

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **CWP No.9503 of 2017 (O&M)**
Reserved on: 12.09.2017
Neeraj & anotherPetitioners

Versus

Vice-Chancellor, Pt.B.D.Sharma University of Health Sciences, Rohtak
& others
...Respondents

(2) **CWP No.20717 of 2017**
Reserved on: 15.09.2017
GayatriPetitioner

Versus

Pt.B.D.Sharma University of Health Sciences, Rohtak & others
...Respondents

Date of decision:27.09.2017

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

Present: Mr.Kuldeep Sheoran, Advocate,
for the petitioners in CWP-9503-2017
& for respondent No.6 in CWP-20717-2017.

Mr.K.S.Banyana, Advocate, for the petitioner
in CWP-20717-2017.

Mr.Bhuwan Vats, Advocate, for respondents No.1 to 3.

Mr.R.K.Malik, Sr.Advocate
with Mr.Bhupinder Malik, Advocate, for respondents No.4 & 5.

G.S. SANDHAWALIA, J.

The present judgment shall dispose of CWP-9503 & 20717-2017, as the challenge is to the action of the official respondents whereby the revised result was issued on 02.05.2017 (Annexure P-5) for the posts of Staff Nurses of the General Category of Outstanding Sports Person (OSP), against which respondents-Pooja and Rina were selected. Resultantly, a writ in the nature of Mandamus is also prayed for, to appoint the petitioners, namely, Neeraj and Mukesh Rani, as per the final result declared on 12.04.2017 (Annexure P-4).

In CWP-20717-2017, Neeraj's eligibility has been questioned as to whether she had the requisite certificate prior to the cut-off date, by the petitioner-Gayatri, who is at Sr.No.8 in the merit-list and would thus, make the cut, if the 3 candidates are held not liable to be appointed. For brevity, facts have been taken from CWP-9503-2017 titled *Neeraj & another Vs. Vice-Chancellor, Pt.B.D.Sharma University of Health Sciences, Rohtak & others*.

The advertisement No.6/2016 was issued on 30.09.2016 (Annexure P-1) for various posts including the posts of Staff Nurses, by the respondent-University and the last date for applying was 07.11.2016. Vide corrigendum dated 20.11.2016, the cut-off was extended to 30.12.2016 (Annexure R-4). Against the 535 posts of Staff Nurses, 5 were reserved for OSP qua which the dispute pertains to. Written test was held on 12.02.2017, in which the petitioners and the private-respondents were successful vide provisional result dated 30.02.2017 (Annexure P-2). The private-respondents, Rina Rani and Pooja figured at Sr.Nos.2 & 3 of the said result whereas the petitioners, Mukesh Rani and Neeraj figured at Sr.Nos.4 & 8, respectively. Similarly, Gayatri (petitioner in CWP-20717-2017) was at Sr.No.10. The successful candidates were called for verification of documents on 28.03.2017 and the interview was fixed for the next day, i.e. on 29.03.2017, pertaining to the said category. Keeping in view the verification done and the interview, the result was declared, in which the petitioners were at Sr.Nos.4 & 5 against the 5 posts so advertised. Same

reads as under:

“INTERVIEWS TO FILL UP 535 POSTS OF STAFF NURSES
ADVERTISED VIDE ADVT. NO. UHSR/RECTT./6/2016
WERE HELD IN THE COMMITTEE ROOM OF THE VICE-
CHANCELLOR'S OFFICE, PT. B.D. SHARMA UNIVERSITY
OF HEALTH SCIENCES, ROHTAK ON 28.2.2017, 1.3.2017,
3.3.2017, 6.3.2017, 7.3.2017, 8.3.2017, 9.3.2017, 10.3.2017,
15.3.2017, 17.3.2017, 20.3.2017, 21.3.2017, 22.3.2017,
27.3.2017, 28.3.2017, 29.3.2017 AND 30.3.2017

The category-wise lists of selected candidates are as under,
however, their selection is subject to result of CWP Nos.3697,
5558, 6298, 6515, 7057 and 7157 of 2017 pending in the Hon'ble
Punjab and Haryana High Court at Chandigarh.

