

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

**L.P.A. No.1164 of 2016 (O&M)
Decided on : 25.09.2017**

Mannu Rani

... Appellant

Versus

State of Punjab and another

... Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present : Ms. Alka Chatrath, Advocate,
for the appellant.

Mr. R.S.Khosla, Sr.Advocate, with
Mr. Ishrat Phulka, Advocate,
for the respondent-PUDA.

Mr. PPS Thethi, Addl. AG., Punjab

MAHESH GROVER, J. (Oral)

CM-2414-LPA-2016

For the reasons stated in the application, delay of 37 days
in filing the appeal is condoned.

Main case

This appeal is against the judgment of the learned Single
Judge dated 2.5.2016. The respondent-PUDA invited applications for
the posts of Senior Assistants (Accounts) under Other Backward Class
(OBC) categories with the following essential qualifications : -

“2. SENIOR ASSISTANTS (Account)

(Category-wise break-up of vacancies to be filled)

Total	General	SC		BC	ESM			Freedom Fighter	Sports Person		Handicapped
		Balmiki/ Majbi Sikh	Other		Gen.	SC	BC		Gen	SC	
34	15	4	4	4	2	1	1	0	1	1	1

Basic Qualification :

B.Com. from a recognized University with a minimum score of 50% marks AND

possesses;

(i) At least one hundred and twenty hours Course with hands and experience in the use of Personal Computer or Information Technology Office Productivity Applications or Desktop Publishing Applications from a Govt. recognized institution or a reputed institution, which is ISO 9001 certified. OR

Certification in usage of Computers equivalent to “O” Level certificate of Department of Electronics Accreditation of Computer Courses (DOEACC) of Govt. of India.

Preference will be given to candidates who have done Post Graduation in Commerce and/or have done a Certification Course in the use of accounting software.”

Along with this, selection criteria was also prescribed

which is also extracted hereinbelow : -

“Selection Criteria :

Selection will be based on the qualification and a written examination. There will be no interview. The merit will be prepared on the basis of the marks obtained in the academic qualifications as well as the score obtained by the candidate in the written examination conducted by PUDA. The breakup of the marks would be as follows :

(a) Academic Qualification : 30 marks

Basic Qualification : 25 x % of average marks in exams
Matric onwards/100 (Matric included)

(5 marks Matric, 5 Marks 10+2, 15 Marks, B.Com
(Three year degree course)

Additional Qualification – Post Graduation in Commerce
and / or have done a Certification Course in the use of
accounting software : 5 marks for 60% and above score ; 3
for below 60% score.”

The appellant was denied consideration at the final stage of the process on the ground that she did not secure 50% marks in B.Com degree and even though she possessed higher qualification of M.Com with 66.6% marks, the fact of her not having B.Com with 50% marks would imply that she did not possess the basic essential qualification prescribed by the respondents.

The writ court before whom she raised her grievance negated her plea on the reasoning that preferential higher qualification would come into operation to secure an advantage to the candidate if

she fulfills the basic qualifications of B.Com degree with 50% marks.

Aggrieved against this, the appellant is in appeal before us wherein it has been contended that since she possessed higher qualifications in the very same stream, she could not have been discarded from the process of selection on the premise of her not fulfilling the conditions of B.Com with 50% marks. It is pertinent to mention here that the appellant has 49.65% marks in B.Com stream whereas in M.Com, she has 66.6% marks.

It has been contended before us by the learned counsel for the appellant that being in possession of a Post Graduate qualification in the same very stream, she had to be considered eligible regardless of the fact whether she fulfilled the conditions of having B.Com with 50% marks. Reliance has been placed on Full Bench decision of this Court in **Manjit Singh v. State of Punjab and others**; 2010 (3) SCT 703 wherein it was observed so.

Learned counsel for the respondents on the other hand has stated that once the employer had the right to prescribe a qualification with no power of relaxation, a person who did not fulfill the basic essential qualification, essentially has to be ousted from the selection process altogether.

Learned counsel for the respondents also disputes the applicability of the Full Bench decision by contending that in the said case, no minimum eligibility conditions were prescribed.

