

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

Civil Writ Petition No.23135 of 2016(O&M)

Date of Decision: April 7, 2017

Surinderjit Saini

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ishan Gupta, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. A.G. Punjab.

JAISHREE THAKUR, J.

The petitioner herein is seeking appointment for the post of Master in Mathematics, in terms of the advertisement dated 20.11.2015.

2. In brief, the facts are that the respondents-State issued an advertisement dated 20.11.2015 inviting applications from eligible candidates for filling up various posts of Master/Mistress in the Education Department. In all, 1200 posts were advertised for the post of Math Master/Mistress, out of which 24 posts were advertised for General Sports Category. The petitioner applied in the General Sports Category, as he carried Sports Gradation Certificate Grade-B for representing State of Punjab in Swimming, whereas, as per requirement in the advertisement, a candidate shall carry Sports Gradation Certificate Grade-C. The petitioner qualified the examination, held pursuant to the advertisement and was

declared '*eligible*' in the merit-list that was uploaded on the website on 20.10.2016, with merit score of 186. The respondents-State also published a public notice directing the candidates, whose status was shown '*withheld*', to clear objections with the Director. On 27.10.2016, another merit list was uploaded on website and status of the petitioner was changed from '*eligible*' to '*withheld*' with remarks '*According to Sports Recruitment Rules, 1988 for recruitment of Class-C post candidate should hold at least Ist, 2nd and 3rd position at State Level (Grade C), but the candidate holds Grade B participation certificate, which do not cover under Gradation Policy*'. The petitioner thereafter, appeared before the authorities for verifying the issue raised, but on enquiry it was found that objections were raised on the basis of circular memo No.47/26/83-ISS/1457 dated 18.08.2008 issued by the Department of Sports and Youth Services, wherein, certain changes have been brought in the Sports Gradation Policy, with regard to Category A and Category B, after the petitioner has got his Sports Gradation Certificate, which was issued on 04.07.2008. It is contended that in case certificate of the petitioner with Grade B was not taken into consideration, he should have been considered as having Grade C certificate. Reliance in this regard, has been placed upon policy with regard to the Certification of Gradation as per the circular letter No.47/26/83-5Edu(5)1490 dated 7.9.1991/12.06.1991 issued on 04.08.1992 and circular No.47/26/83-5Edu/2036 dated 10.12.1997.

3. Mr. Ishan Gupta, learned counsel appearing on behalf of the petitioner has argued that the objection so raised by the respondents-State that the petitioner holds a Grade B participation certificate, which is not

covered under the Gradation Policy circulated vide circular memo No.47/26/83-ISS/1457 dated 18.08.2008, is not sustainable, in view of the circulars dated 04.08.1992 and 10.12.1997, where certain changes have been brought in Sports Gradation Policy with regard to only Category 'A' and Category 'B', immediately after the petitioner had got his Sports Gradation Certificate. It is contended that in terms of the advertisement, a candidate shall carry Sports Gradation Certificate with Grade C, whereas, the petitioner is holding a Grade B participation Certificate, therefore, action of the respondents-State in rejecting the candidature of the petitioner is illegal and arbitrary.

4. Per contra Mr. L.S. Virk, learned counsel appearing on behalf of the respondents-State has argued that earlier the gradation was as per the policy dated 04.08.1992, which was subsequently amended on 10.12.1997, wherein, the Grade B was given even for the participation in national championship/inter state championship recognized by National Federation, whereas, in the current policy dated 18.08.2008, condition has been made that the sportsman should be First Three Position Holder of the Senior National Championship, National Games, Junior World Championship, All India Inter University Championship, National Championship under 19, National School Games under 17/All India Rule Games and to the first three position holders of National Games for Category B Gradation. It is contended that the petitioner does not fulfill the criteria under the Sports Policy dated 18.08.2008, therefore, his candidature was rightly rejected.

5. I have heard learned counsel for the parties and have perused the record of the case very thoroughly.

6. The entire case of the petitioner is built up on the policies with regard to the Certification of Gradation as per the circular letter No.47/26/83-5Edu(5)1490 dated 7.9.1991/12.06.1991 issued on 04.08.1992 and circular letter No.47/26/83-5Edu/2036 dated 10.12.1997, whereas, as per the respondents-State the petitioner does not fulfill the criteria under the current Sports Policy circulated vide circular memo No.47/26/83-ISS/1457 dated 18.08.2008.

7. As per the General Conditions contained in advertisement issued on 20.11.2015, a candidate enjoying the benefit of Sports Quota, shall have to produce a certificate at the time of scrutiny, wherein, it must be mentioned that *“he has won first, second or third position in any discipline in an event organized by State Level Federation, affiliated with Punjab Olympic Association, in State level Championship in individual event or in a team and famous Non-Olympic viz. Cricket and in case of Tennis the winner has won any one position out of the first three position in concerned State Level Association affiliated with National Federation. Under the sports quota, the necessary certificate must be issued to the applying candidate by Director of Sports, Punjab, wherein, his gradation also be shown. In category ‘C’, only those certificates shall be considered, which are approved by Director of Sports, Punjab.”*

8. From the above general instructions, it is abundantly clear that a candidate, who was applying under the Sports Quota, was required to produce a certificate, which satisfies the following conditions;

(i) that it should have been mentioned in the certificate that as to which position the candidate has got, out of first, second or

third, in an event, which had been organized by State Level Federation, affiliated with Punjab Olympic Association in a State Level Championship, either in an individual event or in a team and famous Non-Olympic viz. Cricket,

(ii) That in case of Tennis, the winner should have won any one position, out of the first three positions in concerned State Level Association affiliated with National Federation,

(iii) That the necessary certificate must be issued by the Director of Sports, Punjab, in the name of the candidate, wherein, gradation of the candidate should also be shown, and

(iv) That in Category C, only those certificates shall be considered, which are approved by Director of Sports, Punjab.