GC Sports Category

Sr. No.	Roll.No .	Cat.	Name of Candidates	Father's Name
1.	107539	GC Sports	SONIA	RAMESH KUMAR
2.	104418	GC Sports	SARITA DEVI	RAM SAWRUP
3.	105262	GC Sports	POOJA	SURENDER
4.	105840	GC Sports	NEERAJ	YUDHISTHAR
5.	104181	GC Sports	MUKESH RANI	LILU RAM

It is the case of the petitioners that instead of issuing appointment letters, the revised result was declared for the said category and the names of the petitioners did not figure whereas respondents No.4 & 5-Pooja Kumari and Rina Rani came at Sr.No.1 & 2. The relevant part of the revised result reads as under:

“GC Sports Category

Sr. No.	Roll.No .	Cat.	Name of Candidates	Father's Name
1.	107537	GC Sports	POOJA KUMARI	SHELENDER KUMAR
2	106434	GC Sports	RINA RANI	SATYAVIR SINGH
3.	107539	GC Sports	SONIA	RAMESH KUMAR
4.	104418	GC Sports	SARITA DEVI	RAM SAWRUP
5.	105262	GC Sports	POOJA	SURENDER

Note: The candidates mentioned at Sr.No.1 & 2 above applied under the GC sports category but they produced gradation certificates issued by the District Sports and Youth Affairs Officer. Hence, they were directed to produce the gradation certificates duly issued by the competent authority within four working days. Meanwhile, they were interviewed on 30.3.2017 in GC Category. Further, they submitted the required gradation certificates duly issued by the Deputy Director, Department of Sports & Youth Affairs, Haryana within the stipulated period. Therefore, they were required to be considered under GC sports category but inadvertently they were not included in the merit list prepared for GC sports category. Hence, the merit list/selection list has been revised accordingly.”

Resultantly, the present writ petition came to be filed, challenging the said action of the official respondents.

Before filing of the writ petition, the University had already filed a caveat anticipating litigation on 23.04.2017, whereas the writ petition was filed only on 03.05.2017. Accordingly, interim directions were issued not to issue appointment letters in favour of Pooja Kumari and Rina Rani.

In the written statement filed by the respondent-University,

plea taken was that relevant certificate issued by the District Sports Authority was produced but as per the advertisement, the Sports Gradation Certificate, issued from the Director, Sports Haryana, was to be produced for which, the candidates had applied to the concerned authorities. During the interview, the private-respondents had assured the Establishment Committee to produce the required certificate from the Director, Sports Haryana within 4 working days and accordingly, they were interviewed on 30.03.2017 and submitted their Sports Gradation Certificates within 4 days and were considered. Their names inadvertently had not been included in the merit-list prior and the selection list for the sports category was uploaded in the University website. Resultantly, on their approaching the University for not including their names in the merit-list since their merit was higher, the merit-list was revised and again uploaded which, thus, did not include the names of the petitioners. The appointment letters issued on 02.05.2017 of the private-respondents were withdrawn on 04.05.2017, in view of the interim orders passed.

The private-respondents also took the same plea that 4 working days were given to them and since they produced the relevant certificates, they have been rightly selected since they were higher in the merit and therefore, justified their selection.

Mr.Sheoran (in CWP-9503-2017) has, thus, submitted that the private-respondents did not have the requisite certificates at the time of scrutiny of documents on 28.03.2017 and therefore, they could not

have been interviewed on 29.03.2017, which was the date fixed. Even otherwise, the University's own case was that they were interviewed on 30.03.2017, which was not the date fixed for the said category and therefore, the certificates issued by the competent authority, after the date of scrutiny, could not be taken into consideration and therefore, the revision of the original merit-list was not justified.