We have heard the learned counsel for the parties.

In the case of *Manjit Singh* (supra), Full Bench observed

as follows :-

“26. The distinction sought to be created to deny eligibility is arbitrary and illusory. It goes without saying that the higher qualification provides better knowledge, better sense and in sight and equip the person with better understanding of the issues and problems. It cannot be a “bane” but has to be a “boon”. The Hon'ble Supreme Court in the case of **Mohd. Riazul Usman Gani and others v. District & Sessions Judge, Nagpur, 2000 (2) SCT 10 : (2000) 2 SCC 606** had the occasion to consider whether the higher qualification than 8th standard prescribed for the post of Peon renders a candidate ineligible. Examining the issue, it is observed as under : -

21. A criterion which has the effect of denying a candidate his right to be considered for the post on the principle that he is having higher qualification than prescribed cannot be rational. We have not been able to appreciate as to why those candidates who possessed qualifications equivalent to SSC Examination could also not be considered. We are saying this on the facts of the case in hand and should not be understood as laying down a rule of universal application.”

27. From the facts on record and dictum of above noticed judgments, it emerges that the candidate

possessing higher qualification in the same line cannot be excluded from consideration for selection. It is a different matter that he/she may not be entitled to any additional weightage for higher qualification, but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification. Denying consideration to a candidate having better and higher qualification in the same line and discipline would definitely result in breach of Articles 14 and 16 of the Constitution of India.”

In the said case, the person with certificate of physical education was required to be considered as per the advertisement and aggrieved of the non-inclusion in the selection process, the persons with higher qualifications of degree and Post Graduate in Physical Education approached this Court where the Full Bench had the occasion to comment upon the eligibility as extracted above.

We are of the opinion that since the appellant possesses a higher qualification being Post Graduate in the very same stream, it would not be desirable to keep her out of the selection process. Even if her marks in B.Com are ignored, even then she makes it on the merit to the selection list by obtaining 94.32 marks. The following tabulation would amply demonstrate this fact :

Marks as per formula applied by taking into consideration B.Com qualification.

Qualification	%age of marks	Weightage as per criteria mentioned in advertisement
Matric	53.23%	2.66

Qualification	%age of marks	Weightage as per criteria mentioned in advertisement
10+2	63.55%	3.18
B.Com.	49.65%	7.45
Master of Commerce in Accounting & Finance (M. Com.)	66.6%	5.00
Total		18.29
Marks in the written examination		78.50
Total merit		96.79

Marks as per formula without B.Com qualification.(on the basis of M.Com degree)

Qualification	% age of Marks	Weightage as per criteria mentioned in advertisement
Matric	53.23%	2.66
10+2	63.55%	3.17
Master of Commerce in Accounting & Finance (M.Com.)	66.6%	9.99
Total		15.82
Marks in the written examination		78.50
Total merit		94.32

We are also of the opinion that possessing a superior qualification of Post Graduate in the very same stream would in fact be telling upon the proficiency of the candidate and the basic minimum qualification provided of B.Com with 50% marks has to be construed as enabling qualification to the selection process. Undeniably, the advertisement itself talks of preferential treatment to the Post Graduate in Commerce stream and, therefore, it would be highly illogical to deny the benefit of degree altogether on the reasoning adopted by the

respondents.

We, therefore, set aside the impugned orders and direct that the appellant be treated as eligible for the post of Senior Assistant (Accounts) with a mandate to the respondents to grant appointment to the appellant in case she fulfills all other conditions and centres in the merit list.

We have been informed by the appellant that in the merit list given by the respondents itself, she was placed at Serial No.3 and one post is lying vacant which fact has not been accepted by the respondents and neither have they any instructions to this effect. The only stand of the respondents is of having no information in this regard.

Be that as it may, we dispose of the appeal with directions to the respondents to give appointment to the appellant in case she fulfills all other conditions within a period of two months from the date of receipt of a certified copy of this order. All other consequential benefits except monetary ones shall also be granted to the appellant.

(MAHESH GROVER)
JUDGE

(RAJ SHEKHAR ATTRI)
JUDGE

September 25, 2017

Paritosh Kumar

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