

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12155 of 2013
Reserved On 19.07.2019
Date of Decision: 05.08.2019

Alamdeep Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

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

Present: Mr. Rajiv Atma Ram, Sr.Advocate with
Mrs. Madhu Dayal, Advocate for the petitioner

Ms. Jasleen Kaur Sidhu, AAG Punjab

Mr. Gurminder Singh, Sr.Advocate with
Mr. JS Gill, Advocate for respondent No.3

Mr. DS Patwalia, Sr.Advocate with
Mr. BS Patwalia, Advocate for respondent No.4

G.S. SANDHAWALIA, J.

(1) The petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India seeks summoning of the records whereby respondent No.3 has been appointed to the post of PCS (Executive Branch) and respondent No.4 to the post of Excise and Taxation Officer. A writ of *certiorari* is prayed for quashing the merit list (P6) along with a writ of *quo warranto* for quashing the selection and appointment orders of the said respondents being ineligible as per the definition of Sportsperson given in the information brochure of Punjab State Civil Services Combined Competitive Examination (PCS), 2009. Thus quashing of the appointment orders after summoning the respondent is prayed for. Resultantly, a writ of mandamus for directing the official respondents to re-frame the merit list and declare the petitioner selected and to appoint him under the Sportsperson

Punjab category for general candidates on the posts on which the private respondents No.3 & 4 have been appointed, is prayed for.

(2) The above reliefs are claimed on the strength that the petitioner is B.Tech in Mechanical Engineering from Thapar University, Patiala (P1). On account of having represented Punjab in the 6th National Fencing Championship conducted by the Fencing Association of India (in short, the FAI), he had been awarded B-Grade certificate by the Sports Department, Punjab. The certificate in question would show that he had participated in the 6th National Fencing Championship which was held from 27.02.1993 to 01.03.1993 at Bhilwara (Rajasthan) under the auspices of FAI which was organized by the Rajasthan State Fencing Association and Bhilwara District Fencing Association. Resultantly, having secured the first position, he had been granted the 'B' Sports Gradation Certificate (P2 colly) on 23.06.1993. It is his case that FAI is a unit affiliated with the Indian Olympic Association (in short, 'IOA') (P3).

(3) On account of advertisement issued on 26.11.2009 (P4), the State Government had advertised 143 posts of PCS (EB) and Allied Services which were subsequently increased to 180. Four posts were reserved for Sportsperson, Punjab out of which 2 were for General category candidate, one was for SC and one was for Balmiki/Mazhbi Sikh. As per the category-wise break-up one of the posts fell to the PCS (EB) whereas the other fell to the category of ETO (P5). On account of preliminary examination conducted on 19.12.2010, the result of which was declared on 23.12.2010, the petitioner had become eligible for written examination held from 16.09.2011 to 09.10.2011 and the result of which was declared on 27.04.2012, the petitioner became eligible for *viva voce*. He had received

interview call from the office of Punjab Public Service Commission – respondent No.2 on 30.05.2012. The result was declared on 14.06.2012 and as per the category-wise merit list of Sportsmen for general category, the petitioner was shown at Sr.No.4 whereas private respondents No.3&4 were shown at Sr.No.1&2 respectively. Their gradation is as under:-

Sr. No.	Roll No.	Name	Exam Marks	Viva Voce	Grand Total	%age	Merit
1	1393	Damanjit Singh Mann	515.00	58.30	573.30	57.3300	1
2	2861	Simrandeep Singh Brar	477.00	68.00	545.00	54.5000	2
3	1421	Deepinder Singh	428.00	69.30	497.30	49.7300	3
4	1054	Alamdeep Singh	436.00	56.80	492.80	49.2800	4
5	2066	Manavpreet Singh	426.50	45.50	472.00	47.2000	5
6	1787	Jagpreet Singh	417.50	52.70	470.20	47.0200	6

(4) On account of only 2 seats for General category, the private respondents being the first two candidates were offered and appointed as PCS (EB) and ETO. The information had been sought under the RTI and reply had also been received on 16.07.2012 (P7). Thereafter the sports certificate of the private respondents and other relevant information was asked for which was partly supplied on 25.09.2012 (P8). Resultantly, on 12.10.2012 (P9) the sports certificates of the private respondent No.3 was supplied wherein it was shown that he had Sports Gradation Certificate Category-B for representing school in Punjab State Grade Sportsman in Basketball game at 50th National School Games Kolhapur in the year 2004-05 and had achieved first place. Similarly, the sports certificate of respondent No.4 was supplied in October, 2012 which showed that he had

been granted Gradation Certificate-A representing the School India category in the discipline of Cricket in the competition held for the year 2001-02 at Ludhiana in Asian School Games and having achieved first position representing India (P9 colly).

(5) Resultantly, it has been pleaded in para 17 & 18 of the writ petition that respondent No.3 had participated in 50th National School Games in 2004-05 and as per the information supplied on 16.01.2014 (P12) from the IOA, the School Games Federation of India (in short, 'the SGFI') was not affiliated with the IOA. Similarly, the Asian School Sports Federation (in short, 'the ASSF') which conducted the Asian School Games was not affiliated with the IOA since a certificate had been issued by SGFI. Resultantly, it was pleaded that the National School Games were a unit of SGFI and not of IOA. The National School Games being not conducted at international level nor by any International Olympic Committee or its affiliated Federation was stressed upon.

