

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9054 of 2015

Date of Decision: 02.05.2016

Mannu Rani

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Alka Chatrath, Advocate,
for the petitioner.

Mr. Nikhil K.Chopra, Addl. AG, Punjab.

Mr. K.S. Mamrat, Advocate,
for Mr. R.S. Khosla, Sr. Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The challenge in this petition is to the order dated October 01, 2014 passed by respondent-PUDA rejecting the grievance in the legal notice dated July 30, 2014 submitted by the petitioner in which a claim was made for appointment to the post of Senior Assistant (Accounts) under Other Backward Category (OBC). The claim has been turned down on account of not fulfilling the minimum qualification of B.Com degree prescribed in the rules achieving a minimum score of 50% marks in the examination. The vacancies were advertised for direct recruitment. The petitioner has not secured 50% marks in her B.Com but she possesses the higher preferential qualification of M.Com passing the examination with 66.6% marks.

2. The terms and conditions of the advertisement prescribe that a

Post-Graduation in Commerce is an additional qualification and marks for it are to be included in the selection criteria. In case Post-Graduation is treated as basic qualification with additional weightage of 5 marks for the higher degree, the petitioner's merit comes to 94.32 which entitle her to be placed at slot 4 in the merit list of OBC category. The impugned order has been passed under directions issued in CWP No.15993 of 2014 by means of which the petitioner had sought relief after having served a legal notice. The petition was disposed of with a direction to the respondents to pass necessary orders on the notice within a period of three months from the date of receipt of certified copy of the order. In case, she was found entitled to her claim, an appointment letter was directed to be issued and place of posting to be indicated within a period of one month thereafter.

3. In the impugned order, the 2nd respondent has relied on PUDA Employees Service Regulations, 1999 where they deal with direct recruitment to the post of Senior Assistant (Accounts). Educational qualifications for the post provided therein are as follows:-

“Basic Qualification:

B.Com. from a recognized University with a minimum score of 50% marks AND possesses;

(i) At least one hundred and twenty hours Course with hands and experience in the use of Personal Computer or Information Technology Office Productivity Applications or Desktop Publishing Applications from a Govt. recognized institution or a reputed institution, which is ISO 9001 certified.

OR

Certificate in usage of Computers equivalent to “O” Level certificate of Department of Electronics Accreditation of Computer Courses (DOEACC) of Govt. Of India.

Preference will be given to candidates who have

done Post Graduation in Commerce and/or have done a Certification Course in the use of accounting software.”

4. As per Regulation 41 of the PUDA Regulations, the essential qualifications for any post cannot be relaxed. The Departmental Selection Committee that made the selection after checking found that the B.Com degree/certificate of the petitioner relied upon revealed that she had secured only 49.65% marks in her B.Com degree which is less than the compulsory qualification of 50% marks prescribed by PUDA. As the petitioner did not fulfill the qualifications in the minimum prescribed percentage, her claim has been declined by the Chief Administrator, PUDA, Mohali.

5. The claim of the petitioner is based on a Full Bench decision of this Court in Manjit Singh v. State of Punjab and others, 2011 (1) SLR 583 where the question referred for answer was: “whether a candidate possessing higher qualification than the one prescribed and advertised for the appointment to the posts is eligible for such selection and appointment”. The qualifications prescribed for a number of posts advertised including Physical Training Instructor (PTI) [the post in issue] as contained in the rules of service were:-

*“(E) Basic Qualification and Professional Qualifications :
(1) Senior Secondary School Certificate or Intermediate or its equivalent; and
(2) Certificate in Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent.”*

6. The employment advertisement was followed by a Corrigendum with the following endorsement:-

“Certificate in Physical Education Courses of one year duration after Senior Secondary School Certificate or Intermediate or its equivalent. However, this exception

shall not be available in any recruitment after the year 2007 because the Education Institutions are duty bound as per NCTE Regulation to commence the two year course from 2005.”

