

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 23.10.2017

1.

CWP-27021-2016

Priyanka and others

... Petitioners

Versus

State of Haryana and others

... Respondents
2.

CWP-192-2017

Bharti and another

... Petitioners

Versus

State of Haryana and another

... Respondents
3.

CWP-602-2017

Richa

... Petitioner

Versus

State of Haryana and others

... Respondents
4.

CWP-958-2017

Aditi Kumari

... Petitioner

Versus

State of Haryana and another

... Respondents
5.

CWP-1129-2017

Anil Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

6.

CWP-1130-2017

Krishan Panwar

... Petitioner

Versus

The State of Haryana and others

... Respondents

7.

CWP-1263-2017

Suman Sheoran

... Petitioner

Versus

State of Haryana and another

... Respondents

8.

CWP-1628-2017

Pankaj Kumar Yadav and others

... Petitioners

Versus

The State of Haryana and others

... Respondents

9.

CWP-1788-2017

Benu

... Petitioner

Versus

Haryana Staff Selection Commission and another

... Respondents

10.

CWP-2874-2017

Ritu Devi Kundu

... Petitioner

Versus

Haryana Staff Selection Commission

... Respondent

11.

CWP-2963-2017

Garima Rani

... Petitioner

Versus

State of Haryana and another

... Respondents

12.

CWP-4884-2017

Reema Gupta

... Petitioner

Versus

State of Haryana and another

... Respondents

13.

CWP-4889-2017

Manjeet Kumar and others

... Petitioners

Versus

State of Haryana and another

... Respondents

14.

CWP-5239-2017

Preeti Rani and others

... Petitioners

Versus

State of Haryana and another

... Respondents

15.

CWP-5300-2017

Sunil Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

16.

CWP-8162-2017

Sunil Kumar

... Petitioner

Versus

The State of Haryana and another

... Respondents

17.

CWP-9938-2017

Ruby

... Petitioner

Versus

State of Haryana and others

... Respondents

18.

CWP-10355-2017

Swati Kumari and others

... Petitioners

Versus

State of Haryana and others

... Respondents

19.

CWP-17047-2017

Deepak

... Petitioner

Versus

State of Haryana and another

... Respondents

20.

CWP-22414-2017

Kailash Chander

... Petitioner

Versus

Haryana Staff Selection Commission

... Respondent

21.

CWP-22429-2017

Pooja Verma

... Petitioner

Versus

Haryana Staff Selection Commission

... Respondent

22.

CWP-22613-2017

Sheetal

... Petitioner

Versus

State of Haryana and another

... Respondents

23.

CWP-23135-2017

Rekha Devi

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:

Mr.R.K.Malik, Senior Advocate
 with Mr.Tejpal Dhull, Advocate in CWP-27021-2016;
 Mr.B.S. Rana, Senior Advocate
 with Mr. Gagandeep Rana, Advocate in CWP-2874-2017;
 Mr. Gobind Sharma, Advocate in CWP-5300-2017;
 Mr.Balraj Gujjar, Advocate in CWP nos. 1788, 1263, 8162 of
 2017;
 Mr.Pankaj Middha, Advocate in CWP-602-2017;
 Mr. Rahul Deswal, Advocate in CWP-2963-2017 & 23135-
 2017;
 Mr. Ramesh Malik, Advocate in CWP-192-2017;
 Mr. Vijay Pal, Advocate in CWP-1130-2017 & 1628-2017;
 Mr. Sant Lal Barwala, Advocate in CWP-22613-2017;
 Mr.R.K.Girdhwal, Advocate in CWP-4889-2017, 5239-2017;
 Mr.Lekh Raj Nandal, Advocate in CWP-22414-2017, 22429-
 2017;
 Mr. Raj Kumar Chandana, Advocate in CWP-1129-2017;
 Mr. Sanjeev Kodan, Advocate in CWP-958-2017;
 Mr. Naveen Daryal, Advocate in CWP-4884-2017;

Mr.Jagjeet Beniwal, Advocate in CWP-17047-2017;
Mr. D. R. Bansal, Advocate in CWP-9938-2017;
Mr. S.K.Hooda, Advocate in CWP-10355-2017;
for the petitioners.

