

CWP No.12712 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12712 of 2014
Date of decision:18.03.2015**

Nitin Sood

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Satya Pal Jain, Senior Advocate, with
Mr. Dheeraj Jain, Mr. Arvind Moudgil &
Mr. Vijay Kumar Chaudhary, Advocates,
for the petitioner.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

Rakesh Kumar Jain, J.

The respondent no.2 advertised 1192 posts of Clerks for various departments of the Government of Punjab on 11.06.2013. The last date for online applications was 01.07.2013 which was extended upto 04.07.2013. As per clause (xiv) of the advertisement, the candidates appearing at the time of counselling were required to be present with their original certificates, set of photocopies and the original certificates were to be of a date prior to the date of application.

The petitioner applied online on 01.07.2013. He was in

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possession of the provisional pass certificate of BA Final Year and confidential result of BA 2nd year of English subject in which he was declared pass. He qualified the Punjabi type test on 26.05.2014. The respondent no.2 issued the schedule for counseling of candidates on 27.05.2014. As per the schedule, the counseling of the petitioner was held on 04.06.2014. During the counseling, the petitioner produced all the original documents and submitted photocopy of the following documents:-

- (i) Copy of 10th pass certificate.
- (ii) Copy of 10+2 pass certificate.
- (iii) Copy of BA 1st year result-cum-detailed marks card.
- (iv) Copy of original letter dated 01.07.2013 (Confidential Result) from Punjabi University, Patiala addressed to the Secretary, Punjab Subordinate Services Selection Board, mentioning that the petitioner has passed in English subject of BA 2nd Year.
- (v) Copy of provisional certificate of BA final year result dated 10.06.2013.
- (vi) Copy of BA 2nd year Result-cum-Detailed Marks Card.
- (vii) Copy of BA final year Result-cum-Detailed Marks Card.
- (viii) Copy of Bachelor of Arts Degree.
- (ix) Copy of six months Certificate Course in Computer Application.”

However, the result was declared on 26.06.2014 and the merit list was prepared on the basis of marks obtained in the graduation. The petitioner secured 51% marks and was shown at Sr. No.642 in the General

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Category, though the candidates at Sr. No.643 to 806 were with less than 51% marks but still the name of the petitioner was not included in the list of successful candidates, whereas respondents no.4 to 167, who had secured less marks than the petitioner, were selected.

The petitioner has, thus, sought a direction to re-draw the result and consider his case for the post of Clerk.

In reply to the writ petition, it is averred that the eligibility condition for the post of Clerk was that the candidates should have passed Graduation from some recognized University/Institution together with Punjabi at Matric level and possess at least 120 hours course with hands on experience in the use of Personal Computer on Information Technology in office productivity applications or Desktop Publishing applications from Government recognized Institution or a reputed institution which is ISO 9001 certified or possess a Computer Information Technology Course equivalent to 'O' Level certificate of Department of Electronics Accreditation of Computer Courses (DOEACC) of Government of India. It is further averred that the petitioner passed his B.A. Part-III examination on 20.09.2013 i.e. after the last date of submitting application for the post of Clerk and, thus, he was not eligible as he had not passed the Graduation Degree on or before 01.07.2013. It is further averred that the petitioner appeared in the type test and qualified the same but during counseling held on 04.06.2014, on checking of the certificates of the petitioner, it was found that he had not passed his graduation degree on or before 01.07.2013 and was thus ineligible on 01.07.2013 as the petitioner had actually passed his

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Graduation Degree on 20.09.2013.

The petitioner filed the rejoinder in which it was averred that he had passed his Graduation Degree before 01.07.2013. It is also submitted that the Assistant Registrar (Examination), Punjabi University, Patiala vide its letter dated 01.07.2013, had declared the confidential result of the petitioner wherein the petitioner had obtained 45 marks out of 100 in BA 2nd year and was thus declared pass. The petitioner submitted the confidential result to the Secretary, SS Board, Chandigarh before the last date of submission of application and as a result thereof, he was considered eligible and called for type test and counseling.

Counsel for the petitioner has submitted that the genuineness of the letter dated 01.07.2013 (Annexure P-8) sent by the Punjabi University, Patiala to the Secretary, SS Board, Chandigarh is not doubted and has, thus, relied upon a judgment of this Court in the case of **Lovekesh Kumar v. Haryana State Industrial and Infrastructure Development Corporation and others**, 2011(4) RSJ 167 and a judgment of the Supreme Court in the case of **Dolly Chhanda v. Chairman, JEE**, 2004(4) S.C.T. 546.

On the other hand, counsel for the respondent-State has submitted that the petitioner was not eligible on the date of counseling because he was not in possession of the Graduation Degree and has relied upon a judgment of the Karnataka High Court in the case of **N. Ravishankar v. State of Karnataka**, 1986(4) SLR 375.

I have heard learned counsel for the parties and perused the record with their able assistance.

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The only ground for ignoring the petitioner, as stated in the reply filed by the respondents, is that the petitioner had not passed his Graduation Degree on or before 01.07.2013 and was ineligible.

The respondents, with the aid of the judgment in **N. Ravishankar's case (supra)**, has submitted that it is necessary that on the last date fixed for submitting the applications for the posts for which applications are called for, the applicants must be able to submit the marks card along with their applications, so that the recruiting committee or agency or authority, can determine as to who among the applicants is qualified for the post.

In this regard, there is no dispute about the letter Annexure P-8, appended with the rejoinder, and there is no counter affidavit to the effect that the letter Annexure P-8 was not received by respondent no.2 on or before the cut off date.

Thus, in these circumstances, the decision of the Supreme Court in **Dolly Chhanda's case (supra)** would come to the rescue of the petitioner which has been followed by this Court in **Lovekesh Kumar's case (supra)** in which it has been held that *“even though, certificate was produced later but the same cannot be ignored particularly when its genuineness is not in dispute. It is also argued on behalf of the respondents that Information Brochure/Prospectus no doubt has the force of law, however, the Prospectus/Advertisement contained certain conditions which are mandatory to be observed and certain conditions are directory in nature, non-observance thereof can only be construed as an irregularity*

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which is curable in nature”.

Since the case of the respondents is that the requisite qualification of the Graduation Degree should have been obtained by the petitioner on or before 01.07.2013 and the Confidential Result was sent by the Punjabi University, Patiala to the SS Board, Chandigarh clearly mentioning that the petitioner has passed his BA Part-II English examination with 45% marks out of 100 which was the only bottleneck for the consideration of the candidature of the petitioner as he had to appear in the said examination because of compartment, otherwise the petitioner had passed his BA Part III examination and was fully eligible for being considered for the post of Clerk, therefore, the action of the respondents in ignoring the petitioner from being considered for the selection to the post of Clerk to which he had applied, is patently erroneous and illegal.

Accordingly, the present writ petition is hereby allowed and the petitioner is held entitled to be considered for the post of Clerk to which he had applied.

March 18, 2015
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(Rakesh Kumar Jain)
Judge