

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

**Civil Writ Petition No.6156 of
2017 and other connected cases
Reserved on: 23.10.2017
Decided on : 09.11.2017**

Nirmla Panwar

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Sat Narain Yadav, Advocate for the petitioner
in CWP No.6156 of 2017.

Mr. Raj Kapoor Malik, Advocate for the petitioners
in CWP Nos.402, 1659 and 4514 of 2017.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J.

The present judgment shall dispose of four writ petitions i.e.
CWP Nos.6156, 402, 1659 and 4514 of 2017. The facts are being taken
from **CWP No.6156 of 2017 'Nirmla Panwar Vs. The State of
Haryana and others'.**

The petitioner challenges the action of the respondents,
whereby their claim for the appointment to the post of Post Graduate
Teachers (PGT) in various subjects had been rejected, on the ground that
they did not have 50% marks after taking the average of all examinations
from 10th to Post Graduate.

The case of the petitioner is that the average is to be worked
out of each examination separately and then total the same, rather than
just totalling the marks obtained in each examination and then taking out
the average. Similarly, relief of rounding off is sought, as the petitioner

is fractionally below the eligibility criteria and seeks the said benefit.

The respondents had advertised for filling up the posts vide Advertisement No.4/2015 on 28.06.2015 (Annexure P-1). The eligibility criteria was as under:-

“POST GRADUATE TEACHERS (PGT) H.E.S.II (GROUP-B SERVICES) DEPARTMENT OF SECONDARY EDUCATION, HARYANA QUALIFICATIONS COMMON TO ALL CATEGORY OF POSTS

▪ **Eligibility:-**

(a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.

(b) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani.

Note- The candidates those who are having/passed HTET till the date of interview after advertisement will be allowed for interview on the basis of acquiring HTET (Test) till the date of interview.

(c) Consistent good academic record (See Note-2).

Note-Applications of candidates not having consistent good academic record will be accepted provisionally as per directions of Hon’ble Punjab & Haryana Court, Chandigarh passed in CWP No. 19747 of 2014 titled as Rakesh Kumar & Another Vs. State of Haryana, subject to final decision of the said CWP.

(d) Essential qualification (EQ) is given with each post.

▪ **Age:** 18-42 years, relaxation as given in special instructions.

For working teachers upper age relaxation (See Note-3).

Pay Scale: Rs.9300-34800 (PB-2) with a grade pay of Rs. 4800/-”

Particularly for the post of Political Science advertised under

Category No.13, M.A. Political Science with at least 50 marks was the requirement, which would be clear from the following:-

“Cat. No. 13 424 posts of PGT Political Science

E.Q. M.A. Political Science with at least 50% marks and B.Ed. from recognized university.”

Similarly, vide Note 2, it was prescribed that 50% marks in the two lower exams and 45 % marks in third lower exam were required.

The said note reads as under:-

“Note 2. Consistent Good Academic Record implying that out of the lower qualification i.e. Matric/10+2/Graduation than requisite minimum qualification, one must secure at least 50% marks in two lower exams and 45% marks in third lower exam. If there are only two lower exams, than one must secure at least 50% marks in one exam and 45% marks in another.”

Vide corrigendum dated 01.09.2016 (Annexure P-2), in view of the Haryana State Education School Cadre (Group B) Service Rules, 2012, providing the essential qualifications substitution was done w.e.f. 28.06.2015 and accordingly recruitment was to be done as per the terms of the Rules. The said requirement was thus modified, which reads as under:-

“In case of direct recruitment “Good Academic Record”, means the candidate having 50% marks after taking average of all examination i.e. 10th/12th/Graduation/Post Graduation as the case may be. However, the candidate must have at least 50% marks in Post-Graduation.”

The case of the respondents is that they are accordingly taking combined average of all the examinations and a uniform procedure has been followed and the petitioner had not made the grade, thus, cannot say that he should have combined average. In the case of the petitioner

both the averages as calculated reads as under:-

<i>Class Name/qualification</i>	<i>Marks obtained/total marks</i>	<i>Percentage</i>
<i>Matric</i>	<i>325/550</i>	<i>59.09%</i>
<i>10+2</i>	<i>262/500</i>	<i>52.40%</i>
<i>B.A</i>	<i>796/1800</i>	<i>44.22%</i>
<i>M.A. Political Science</i>	<i>472/900</i>	<i>52.44%</i>
<i>Average</i>	<i>1855/3750=49.46%</i>	<i>52.03%</i>

It would be thus clear that the petitioner is falling short 50% if average of all the marks in all examinations is taken after totalling each and every examination and therefore he was getting only 49.46%. The petitioner claims that the percentage of each examination should be firstly calculated and then the main average of the same should be taken out by which he would get the benefit to the tune of 50.03%. The respondents are applying a uniform procedure to all as per the provisions of the Rules, which provides that the 50% marks after taking average of all examination is to be kept in mind who have a good academic record as per their method of calculation which is universal, rather than first working out averages of all examinations and totalling them which is now contended by the petitioner.

No fault can be found as such in the criteria adopted by the respondents and therefore no case is made out to calculate the average of each examination separately and then grant the benefit, as contended by the petitioner, as that is not what the Rule provides.

Secondly, the issue of rounding off also would not be applicable, as nothing was pointed out as there is any provision, statute or rule framed by which the petitioner were entitled to the said relief. It

is settled principle that a writ of mandamus is only liable to be issued where there is any such rule and there is a requirement to the authority to prescribe to the said formula. The Division Bench judgment in **'Nirmalendu Vs. The State of Haryana and others' 2013 (2) PLR 290** by placing reliance upon the judgments of the Apex Court also rejected the plea whereby rounding off of marks was sought for. The observations of the Division Bench reads as under:-

“4. After hearing learned counsel for the appellant, we do not find any merit in the aforesaid contention.

5. In the present case, the appellant is seeking that on the basis of 5% relaxation being permissible, it would come to 7.5 marks as the total marks being 150. After adding the aforesaid 7.5 marks, the total marks should have been rounded off to the nearest whole number. Unless there is any provision in any statute or rule framed thereunder which may permit rounding off of marks, where eligibility criteria has been laid down for qualifying examination, the same would not be permissible. Learned counsel for the appellant was unable to refer to any statute or rule so as to substantiate that the same was permissible under any provision of law. Moreover, in case the contention of the appellant was accepted, the same would have resulted in enhancing the reservation to 8 marks which would have exceeded 5% as provided under the rules. The benefit of rounding off was, thus, rightly declined to the appellant.

*6. The Hon'ble Supreme Court while negating similar contention in **Orissa Public Service Commission and another v. Rupashree Chowdhary and another, AIR 2011 SC 3276** held as under:-*

"13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in

favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.

14. The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written examination in aggregate."

*7. Identical issue was repelled by the Apex Court in The Registrar, **Rajiv Gandhi University of Health Sciences, Bangalore v. G.Hemlatha and others, 2012(4) SCT 157** with the following observations:-*

"10. No provision of any statute or any rules framed thereunder has been shown to us, which permits rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in M.SC (Nursing). When eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that learned Single Judge was right in rounding-off of 54.71% to 55% so as to make respondent 1 eligible for admission to PG course. Such rounding-off is impermissible."

Keeping in view the above observations, the petitioners do not have any legal right as such to take the benefit of rounding off. Accordingly, there is no scope made out for interfering in the criteria

which had been applied by the respondents to shortlist the candidates and cut out ones who do not have any good academic record.

Accordingly, finding no merit the present writ petitions are dismissed.

NOVEMBER 09, 2017

Naveen

(G.S. SANDHAWALIA)

JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No