(6) Similarly, it was pleaded that respondent No.4 had participated in the Asian School Games in 2001-02 in the game of Cricket which was not an Olympic Sports and the Asian School Games was also not an affiliated unit of IOA. Accordingly on the strength of the definitions contained in the brochure of Punjab State Civil Services Combined Examination (P11), challenge was made to the eligibility of the private respondents. It is not disputed that the definition as such of "Sportsperson" Punjab as per the brochure is as per the Punjab Recruitment of Sportsman Rules, 1988. The said Rules talks about recruitment of reserved vacancies in Class-I or Class-II posts (with which were are concerned in the present case) and also to

recruitment of Class-III and Class-IV posts. The Rules as placed on record by the State read as under:-

**“GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE
REFORMS
(PERSONNEL POLICIES I BRANCH)
Notification
The 1st February, 1988**

No. C.S.R. 16/Const./Art.309/88- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India and all other powers enabling him in his behalf, the President of India is pleased to make the following rules regulating the recruitment of Sportsman to the State Civil Services and posts connected with the affairs of the State of Punjab, namely:-

1. Short title and application:- (1) *These rules may be called the Punjab Recruitment of Sportsmen Rules, 1988.*

(2) *They shall apply to all the services and posts connected with the affairs of the State of Punjab except the Punjab Vidhan Sabha Secretariat, Punjab Public Service Commission and Punjab and Haryana High Court.*

2. Definitions:-

In these rules, unless the context otherwise requires:-

(a) *“direct appointment” means an appointment made otherwise than by promotion or by transfer of a person already in the service of Government of India or of a State Govt;*

(b) *“Government” means the Govt. of the State of Punjab;*

(c) *“reserved vacancy” means a vacancy reserved under sub-rule (i) of rule 3, to be filled in by the appointment of a sportsman.*

(d) *“Sportsman” means a person of either sex who fulfils the following conditions, namely:-*

(a) *In the case of recruitment to a reserved vacancy in Class I or Class II posts:-*

(i) *that he belongs to the State of Punjab; and*

(ii) *that he has won national championship in team or individual events while representing the State of Punjab in such sports events as*

have been conducted by such respective national federations as are affiliated to the Indian Olympic Association;

Or

(i) that he has won national championship in team of individual events which are organized by the Indian Olympic Association;

Or

(ii) that he has won first, second or third position in team or individual events and or he has won Gold or Silver or Bronze Medals at International Sports meets, conducted by International Federations affiliated to the International Olympic Committee or by the International Olympic Committee itself.

(b) In the case of recruitment to reserved vacancy in Class III posts:-

(i) that he belongs to the State of Punjab : and

(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organized by the State Level Federation.

(c) In the case of recruitment to a reserved vacancy in Class-IV post:-

(i) that he belongs to the State of Punjab : and

(ii) that he has attained the first, second and third position in a District Level Championship organised by the concerned District Level Association affiliated to the State Level Association in the respective discipline.”

(7) However, it is pertinent to notice that respondent No.4 has also placed the Rules on record as Annexure R4/8 and there is a slight variance *qua* the clause pertaining to Class-III posts in as much as reference is made to the non-Olympic discipline of Cricket and Tennis with which the present controversy is not connected. The relevant portion which is apparently different reads as under:-

“(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the disciplines affiliated to

the Punjab Olympic Association organized by the State Level Federation. In case of non-Olympic disciplines such as Cricket and Tennis, a winner should have attained any of the first three positions in a State level Championship organized by the concerned State Level Association affiliated to the concerned National Federation.”

(8) In such circumstances Mr. Rajiv Atma Ram, Senior Advocate vehemently contended that certificate (R3/4) in favour of respondent No.3 who has played 50th National School Games in Basketball (boys) would show that it was issued by the SGFI which was only recognized by the Ministry of Youth Affairs Sports Government of India and IOA. It was a member of the International School Sports Federation, Asian School Sports Federation and Asian School Football Federation and not being affiliated with IOA which was the requirement of the Rules. Similarly, *qua* the certificate issued in favour of respondent No.4 submitted that it was also by SGFI and therefore in the absence of affiliation the private respondents had been wrongly appointed and selected.