Mr.Hitesh Pandit, Addl.A.G. Haryana.

Mr.Raj Kapoor Malik, Advocate
for respondents no. 3 to 5 in CWP no.27021 of 2016.

Mr.Jagbir Malik, Advocate
for respondents no.6 to 14 in CWP-27021-2016.

Mr.Rajinder S. Rana, Advocate
for respondent no.4 in CWP-1130-2017.

AMOL RATTAN SINGH, J.(ORAL)

The controversy in these petitions is as to whether the petitioners can be declared eligible for being considered for appointment to the posts of Post Graduate Teachers (Mathematics), in view of the fact that the results of the examinations for the degrees they were to obtain to make them eligible for the said posts, were not declared officially by the University concerned by the cut off date prescribed in the advertisement inviting applications, i.e. 12.10.2015.

The contention of the petitioners is that they had, however, all obtained the result confidentially from the respondent University, i.e. the Maharshi Dayanand University, upon making an application to that effect before the University and as per the said results, they all passed the examinations which made them eligible for being considered as candidates for the posts in question.

2. Mr.R.K.Malik, learned senior counsel appearing for the petitioners in CWP no.27021 of 2016, has referred to certificates issued by the University in respect of all the petitioners in CWP no.27021 of 2016 (Annexure P-13 to P-21), by which the University has certified that the

petitioners had passed the B.Ed. examinations held in July 2015, with the result already issued to each petitioner on the different dates given in each certificate.

Mr.Malik points out that the said dates are all of September 2015, i.e. obviously before 12.10.2015.

It is contended by learned counsel appearing in the other petitions also, that the petitioners having admittedly filled in their forms prior to the cut off the date and they having disclosed the result therein as was communicated by the University to them confidentially, obviously the results were declared qua each petitioner prior to 12.10.2015.

3. The following judgments are referred to by the learned counsel for the petitioner in support of their contentions:-

“1. Mrs.Rekha Chaturvedi vs. University of Rajasthan, 1993(2) S.C.T. 279

2. Ashok Kumar Sharma vs. Chander Shekhar, (1997)2 SCC 18

3. Shashi Bala vs. State of Punjab, 1999(3) S.C.T. 94

4. Ashok Kumar Sonkar vs. Union of India and others, (2007) 4 SCC 54

5. Ajay Sondhi vs. Punjabi University, Patiala and others, 2005(3) S.C.T. 592

6. Rakesh Kumar Sharma vs. Govt. of NCT of Delhi & Ors., (2013)11 SCC 58”

4. Learned counsel for the State as also for respondents no.6 to 14 in CWP no.27021 of 2016, for respondent no.4 in CWP no.1130 of 2017 and for respondents no. 3 to 5 in CWP no.27021 of 2016, have opposed the aforesaid contentions, essentially arguing that, firstly, the result not having been declared by the University, by way of publication, it is not an officially

declared result and therefore cannot be taken into consideration to hold the petitioners eligible to be appointed to the posts in question.

Learned counsel for the State as also for the private respondents have also relied upon various judgments of the Supreme Court and this Court (as also of other Courts), to submit that the cut off date prescribed in the advertisement being a sacrosanct date, this Court would not hold the petitioners to be eligible, with the result not officially declared by the University by that date.