Mr.Banyana (in CWP-20717-2017) has challenged the eligibility of Neeraj on the ground that the Gradation Certificate in her favour was dated 27.03.2017, which is after the cut-off date of 30.12.2016 and therefore, the same could not have been taken into consideration at the time of interview. Therefore, she is also not eligible and the writ petition qua her should be dismissed and qua the other private-respondents should be allowed, so that Gayatri (petitioner in CWP-20717-2017), who is at Sr.No.8, could make the cut, accordingly. He, accordingly, placed reliance upon the judgment of the Apex Court in **Bhupinderpal Singh & others Vs. State of Punjab & others 2000 (2) RSJ 728.**

Mr.Vats, appearing for the University, justified the action of the University, saying that proper opportunity was given, as such, to produce the certificates in question as they had applied in the said category and on merits, the said private-respondents were higher and therefore, the result had been altered. He, accordingly, placed reliance upon **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & another 2016 (4) SCC 754.**

Mr.Malik, Learned Senior Counsel for the private-respondents, on the other hand, relied upon the judgment of the Apex Court in *Dolly Chhanda Vs. Chairman, JEE 2005 (9) SCC 779* and the judgment of the Allahabad High Court in *Atul Kumar Sharma & others Vs. State of U.P. & others 2012 (11) SCT 209* and Full Bench of the Allahabad High Court in *Gaurav Sharma Vs. State of U.P. th. Secretary & others 2017 (3) SCT 497*.

Mr.Sheoran also, in support of his arguments and to justify his client's eligibility, held out that Neeraj was eligible as the achievements were prior to the cut-off date and the certificate was to be produced at the time of the interview and the cut-off date was not relevant for the Sports Gradation Certificate, which was only to be produced at the time of the interview and the essential qualifications were very much in place before the cut-off date.

After hearing arguments of counsels for the parties, this Court is of the opinion that CWP-9503-2017 is liable to be allowed, since the revision of the result, whereby Pooja and Rina have been shown as amongst the successful candidates, is not justified and the same is liable to be set aside, whereas the eligibility of Neeraj cannot, as such, be questioned at the hands of the petitioner in CWP-20717-2017, on account of the following reasons.

Firstly, it is not disputed that the result was revised at the back of the petitioners, having been released on 12.04.2017 (Annexure P-4), the same could not have been modified on 01.05.2017 (Annexure

P-5) by the University, without even issuing any notice to the successful candidates who had started clamouring for their appointment letters. The principles of natural justice were, thus, violated, as such, at that point of time, as a vested right had accrued in favour of the petitioners who had been declared successful at one stage and therefore, the revision was not justified.

Secondly, it is the case of the University itself and is not disputed that the verification of the original documents was to be done on 28.03.2017. The private respondents-Pooja Kumari and Rina Rani did not have the Sports Gradation Certificates on the said date. As per the terms of the tentative schedule (Annexure P-3), the interview was to be held on 29.03.2017 and only candidates having the requisite certificates were to be called for interview. The certificates issued by the Deputy Director, Department of Sports & Youth Affairs, in favour of the private-respondents are dated 30.03.2017, which would be clear from the record which has been produced and thus, were submitted only on 30.03.2017 itself. It is the case of the University that the candidates were interviewed on 30.03.2017, on which date, even otherwise, there were no interviews fixed for the said category, as would be clear from Annexure P-3, which was the schedule for verification and fixing the time of interview. The relevant portion reads as under:

TENTATIVE SCHEDULE OF VERIFICATION OF DOCUMENTS

It is notified for information of all concerned that the following candidates who appeared in the Written Screening Test for the posts of Staff Nurses held on 12.02.2017 against

advertisement no. 06/2016 are directed to appear before the Screening Committee for verification of original documents to ascertain their eligibility, as per qualifications and experience laid down in the advertisement. After verification of the original documents they will be allowed to appear before the Selection Committee only if, they are found eligible and fulfill the required qualification and experience for Interview at the venue, on the dates & time mentioned below. All the following candidates are advised to bring their original documents alongwith copy of online application form and one set of photocopies.