7. The argument raised before the Full Bench in *Manjit Singh* was that persons possessing qualification other than CP.Ed. were not eligible for appointment. The question mooted was whether candidates qualified with BP.Ed but not CP.Ed. were qualified for the post since they possessed higher qualification than the minimum in the line of study. The Court noticed that under the Punjab Educational Service, Class III, School Cadre Rules, 1955 the educational qualifications like Matriculation or 10+2 are not prescribed therein though in the advertisement/rules Senior Secondary School Certificate or Intermediate or its equivalent basic qualification was an essential component for eligibility for the post. Similarly, for professional qualifications, Certificate in Physical Education (C.P.Ed.) of duration of not less than two years or its equivalent was prescribed. However, by virtue of the Corrigendum dated October 24, 2006 even a candidate with one year duration course in C.P.Ed. was eligible for the recruitment in question. Similarly, in the rules no equivalent qualification of C.P.Ed. was referred to but in the advertisement C.P.Ed. or its equivalent qualification was also recognized as a professional qualification. The Court did not ignore that the qualification prescribed under the rule and the advertisement is always the minimum qualification. At the same time, the curriculum of B.P.Ed. and other higher courses, if include almost all the components of curriculum of C.P.Ed. should not be construed to be a totally different or distinct qualification. It was in these circumstances, that the Full

Bench held that a candidate possessing higher qualifications in the same line cannot be excluded from consideration for selection. It is a different matter that a candidate may not be entitled to any additional weightage for higher qualification but he cannot be denied consideration at par with the candidate. The Full Bench held that denying consideration to a candidate having better and higher qualification in the same line and discipline would result in breach of Articles 14 & 16 of the Constitution of India. The Court reached the conclusion by comparing the curriculum of C.P.Ed. and B.P.Ed. courses offered by the Panjab University, Chandigarh and found sufficient similarity in the two courses to reach the conclusion. However, the question before the Full Bench was not the same as arises in this case.

8. In *Manjit Singh* case, the educational criteria prescribed in the rules did not prescribe percentage of marks required for eligibility vis a vis basic qualification. In the present case, there is a clear and categorical statutory rule that a candidate must possess 50% marks in the B.Com to be considered eligible. In none of the cases relied upon by the petitioner in the petition or at the oral hearing was a judgment shown where the rule position was similar or identical to the one in hand. The petitioner cannot rest her case on the foundations of securing a first division in M.Com to by pass the minimum required. The M.Com degree may be in the same line of study after B.Com but that alone will not make her eligible for consideration for selection and appointment to the post for lack of the condition precedent laid down in the rules of service governing service. The petitioner qualified her M.Com (Accounting & Finance) in 2011 from Annamalai University.

9. Accordingly, the preference given to candidates who possess

Post Graduation in Commerce has to be read subject to possession of the basic qualification of B.Com from a recognized University with a minimum score of 50% marks. If the petitioner cannot cross the first hurdle then preference becomes meaningless. Admittedly, the petitioner is not a B.Com pass with 50% marks and, therefore, no directions can be issued altering minimum qualification by a veto of the writ court. It is well settled that in absence of enabling provision in the statute/rules minimum educational qualification cannot be relaxed when there is inherent lack of eligibility. See among other judgments State of Orrisa v. Mamta Mohanty, (2011) 3 SCC 436. Non essential qualifications or preferences may be within the parameters of Article 16 of the Constitution to underscore by relaxation being different from essential eligibility conditions. There is a marked difference between eligibility and qualifications in service law entailing different results in different fact situations. But before a candidate is considered for a post he must fulfill the basic eligibility criteria. If academic marks are prescribed they must be achieved and if departed from must be brought in tune with the rules and departures struck down being the rule of law. The preferential higher qualifications would come into operation to secure advantage to a candidate and lend him an edge in competition only if he holds the B.Com degree with 50% marks prescribed but the additional weightage to M.Com degree holders does not stand alone and de hors the minimum prescribed percentage of marks in B.Com @ 50% marks. Therefore, the law in *Manjit Singh* case is apparently distinguishable on facts and reliance on the ruling is misconceived and of no help to the petitioner.

10. Even the prescribed selection criteria speaks against the petitioner's claim based on acquiring higher qualifications over and above the minimum. Sub clause (a) prescribes 30% marks for academic qualification which has to be worked in the formula: 25 X % of average marks in exams Matric onwards/100 (Matric included). The breakup of 5 marks, Matric, 5 marks 10+2, 15 marks for B.Com (three year degree course) whereas the additional qualification for Post Graduation in Commerce wins 5 marks for 60% and above score. If the petitioner has a right to be assigned 5 marks for M.Com she still does not make the grade because of the basic lacuna in her B.Com qualification which is below the minimum required. The petitioner builds castles in the air.

11. For the foregoing reasons, the opinion is that the petition cannot bring relief to the petitioner as prayed for as the prayer is based on a misconception and a misreading of *Manjit Singh* case and is thus best dismissed for lack of merit. In *Manjit Singh* case the Court did not deal with a case of prescription of minimum marks for the basic qualification on which depended the eligibility criteria but not the preference.

12. Accordingly, the petition is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

02.05.2016
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