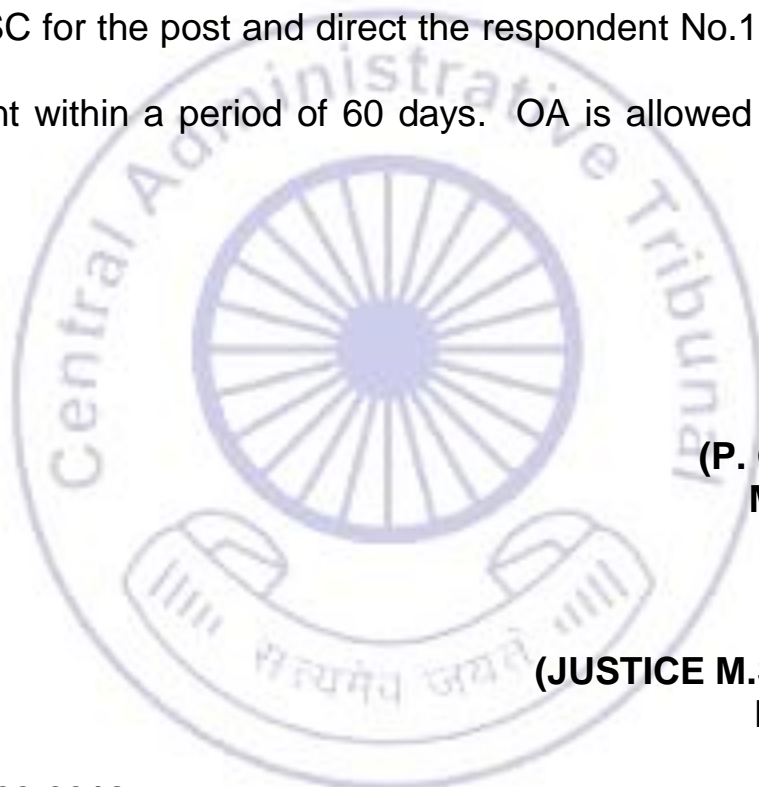
of the merit of the applicant has been made by the 2nd respondent by selecting him for the post. The issue that remains for consideration before the Tribunal is the eligibility of the applicant. The applicant's main argument is that he had appeared for the examination in April, 2015 much before the last date of submission of the online applications i.e. 14.05.2015. Whereas it is admitted that his result was declared on 27.05.2015, 13 days after closing date. The applicant submits that he could have produced the confidential result before the prescribed closing date of receipt of application as the same was available by then.

9. From the A-3 advertisement produced by the applicant, we note that the applicant possesses all the three essential qualifications required for the post. The only shortcoming is that the 2nd essential qualification of having a Postgraduate Diploma in Teaching of English awarded by the Central Institute of English and Foreign Languages, Hyderabad was available to the applicant two weeks after the closing date, though he had appeared in the exam before the closing date for receipt of application form.

10. There is no doubt that the applicant could have obtained the confidential result and submitted it with his application form. Another argument that comes to mind while deciding this OA is the fact that this is a teaching post to which the best person ought to be appointed. Applicant has been selected to the post by a neutral body i.e. the UPSC. The applicant has also got experience of teaching as Assistant Professor of English on contract since 01.08.2010. Though

this was not a required qualification, but would serve to add value to the job. Thus, the merit of the applicant has already been assessed. In view of the fact that the applicant is a meritorious candidate selected for the post and that confidential result would have been available to him prior to the closing date, we are of the view that the candidate merits appointment to the post.

11. For the foregoing discussion, as a special case, not to be quoted as precedent, we uphold the selection of the applicant made by the UPSC for the post and direct the respondent No.1 to make the appointment within a period of 60 days. OA is allowed accordingly. No costs.



(P. GOPINATH)
MEMBER(A)

(JUSTICE M.S. SULLAR)
MEMBER(J)

Dated :23.03.2018

ND*