Venue: Verification of Original Documents Examination Hall,
I-A, 1st Floor Admn.
Block, UHS, Rohtak

Interview Committee Room,
V.C. Office, UHS
Rohtak

Category	Sr.No. Of the provisional merit list	Date & time of Verification of Original Documents TIME: 9:00 AM	Date & Time of Interview (TIME 10:00 AM)
GC-Sports (OSP)	01-15	28.03.2017 (Tuesday)	29.03.2017 (Wednesday)

Counsel for the petitioners (in CWP-9503-2017) was well justified in placing reliance upon the relevant terms of the advertisement whereby the original documents were to be produced at the time of interview which included the Sports Gradation Certificate, if any. Clause 4 (viii) reads as under:

“4.Original Documents to be produced at the time of interview:-
xxxx
(viii) Sports Certificate if any.”
xxxx”

Similarly, it was specifically provided under Clause 11 that the eligibility is to be verified before the interview, as per the qualifications, experience and other terms and conditions. As per Clause 14, the Gradation Certificate was to be issued by the Director, Sports Haryana. Similarly, as per Clause 21, it was provided that all the original documents listed at Sr.No.3 of the general terms and conditions should be submitted at the time of interview. Clauses 11, 14 & 21 read as under:

“11. Mere submission of the online application, permission for appearing in written/screening test and call for interview does not mean that the applicant is eligible for the post applied for. The eligibility shall be verified just before the interview as per the qualifications, experience and other terms and conditions given in the advertisement.

14. The SC/BC-A/BC-B/PH candidates are required to submit SC/BC-A/BC-B/PH certificate duly issued by the competent authority at the time of interview. In addition to the above any other Certificate of extra curricular activities (sports) i.e., Prize or position in an international/national/inter-university/athletic meet and college colour, if any, must also be supplied. The applicant shall be required to produce the sport gradation certificate issued by the Director Sports Haryana. ESM/DESM are required to produce the fresh Eligibility Certificate duly issued by the respective Zila Sainik Boards at the time of interview. The candidates applying for PH category should submit certificate issued by the Authorized Medical Board.

21. Applicant must also bring printed application form duly signed by him/her on all the pages along with all the original documents listed on serial number 3 of the general terms and conditions and one set of self attested photocopies of the said documents. All these should be submitted at the time of interview.”

Thus, from a reading of the above clauses, it would be clear that at the time of scrutinization, certificates had to be present and had to be produced and in the absence of the certificate not being available with the private-respondents, there was no question of giving any further extension of time to produce the same, by getting them issued from the competent authority, as per the terms and conditions of the advertisement and the schedule fixed.

It is settled principle that selection process is a time-bound process and the candidates should be well aware and bound by the terms of the same and the selecting authorities cannot wait for production of the documents at the convenience of the candidate, which would never make the process complete. The extra leverage which has been given to the private-respondents has, thus, been well demonstrated by counsel for the petitioners and even otherwise also, it has come on record in the form that the University stretched itself to the extra mile to give some leverage to them. It also chose to file a caveat to defend its illegal action and had already approached this Court before the petitioners could also come for the protection of their rights. The said facts only go on to show that different rules were being applied to different candidates and therefore, this aspect cannot be appreciated in any manner. The University was applying the principle that 'show me the face and I will show you the rule' and therefore, the revision of the result is not justifiable.

The Sports Policy, which has been issued by the State dated

30.11.1993, pertains to reservation of seats for outstanding players for the purposes of Technical/Medical Institutions and State Government Services and provides for granting of service. As per Clause 5(4), application in the prescribed performa has to be received from the concerned District Sports & Youth Welfare Officers along with a affidavit, which has to be forwarded to the Director Sports, Haryana and thereafter, the certificate would have to be issued.

Petitioner-Neeraj, who is respondent No.6 in CWP-20717-2017, had also, while filling the application form, mentioned her category that she was 'Outstanding Sports Person' and relied upon the certificate issued by the Haryana Kabaddi Association which showed that her achievements were of December, 2013. Similarly, as per Annexure D-1, there were other achievements under category No.3, which were vouched for by the certificate issued by the competent authority dated 27.03.2017, which were prior to the scrutinization date and therefore, she was rightly interviewed and duly selected. The argument raised that it was issued after the cut-off date is of no value, since it is not the case of essential qualifications not being in place before the cut-off date. The certificate was only to be produced at the time of interview, as per the clauses of the advertisement, referred to above.

