

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 15081 of 2012

Reserved On : November 05, 2015

Pronounced On : 18.11.2015

Jaipal

.... Petitioner

vs.

The Haryana Public Service
Commission and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. R. K. Malik, Senior Advocate
with Mr. Kuldeep Sheoran, Advocate
for the petitioner.

Mr. H. N. Mehtani, Advocate
for respondent no. 1.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Puneet Bali, Senior Advocate
with Mr. Arun Gupta, Advocate
for respondents no. 3, 4, 6 and 8.

Mr. Dinesh Arora, Advocate
for respondent no. 5.

Mr. R. N. Sharma, Advocate
for respondent no. 7.

* * *

DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks appointment as Assistant Professor (Physical Education) in the College Cadre. He further seeks quashing of the selection and appointment of the private respondents no. 3 to 8.

The facts, which are relevant for adjudicating upon the issue raised in the present petition are that the respondent – Haryana Public Service Commission, through an advertisement dated 28.10.2009, invited applications for appointment to various posts including posts of Assistant Professors (Physical Education) in the College Cadre. It is not disputed that the petitioner applied in time and being eligible, was interviewed. However, on the declaration of the results, the petitioner was shown to have secured 66 marks as against 67 marks, which had been obtained by the last person, who was selected and appointed in the General Category i.e. the Category, under which the petitioner had applied. He was thus not offered appointment.

Laying a challenge to the aforesaid inaction on the part of the respondents for not offering appointment to him, the petitioner filed the present writ petition on several grounds. However, at the time of arguments, only one ground was pressed, which was that as per the criteria, two marks were required to be given for participation in any national level event in Sports and as the petitioner had participated in one such event, according to him, he should have been granted those two marks, on the

addition of which, he would have secured 68 marks and thus, would have a right to be selected in preference to the last person selected and appointed.

The facts in issue have not been disputed by the parties and thus, in view of the above uncontroverted facts, it needs to be considered whether the petitioner was entitled to the grant of two marks for participation in any National Level event in Sports.

Before proceeding further with the matter, the relevant portion of the criteria may be extracted, which is as under :-

<i>“c) Co-curricular Activities/Sports</i>	<i>05 Marks</i>
<i>(i) NCC 'C' Certificate</i>	<i>03 Marks</i>
<i>(ii) NCC 'B' Certificate</i>	<i>02 Marks</i>
<i>(iii) Sports (Participation in any International level event)</i>	<i>03 Marks</i>
<i>(iv) <u>Sports (Participation in any National level event)</u></i>	<i><u>02 Marks</u></i>
<i>(Subject to maximum of 05 marks for (i) to (iv) above.) [Emphasis supplied]</i>	

From the above quoted portion of the criteria, it is clear that two marks were required to be granted to a candidate for having participated in any National Level event in Sports. It is not disputed that the petitioner took part in the All India Inter-University Championship held in the year 1995-96, organized by the Delhi University, Delhi, in the Sport of Swimming and Waterpolo. On a query posed by the petitioner under the Right to Information Act, 2005, the Department of Sports and Youth Welfare, Government of Haryana, through letter dated 03.04.2013, has

certified that All India Inter-University competitions are National Level competitions.

No opinion to the contrary has been shown by the respondents.

Once the petitioner had participated in an Inter-University Championship held at the National Level, then two marks earmarked for participation in any National Level event had to be granted to him, especially when the Department of Sports and Youth Welfare, Government of Haryana, certifies the event, in which the petitioner had participated, to be an event of National Level. Thus, the benefit of two marks for having participated in any National Level event, as per criteria, has wrongfully been denied to the petitioner. Had that been done so, his score would have been 68 marks, which, according to me, is the score to which he is entitled to.

In view of the aforementioned facts, I have little hesitation to hold that the petitioner has wrongly been denied appointment.

Now, the question arises so as to what relief the petitioner is entitled to. A question was posed to the counsel for the State of Haryana to apprise the Court whether any vacant sanctioned post of Assistant Professor (Physical Education) in the College Cadre was available in the State of Haryana, against which the petitioner could be appointed. The answer came in the affirmative as the Court was informed that at least three such posts in the General Category, the Category to which the petitioner belongs, are vacant.

The appointments in the case in hand were made in the year 2012. Over three years have passed since then. The Court is informed that the work and conduct of all the private respondents is unblemished. No fault can be attributed to them for non-grant of two marks to the petitioner.

In view of the above facts, which are peculiar to this case, in order to do the complete justice between the parties, the petitioner is directed to be appointed as Assistant Professor (Physical Education) against one of the three available and sanctioned vacant posts.

The above exercise be done within a period of three months from the date of receipt of a certified copy of this order.

Needless to say that the petitioner shall be entitled to the seniority, pay fixation and increments with effect from the date other persons, in pursuance to the selection in question, have been appointed. However, he shall not be entitled to any arrears of pay before the date of his joining.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 18.11.2015

monika