

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 14.09.2018****CWP No.9198 of 2015**

Saroj Bala

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Avtar Sheoran, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. Posts of Primary Teachers (PRT) were advertised on 08.11.2012 vide Advt. No.2/2012 by the Commission in two categories. Category No.1 related to 'District Cadre Post Except District Mewat'. In this Category, 8763 vacancies were advertised. Category No.2 was earmarked for the 'Post For District Mewat Only' and the total number of vacancies/posts were 1107. The petitioner being eligible applied in both the categories, which was permissible. The petitioner qualified the written examination and was called for scrutiny of documents.

2. The controversy in this case is around the Post Graduate qualification of the petitioner for which the detailed marks certificate was issued on 18.12.2012 i.e. 10 days after the cut-off date of inviting applications from eligible candidates i.e. 08.11.2012. The petitioner

qualified M.A. (History), the result of which was declared on 28.09.2012 by the Maharshi Dayanand University, Rohtak.

3. The short question which arises for consideration is; whether the detailed marks certificate relates back to the date of declaration of the result of M.A. (History).

4. Learned counsel for the petitioner relies on the judgment of the Supreme Court in Charles K. Skaria & others Vs. Dr. C. Mathew & others, AIR 1980 SC 1230; V.R.Krishna Iyer, J. delivering judgment of which para.26 is relevant observed as follows:

“26. Even so, there is a snag. Who are the diploma-holders eligible for 10 extra marks ? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the dateline makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the concerned authority. An examinee for a degree or diploma must complete his examination-written, oral or practical-before he can tell the selection committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled, viz., the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. May be, the examination is cancelled or the marks of the candidates are with-held. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the selection committee has the result before it at the

time of- not after-the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory, a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom-unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unveracious touch about the process.”

5. I have no doubt that the principles in Charles K. Skaria’s case apply to this case. Not only does the principle apply, the conduct of the Haryana School Teachers Selection Board gives rise to the success to this petition on the short ground that the result sheet discloses that in Category No.1, the petitioner appearing under Roll No.44419547 was assigned 2 marks for Post Graduation, but in Category No.2, she was not assigned marks for Post Graduation. As per criteria, 2 marks were to be given for higher qualification i.e. M.A. (History).

6. The petitioner has not pressed her case in Category No.1, as she does not make it in general merit. However, she has claimed relief in

Category No.2, wherein no marks were assigned to her for higher qualification. The result sheet at pp.37 of the paper-book reveals that she was graded with 61.87 marks. The admitted position is that the last candidate selected in Category No.2 'Post For District Mewat Only' secured 63.12 marks. If 2 marks are added to the petitioner's score i.e. 61.87, she will rank higher in merit than the last candidate selected securing 61.87 marks. This position could not be disputed in the face of documents and the admission that in Category No.1, 2 marks were given for higher qualification i.e. Post Graduation, while they were not in Category No.2. These facts are also confirmed by the information supplied under the Right to Information Act, 2005 by the Haryana School Teachers' Selection Board vide memos dated 14.10.2014 (Annex P-3 & P-4).

7. In this factual background, the petitioner has a valuable right to 2 marks added to her score in Category No.2 (for Mewat) and in case her merit position ranks higher than the last candidate selected, then I have no doubt that the respondents will offer her appointment after completing the necessary formalities within eight weeks from the date of receiving of certified copy of this order.

8. It is made clear that the seniority of the petitioner will be fixed on the basis of merit position determined by the Board in relation to her batch and advertisement. The consequential benefits will be notional, but actual on appointment. Since the petitioner's rights have been trampled upon in the most casual manner and the action appears to be not bona fide in depriving the petitioner of job at the appropriate time, the petitioner is entitled to be compensated by way of damages for loss of salary and restitution of fee and sundry expenses she must have incurred in the

litigation. Accordingly, I deem it appropriate to award ₹1 Lakh as damages and in addition ₹50,000/- for litigation, costs and sundry expenses. The amount is directed to be paid to the petitioner with the first salary. It will be open to the respondents i.e. the Commission and the State to recover this amount from the erring officials and members of the erstwhile Haryana School Teachers' Selection Board who committed patent illegality in depriving the petitioner of her rights secured by dint of hard work and merit.

9. However, this order will not disturb the appointment of the last candidate selected for no fault of his or her. The petitioner will be offered appointment against an existing vacancy or a future vacancy or by creating a supernumerary post from back date i.e. the date when candidate lower in merit was appointed and joined or by any other arrangement deemed suitable.

14.09.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>