The judgment in **Ram Kumar Gijroya** (supra) would also be of no assistance to the University University counsel, in view of the above facts and circumstances, since in the said case, the certificate had

been submitted after the last date by an OBC candidate and the said candidate had not been selected and his name did not appear in the final list of the selected candidates. Only on account of the said OBC certificate having not been submitted along with the application form, it was held that keeping in view the Directive Principles of State Policy that there was an object of providing reservation, the Division Bench was in error in reversing the order of the Single Judge. It was not a case, as such, where the list had been revised, to the detriment of the others and vested right had been taken away and therefore, the said judgment, as such, would not be applicable.

Similarly, in the case of **Dolly Chhanda** (supra) was where a wrong certificate had been issued by the Zila Sainik Board and the correct certificate had not been considered at the stage of second counselling and therefore, persons lower in merit had been admitted. Resultantly, admission was granted to the petitioner in the subsequent academic year in the MBBS course. In the present case, as noticed, the private-respondents were well aware of the terms of the advertisement, who chose not to get the requisite certificate from the competent authority and now, cannot turn around and submit that they were given time to submit the requisite certificate.

The judgment in **Atul Kumar Sharma** (supra) would also not be applicable, since in the said case, relaxation had been given by the selecting authority for producing the certificates and the same could be produced within the extended time-frame and were not produced at

the time of the interview. It was, accordingly, held that the decision was taken *bonafidely* and the authority of relaxation was provided for under the rules. The petitioners had taken a chance and failed to make a place for themselves and therefore, could not, as such, claim that the relaxation was bad thereafter and thus, the said judgment would not be applicable to the facts of the present case.

Similarly, the Full Bench judgment in **Gaurav Sharma** (supra) would be of no avail to the petitioner in CWP-20717-2017, since the Court held that the candidature of an OBC candidate is liable to be rejected if the caste certificate is submitted after the last date of submission of the application forms and as such, reserved candidates were not exempted from the cut-off date. Rather, the judgment in **Ram Kumar Gijroya** (supra) was noticed and it was held that the advertisement, in that case, did not prescribe the cut-off date and there was a distinct factual background in which the judgment of the Apex Court had been rendered and thus, the judgment rather, would not support the petitioner, in any manner.

Similarly, the judgment in **Bhupinderpal Singh** (supra) would not be applicable, in view of the peculiar terms of the advertisement itself which provided that certificate has to be produced at the time of the interview and there was no such cut-off date provided regarding the eligibility qua the certificate. In the said case, there was a cut-off date fixed whereby the educational qualifications had to be acquired and vide corrigendum, the upper age limit had been increased

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and the application had to be complete in all respects as per the original advertisement. It was, accordingly, in such circumstances, held that when seeking public employment and the cut-off date is provided under the rules then such date is to be seen. If there is no cut-off date, as provided under the rules, then such date as may be provided for the purpose, in the advertisement calling for the applications is to govern. Resultantly, the petitioner (in CWP-20717-2017), cannot as such, rely upon the principle that the certificate issued by the Sports Department, in the case of Neeraj was after the cut-off date and therefore, she was not eligible, in view of the clauses of the advertisement, which have already been reproduced above.

Resultantly, both the writ petitions are allowed, to the extent that the revised merit-list issued on 01/02.05.2017 is set aside and accordingly, the appointment letters issued to Pooja Kumari and Rina Rani are set aside. However, CWP-20717-2017 is dismissed, qua the prayer questioning the eligibility of Neeraj. Accordingly, the University shall issue appointment letters to the petitioners-Neeraj and Mukesh Rani, within a period of 2 weeks from the receipt of the certified copy of this order.

27.09.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*