The following judgments have been referred to by the learned State counsel :-

- 1. Government of Andhra Pradesh and others vs. N.Subbarayudu and others, (2008) 14 Supreme Court Cases 702**
- 2. Jyoti Rani vs. State of Haryana and others, 2012 (2) S.C.T. 105**
- 3. Sanjay Kumar Tiwari vs. Jharkhand Academic Council, Namkum, Ranchi, 2016(4) AIR Jhar R.249.**
- 4. Kabal Singh and others vs. State of Punjab and another, 1997(3) SLR 2**
- 5. A.P.Public Service Commission vs. B.Sarat Chandra, (1990)2 SCC 669**
- 6. R.Muthuselvi vs. The Secretary Tamil Nadu Public Service Commission Frazer Bridge Road, 2017 (1) C.W.C. 444**
- 7. Jiura Oraon vs. The State of Jharkhand and others, 2013(21) S.C.T. 522**
- 8. Rakesh Kumar Sharma vs. Govt. of NCT of Delhi & Ors., (2013) 11 SCC 58**
- 9. A.P.Public Service Commission vs. B.Sarat Chandra, 1990(2) SCC, 669**
- 10. Mrs.Rekha Chaturvedi vs. University of Rajasthan, 1993(1) JT 220**

11. U.P. Public Service Commission Uttar Pradesh, Allahabad vs. Alpana, 1994 AIR (SC) 423

12. Jyoti Rani vs. State of Haryana and others, 2012 (2) S.C.T. 105.

5. The learned Addl.A.G. further submits that as such, the cut off date being sacrosanct, persons other than the petitioners would be discriminated against, if the contention of the petitioners is to be accepted, as those persons had not applied for the result confidentially, under the impression that with their result not declared by the University, they were ineligible to apply for the posts.

6. Mr.Jagbir Malik, learned counsel appearing for some of the aforesaid private respondents, has also relied upon the calendar of the Maharshi Dayanand University, for the year 2005, Clauses 29, 30 and 37 of which, pertaining to the General Rules for Examination, read as follows:-

“29. The Registrar/Controller of Examinations shall publish the results of various University examinations in such manner as may be decided by the Academic Council.

Before declaration, the results of an examination together with a statement of pass percentage in the whole examination and in each subject for current and the for preceding years, shall be submitted to the Vice-Chancellor.

The Vice-Chancellor may order publication of the results unless on scrutiny of the figures submitted, he considers that there has been a distinct change of standard in the examination as a whole or in a particular subject. In that case he may refer the matter to the examiners concerned for a report or may take such action as he considers necessary.

30. *The Registrar/Controller of Examinations may withhold the result of any candidate who by an act of omission or commission might be found to be guilty of either contravening the provisions of the Act, the Statutes, the Ordinances or the Regulations or of non-compliance thereof or for any other cause which in the opinion of the, Registrar/Controller of Examinations might warrant such an action.*

XXX XXX XXX

XXX XXX XXX

37. *Any candidate who has been declared successful at a University examination may, after the declaration, of his/her result and before the award of the degree or diploma at the next convocation, apply to the Registrar/Controller of Examinations alongwith fee for Provisional Certificate for passing the examination. The application should come through the officer who forwarded the application of the candidate for appearing in the examination together with a fee of Rs.100/- for the issue of Provisional Certificate.”*

He therefore submits that since the Registrar/Controller of Examinations is to declare the result in terms of the aforesaid calendar, any disclosure of the result of the examination in question prior to that cannot be recognized by this Court as a result duly published by the cut off date given in the advertisement.

7. Mr.Rana, learned senior counsel appearing for the petitioners in CWP no.2874 of 2017, in rebuttal has relied upon a judgment of a Division Bench of this Court in CWP no.9533 of 2001, “Ankita Beniwal vs. Haryana Public Service Commission”, wherein also it is seen that the petitioner therein had been communicated her result in confidence by the University

eventually holding that the result having been so communicated, the petitioner was to be treated as having qualified the examination which made her eligible for the post in question.

8. Having heard learned counsel for the parties, firstly, in view of the Division Bench judgment which in any case is binding upon this Court, and otherwise also, considering the fact that the petitioners have obtained the results not from any other source but from the University itself, after having duly applied for the same, even if in the University Calendar it is contained that the result would be declared by the Controller of the Examination / Registrar, it cannot in my opinion be considered to be a result not validly declared, with the same result being backed up by the University even by certificates issued later, especially when the result was given in confidence to the petitioners prior to the cut off date. Further, the provision for applying for a confidential result being very much existent in all Universities, with formats published by the said Universities to enable candidates eligible to apply for such results confidentially, to enable them to appear for examinations / selection processes for various jobs, I do not see how even the aforesaid stipulation in the University Calendar comes in the way of the petitioners.

