

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

**CWP No. 3025 of 2011
Date of Decision: 01.08.2017**

Jain Kumar

.....Petitioner

vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. S.S. Sangwan, Advocate,
for the petitioner.

Mr. R.K. Doon, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the communication made to him by the respondent-Haryana Staff Selection Commission on 30.11.2010 (Annexure P-24), informing him that as he had passed the D.Ed-II year examination on 14.06.2010 and the cut off date for submission of the application forms for the post of JBT teachers against advertisement 04/2009 was 26.04.2010, therefore, he did not possess the essential qualification on the cut off date, consequent upon which his candidature had been rejected.

Learned counsel for the petitioner submits that the petitioner had initially appeared for the Diploma in Education (D.Ed) II year examination in April 2009 but on account of the unfortunate death of his mother on 24.04.2009, he could not appear for the examination in the subject of “environmental studies”, which was also held on the same date. He therefore took the said written examination on 07.09.2009 and appeared for the practical examination on

08.09.2009, the result of which was actually declared on 11.09.2009, by the Board of School Education Haryana, vide Annexure P-13. However, though the entire details of the marks obtained by the petitioner in each subject have been given in the said document, the result has been shown to be “RLA”, i.e. “result later due to lack of award”.

The same result was eventually finally declared on 14.06.2010 (vide Annexure P-16) by the said Board, in which the entire set of marks is seen to be exactly the same as in Annexure P-13 dated 11.09.2009, except that the result has been shown as “passed in the Ist Division” with the “internal grand total” shown to be 523 marks.

He submits that as a matter of fact, the complete result was not declared on account the fact that the petitioner had filed Civil Suit No. 1010 of 2009, in the Court of the Civil Judge (Senior Division), Bhiwani, in which an interim order was passed on 05.09.2009, directing the defendants (in the suit), i.e. the Board of School Education, Haryana, to not declare the result till the final decision of the suit, which order was vacated on 14.06.2010, a copy of which has been annexed as Annexure P-15.

On query, learned counsel for the petitioner submits that the suit had been instituted by the petitioner against the Board of School Education Haryana, in view of the fact that because he could not take one of the examination papers on 24.04.2009, he had been required by the Board to take the entire examination again, i.e. all the others examination papers, which he had otherwise appeared for in April 2009.

Eventually the civil suit was withdrawn by the present petitioner (plaintiff therein) on 27.10.2010, as recorded in the order of the learned Civil Judge, a copy of which has been annexed as Annexure P-23.

Learned counsel for the petitioner submits that it was withdrawn because by that time the Board of School Education had amended its rules, thereby not making it essential for any person who had not appeared in one examination paper, to take all the other examination papers also.

Thereafter, during the pendency of the present petition, the petitioner is stated to have filed another Civil Suit, No. 86/2017, which came up before the learned Civil Judge (Junior Division), Bhiwani, but was dismissed on 02.05.2017, against which an appeal was preferred by the present petitioner, i.e. CMA/55/2017, in which an order came to be recorded on 14.07.2017 by the learned Additional District Judge Bhiwani, to the following effect:-

“Jain Kumar vs. Board of School Education Haryana

*Present:- Shri S.L. Jangra, Advocate, for the appellant-plaintiff.
Shri Ganesh Bansal, Advocate, for the respondent-
defendant with Shri Vinod Kumar, Superintendent, D.ED
Cell, Board of School Education Haryana, Bhiwani*

In pursuance to the notice issued by this Court Shri Vinod Kumar, Superintendent, D.ED Cell, Board of School Education Haryana, Bhiwani, appeared in person and made the following statement:-

“Stated that the appellant had cleared his D.Ed (second year), 2009 Examination on 11.09.2009 alongwith other students who had participated in the compartment examination. However, the result of the appellant was shown as late (RLA) due to pendency of the Court case and thereafter, detailed mark sheet was issued on 14.06.2010.”

After that Shri S.L. Jangra, Advocate, for the appellant also made the following statement:

“Stated that in view of the above statement of Shri

Vinod Kumar, Superintendent, I do not want to pursue the present civil miscellaneous appeal and wants to withdraw the same. File may be consigned to the records after due compliance.

Heard. Keeping in view the statement made by Shri Vinod Kumar, Superintendent, D.ED Cell, Board of School Education Haryana, Bhiwani and thereafter Shri S.L. Jangra, learned counsel for the appellant, instant appeal is hereby dismissed as withdrawn. File of the instant appeal be consigned to the records, after due compliance.”