9. In the instant writ petition, in support of his case, the petitioner has produced on record his Sports Gradation Certificate dated 04.07.2008 as Annexure P-3, according to which the petitioner has been declared as “*B Grade (Representing Senior Punjab State) sportsperson in Swimming Game*”. Certificate Annexure P-3 further reflects the sports achievements, wherein, under the heading “*Position Secured*” only word “*Participated*” has been mentioned, while giving the “*Name of Competition*” as 33rd Junior National Aquatic Championship and 60th Senior National Aquatic. So from a bare reading of the Sports Gradation Certificate, relied upon by the petitioner shows that it does not fulfill the conditions, as stipulated in the advertisement, so issued. As per the advertisement, the first and foremost requirement was that it must have been mentioned in the Sports Gradation

Certificate that the candidate had secured any position, out of first three positions, whereas, the petitioner has been shown to have participated, secondly, it does not specify that whether the event in which the petitioner had participated were organized by State Level Federation, affiliated with Punjab Olympic Association in a State Level Championship. The certificate produced by the petitioner has only find mentioned his Grade as B, but it does not fulfill the other conditions, specified in the advertisement, so issued.

10. A contention has been raised by learned counsel for the petitioner that the petitioner being eligible for Grade B is deemed to be eligible for Grade C as well as Grade D. Admittedly the petitioner had a Category B certificate has issued by the Punjab Sports Department which was in consonance with the instructions as specified in the circulars of 1992 and 1997. By the circular issued on 18.8.2008 there was a change in the specifications in the Grade A and B category, without any changes reflected in the category C and D, for which the 1997 instructions were to apply. Point 4 of the 4.8.1992 (instructions still in force) note *'participation in a lower grade shall be pre-requisite for except ability in the higher grade. For instance, no achievement in Grade A would be recognized if it is not shown to have been achieved through participation in grade 'B', 'C' and 'D'. Similarly for recognition of an achievement in Grade 'B' participation in Grade 'C' and 'D' will be necessary.'* Meaning thereby a person would be issued a category 'B' certificate only if there is participation in category 'C' level sports. The petitioner having a category 'B' certificate would necessarily have participated in sports and could have been considered in a

lower category. It is not a case that the petitioner did not fall into the sports category or did not have the requisite qualification on the date of the advertisement. At best it could be said that there was an irregularity in the submission of his certificate since he had relied upon a certificate issued by the Sports Department of Punjab based on instructions which had subsequently been amended. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

11. It has been held in the case of ***“Dolly Chhanda vs. Chairman, Jee and others”***, AIR 2004 SC 5043, that the general rule is that while applying for any course of study or a post is that a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. It was also held that there can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. It was further held that depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

12. As far as the contention raised by learned counsel for the State that the documents were not as per the advertisement, the petitioner submitted a representation to the effect that he may be given some time to

submit a new certificate but to no avail. The name of the petitioner earlier appeared in the '*eligible*' list and it is only later that his name was in the '*withheld*' list. He was not offered any opportunity to produce the certificate, in accordance with the advertisement and the current instructions.

13. Mr. L.S. Virk, learned counsel appearing on behalf of the respondents-State places reliance upon a judgment rendered by this court in CWP 9758 of 2011 titled as “***Satinder Kaur vs State of Punjab and others***” to contend that in a similar situation, this court has dismissed the writ petition. However the case relied upon is distinguishable. In “***Satinder Kaur vs. State of Punjab and others***” (*supra*) she had a Category B certificate that was issued on 15.4.1996 on the basis of which she applied for a post, despite the new Government instructions that had come into effect on 18.8.2008. She was given an opportunity by the respondents to get herself graded as per the notification prevalent on the date of the advertisement but she refused to do so. In this background, appointment was denied. The Division Bench too dismissed the appeal by noting that the appellant Satinder Kaur had refused to get her Gradation certificate re-determined as per new instructions. Whereas, in the instant case no such opportunity has been given despite the fact that a request was made.

14. Therefore, in the opinion of the Court the selection committee could have considered the category of the petitioner to be of ‘C’ category or should have given him an opportunity, as was done in the case of “***Satinder Kaur vs. State of Punjab and others***” (*supra*). Since posts are still lying vacant and have not been filled up in the sports category, this writ petition is being disposed of by giving a direction to the respondents to give an

opportunity to the petitioner to produce a certificate in terms of the instructions dated 18.8.2008. Let the needful be done within a period of two months of receipt of certified copy of this order and in case the petitioner fulfills all other eligibility criteria, his case may be considered for appointment.

15. Writ petition stands allowed accordingly.

April 7, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