9. As regards the contention of learned counsel for the State that other persons would stand discriminated against, that contention is not tenable either, because with all persons who took an examination obviously eligible to apply for a confidential result, if some did not so apply, to the University, in the opinion of this Court the petitioners cannot be made to suffer for that, with the University actually having declared them to have passed the examination concerned prior to the cut off date.

10. As regards the cut off date being sacrosanct, the judgments cited by the respondents are obviously equally binding on this Court; however with the result having been declared even in a confidential manner prior to the cut off date, I do not see how the sanctity of that date has been violated.

11. Mr. Jagbir Malik, learned counsel for the private respondents in CWP no.27021 of 2016 has also now drawn attention of this Court to the last clause of the corrigendum issued by the respondent Commission, i.e. Annexure P-2 with the CWP no.27021 of 2016, which reads as follows:-

“Other terms and conditions of the Advertisement Nos.3/2015, 4/2015, 5/2015 and 9/2015 dated 28.6.2015, 02.07.2015 and 23.07.2015 remain the same.”

He therefore submits that all other terms and conditions prescribed in the original advertisement remaining the same, including the eligibility conditions, even the extension of the last date for submission of application forms (given in the paragraph immediately prior to that), cannot be accepted to be an extension of the date by which eligibility conditions were to be met with.

To understand the argument of learned counsel, the said annexure, i.e. the notice extending the date, is also being reproduced in toto:-

“NOTICE

(Extension of Closing Date for Submission of Online Application)

Reference Haryana Staff Selection Commission's Advt. No.3/2015, 4/2015, 5/2015 and 9/2015, dated 28.6.2015, 02.07.2015 and 23.07.2015 which were published in various newspapers on 29.06.2015, 03.07.2015 and 24.07.2015, vide above

Advertisement online application forms were invited for various posts of PGT and TGT through Haryana Staff Selection Commission's website i.e. www.hssc.gov.in from 21st August 2015 to 21st September, 2015.

Keeping in view the convenience of the candidates, the last date for applying online against these Advt.3/2015, 4/2015, 5/2015 and 9/2015 is hereby extended up to 12th October, 2015 till 05:00 P.M. through Haryana Staff Selection Commission website www.hssc.gov.in. Thereafter, website link will be disabled. The last date for deposit of fee is also extended up to 15th October, 2015.

Other terms and conditions of the Advertisement Nos.3/2015, 4/2015, 5/2015 and 9/2015 dated 28.6.2015, 02.07.2015 and 23.07.2015 remain the same.”

Learned counsel is correct in saying that the eligibility conditions as prescribed in the advertisement Annexure P-1, dated 28.06.2015, would not change simply by extension of the last date of submission of application.

His contention, 'more fully', is that as in the said advertisement, in Clause 1 thereof, it is stipulated that eligibility conditions would be determined as per the last date fixed for applying by way of online applications, “**i.e. 21st September 2015**”, that reference date, to see eligibility conditions, cannot be changed.

Whereas if the phrase “with regard to last date fixed to apply online applications also called as closing date”, had not been given in Annexure P-1, that contention may have been considered by this Court; however, it being stipulated so, that the reference date would be the last date

and the last date itself having been extended vide the notice Annexure P-2 upto 12.10.2015, the said argument also cannot be accepted, in my opinion.

12. Hence, in view of what has been stated hereinabove, as also as per the ratio of the Division Bench judgment in CWP no.9533 of 2001, “Ankita Beniwal vs. Haryana Public Service Commission”, these petitions are allowed and the respondent Commission is directed to interview the petitioners if they otherwise come within the zone of selection as per the marks obtained by the last candidate, in each category in which the petitioners have applied, provided of course that the result in the case of each petitioner, in the examination concerned, was disclosed by the respondent University prior to the cut off date, i.e. 12.10.2015 as per the corrigendum Annexure P-2.

(AMOL RATTAN SINGH)
JUDGE

October 23, 2017.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No