Dated 14.07.2017

*(Narender Sharma)
ADJ. Bhiwani
UID No. HR-0142”*

Though the factum of the second suit having been filed, it having been dismissed and an appeal against that having been filed has not been mentioned in the writ petition, those being subsequent events to its filing, a certified copy of the aforesaid order has been produced in Court today by learned counsel for the petitioner, which would obviously authenticate his aforesaid contention.

Thus, the situation is that though officially the petitioners' result in the the D.Ed. IInd year examination was not declared till 14.06.2010, inasmuch as he was not shown to have passed the examination and the total marks were technically not shown in the result, however, factually the result had been calculated and in fact even put on the website on 11.09.2009, and the result had actually shown the detailed marks obtained by the petitioner, on that date itself. The only difference was that he was not shown to have passed the examination (which he eventually was shown to have passed in the Ist division), due to the stay operating as ordered by the learned Civil Court.

Learned counsel for the State submits that even though the aforesaid facts may otherwise be correct, however, the Haryana Staff Selection Commission,

i.e. respondent No. 2 herein, not being a party to the civil suit at Bhiwani, whatever orders were passed in that *lis*, cannot be held to be binding on the Commission.

Undoubtedly, the factum of those orders not otherwise being binding on the Commission cannot be denied, the Commission not being a party thereto; however, what this Court is to see in writ jurisdiction is as to whether the petitioner actually fulfilled the parameters and basic eligibility conditions required to be considered for appointment to the post in question on the cut off date prescribed in the advertisement, Annexure P-1, i.e. 14.09.2009, (later amended by a corrigendum to 26.04.2010), which was the last date for submission of application forms to the Haryana Staff Selection Commission.

The petitioner having unfortunately lost his mother on the date that he was to actually appear for one examination paper, i.e. on 24.04.2009, very obviously that was an unfortunate circumstance beyond his control and he having taken the paper 'leftover' on 07.09.2009, and the practical examination thereafter on 08.09.2009, the result of which was actually declared on 11.09.2009 on the website of the Board of School Education Haryana, as deposed before the learned appellate Court in CMA No. 55 of 2017, recorded in the order of that Court dated 14.07.2017 as reproduced hereinabove, I see no reason as to why the petitioner should be denied the benefit of the post that he has applied for, i.e. Junior Basic Trained Teacher (JBT), only on the ground that his result was not “fully declared” on the cut-off date.

Vide an order of this Court dated 18.07.2017 (in the present writ petition), learned counsel for the State and the Commission had been directed to produced in Court the marks obtained by the petitioner in the selection process. The said result having been so produced in Court today in a sealed envelope,

which has been de-sealed, it is seen that he has obtained 'grand total' marks of 47.99 out of 90, with learned counsel for the respondent-Commission stating that marks obtained by the last selected candidate in the Scheduled Castes category are 45.34.

Though the selection in question is of the year 2010, with the result also having been declared on 17.09.2010, it has been averred by the petitioner in paragraph 17, that out of the 1233 posts kept reserved for the Scheduled Caste category (male), only 1135 candidates were selected, with 98 posts lying vacant at that time.

The said averment has factually not been denied by the respondent-Commission in its reply to paragraph 17, wherein the reply only refers to the petitioners' ineligibility on account of his result having been formally declared after the cut off date.

Since the petitioner has been found to have obtained more marks than the last candidate selected in the aforesaid category, it is directed that the petitioner be given an appointment against one of the then vacant posts, but at this stage, without disturbing the last candidate selected, seven years down the line.

The direction hereinabove is in view of the fact that admittedly 98 posts were kept vacant at that stage, which even if filled up thereafter by a subsequent selection process, obviously cannot be translated to mean that there are no posts at all vacant in the department of Primary Education, Haryana, especially as even presently, selections for the post of primary teachers are continuing.

This petition is therefore allowed, with the aforesaid direction to be carried out within a period of three months from the date of receipt of a certified copy of this order.

Since the selection pertains to year 2010 and the petitioners' non-selection is traceable to the death of his mother and non-declaration of his supplementary result only on account of a stay operating against such declaration of the result, at the instance of the Civil Court, (though actually his declared marks stood displayed), the petitioners' seniority would be calculated along with those in the select list of 2010 in the cadre of JBT teachers, but he shall not be paid any actual financial benefits, till the date that he is actually appointed to the post. However, his pay shall be fixed at this stage of his immediate juniour, upon such appointment being granted to him.

August 01, 2017
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes