

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2683 of 2019 (O&M)

Date of Decision: July 18, 2019

Amit Kumar

...Petitioner

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Jagbir Malik, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

CM No.9754 of 2019

For the reasons mentioned in the application, which is supported by an affidavit, hearing of the petition is preponed to today.

CM stands disposed of.

CWP No.2683 of 2019

Petitioner seeks indulgence of this court for issuance of a writ in the nature of certiorari quashing the action of respondent No.3 by which his candidature for the post of PGT Mathematics has been rejected on the ground of having issued consolidated DMC for M.Sc. Mathematics after the cut off date.

Mr. Jagbir Malik, learned counsel for the petitioner submitted that in pursuance to advertisement No.4/2015 dated 28.06.2015 (Annexure P-12), 1427 posts of PGT Mathematics were sought to be filled, out of which 624 posts were meant for general category and the last date for

submission of online application was 21.09.2015. The essential qualification for the post was M.Sc. Mathematics with at least 50% marks and B.Ed from a recognized University. Respondent No.3 uploaded admit cards of the candidates for screening test to be held on 06.03.2016. Petitioner was issued admit card vide Roll No.61001060 under general category.

The screening test for the post of PGT Mathematics was held on 06.03.2016. Petitioner secured 110 marks out of 160 marks. Petitioner stated to have appeared for verification of documents and interview on 07.11.2016 in the office of respondent No.3, i.e., Haryana Staff Selection Commission. On 12.01.2019, result was declared for the advertised posts of PGT Mathematics and the last candidate, who secured 116 marks, was shown selected in the general category, though the petitioner was not in the final list despite the fact that he secured 110 marks in the written examination. On 16.01.2019, petitioner approached the office of respondent No.3 and asked to offer selection. He was orally informed that his Detailed Marks Card (DMC) for M.Sc. Mathematics has been issued after the last date of submission of the application.

Mr. Kiran Pal Singh, learned Assistant Advocate General, Haryana representing the State submitted that the last date for submissions of the applications was 21.09.2015, which was extended to 12.10.2015. The result of the M.Sc. Mathematics was declared by the University on 25.10.2016, i.e., after the cut off date, which was 12.10.2015. DMC of the petitioner for M.Sc. Mathematics was issued after the last date of submission of the application, thus, was not eligible on the date of the application. Attention of this Court was also drawn to the various conditions

of the advertisement and, thus, prayed for dismissal of the writ petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner.

It would be in the fitness of things to reproduce relevant portion of the advertisement. The same reads thus:-

*“Online applications are invited for direct recruitment for the under mentioned 6874 posts of (PGT)- H.E.S.-II (Group-B Services) using the website of Haryana Staff Selection Commission i.e www.hssc.gov.in. The online application can be filled up from **21st August 2015 to 21st September 2015**; thereafter website link will be disabled. The candidates are strictly advised to apply online well in advance without waiting for last date of submission of online application form. The printed copy of the online application form with necessary certificates must be brought at the time of verification/scrutiny-cum -interview. No offline application form or copy of downloaded application form will be accepted by the office. Qualifications/ eligibility conditions, age and other documents (except HTET) will be determined with regard to last date fixed to apply online applications also called as closing date i.e. **21st September 2015** given in the advertisement. The details of the posts are 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/-."*

It is a matter of record that the petitioner did not have the essential qualification on the date of submission of the application, but acquired the qualification only on 13.07.2016, i.e., after the last date of application, i.e., 12.10.2015.

The position of law involving similar controversy came to be debated upon by the Hon'ble Supreme Court in **Rakesh Kumar Sharma Versus Govt. of NCT of Delhi & Ors., 2013(11) SCC 58 (Paras 16 and 17).** The same read thus:-

"16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him

which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and terms of the advertisement.

There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance.

The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed.”

On reading of the aforementioned ratio, it is held that the candidates, who may have considered themselves to be eligible, cannot be permitted through the intervention of the Court for considering them eligible once they were not eligible at the time of submission of the applications.

For the reasons mentioned above, I do not find any substance in the argument of the learned counsel for the petitioner. No ground for interference is made out. Resultantly, the writ petition is dismissed.

July 18, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No