(9) It was thus submitted that the petitioner having a certificate from the FAI was fully eligible and the said Association was a unit of IOA. It is further submitted that FAI was affiliated since 1985 as per the letter received on 22.12.2014 (P14). Reliance has been placed also on correspondence dated 11.07.2011 (R4/2) issued by IOA that the affiliated National Sports Federation and State Olympic Associations were members and there shall be no category of recognized members henceforth in view of the amended Constitution of IOA which was done in the Annual General Assembly held on 12.02.2011. It was pointed out that certificate dated

22.07.2013 (R4/3) had been issued by IOA that recognition had been given to the SGFI in the Annual General Meeting held on 26.10.1998. However, the same had been withdrawn in AGM held on 12.02.2011. Accordingly, reliance has been placed upon another certificate dated 12.11.2014 (Mark A) which both the sides have relied upon and thus it was taken on record on 19.07.2019. The said letter would show that the affiliated Associations were entitled to attend and vote at the General Body Meeting of IOA whereas the recognized Associations are the Sports Bodies which control that particular sport and conduct/participate at the National/International events. Counsel for the private respondents have relied upon the same in context that the SGFI was thus a recognized Association controlling the particular sport at that level and conducting the events at the national/international level and therefore the private respondents having participated in the games conducted by SGFI could not be ousted on the ground that it was not affiliated to IOA.

(10) Mr. Rajiv Atma Ram, Sr. Advocate relied upon **Rohitash Kumar & Ors. vs. Om Prakash Sharma & Ors. (2013) 11 SCC 451** that once there was a statutory provision, the Court would have no choice but to enforce the meaning of the Rule even if it was inequitable, unjust or harsh. The relevant portion reads as under:-

“18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor.

It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible

injustice. (Vide: Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal, AIR 1950 SC 265; and D. D. Joshi & Ors. v. Union of India & Ors., AIR 1983 SC 420).

19. In Bengal Immunity Co. Ltd. v. State of Bihar & Ors., AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, ‘dura lex sed lex’ which mean “the law is hard but it is the law.” may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.”

(11) The State in response has relied upon the 1988 Rules to submit that respondents No.3&4 were covered under the definition of Sportspersons and have been rightly considered in that category. Respondent No.3 had secured first position in the National School Games (Basketball) representing State of Punjab whereas respondent No.4 secured first position in the Asian School Games (Cricket) representing India. Reliance was placed upon letter dated 19.11.1998 (R2) pertaining to the judgment of this Court in **CWP No.9690 of 1994 Varinder Kaur vs. State of Punjab** decided on 07.10.1994 (R1). Similarly, respondent No.5 Director Sports also supported the appointment of private respondents.

(12) Mr. Gurminder Singh, Senior Advocate defended the appointment of respondent No.3 and referred to the instructions dated

10.12.1997 (R3/6) which provide for issuing of Sports Gradation Certificates-Reservation of Seats for Sports men/woman in Technical/Medical and Preferential Treatment in services of the State Government. It is submitted that the earlier Instructions dated 04.08.1992 had been revised and submitted that Grade B certificates are issued to school teams of Punjab who are position holders in the School National Championships.

(13) It is accordingly submitted that there was a representation at the national level and Basketball was one of the recognized sports disciplines figuring at Sr.No.3 of the said policy. Reference was also made to clause 31 to show that there was a Uniform Gradation Policy. It is pointed out that on 18.08.2008 (R3/7) modification had been done and National School Gradation Certificates were to be awarded to position holders of National School Games Under-17.

(14) Similarly information received from respondent No.5 was relied upon that on 24.10.2013 (R3/8) that the Sports Gradation Certificates were issued as per Sports Gradation Policy and the eligibility for recruitment was fixed under the 1988 Rules. It is submitted that certificate as such which had been issued was valid and had never been challenged. Reliance was accordingly placed upon the letter dated 'Mark A' dated 12.11.2014 issued by the IOA to submit that the SGFI was the only authority who was conducting the school games and it was a body which was recognized and conducting the events at the national/international level. Merely, because affiliated bodies had right to voting, certificate issued by the SGFI could not be done away with. Reliance was placed upon the Division Bench judgment of **Varinder Kaur's** case (supra) that the purpose as such was that the

applicant should have played at the said level and represented the State at the national level. Therefore participation of the private respondents at that level would bring them within the definition of Sportsman and they had been rightly appointed. Lastly, it was submitted that private respondents had put in 7 years of service by now and it was not the case that the appointment has been taken on the strength of fraud or misrepresentation. It was submitted that as per the merit list also there was another candidate who was higher in merit as such namely Deepinder Singh at Sr.No.3 whereas the petitioner was only at Sr.No.4 and the said person had not approached the Court. Even if the writ petition is to be allowed the petitioner could not frog leap over him. Reliance was placed upon **Vikas Pratap Singh & Ors. vs. State of Chhattisgarh & Ors. (2013) 14 SCC 494** that in such circumstances it would be highly unfair and unjust for the respondents to have their appointment set aside at this stage as they had become overage for Govt. recruitment.

(15) The faint argument was also raised to challenge the *locus standi* of the petitioner that the certificate in his favour (P2) had been issued under the auspices of the FAI and the event had been organized by the Rajasthan State Fencing Association. Admittedly, no pleadings in the written statement as such *qua* this aspect have been made and therefore the petitioner also could not rebut the same by way of replication and therefore the same is not liable to be taken into consideration. Even otherwise it is a matter of common knowledge that events are organized at the State level by the Associations which are affiliated with the national association which in the present case is FAI and further affiliated with IOA and therefore the

petitioner's locus as such cannot be questioned on this count. The argument is thus not tenable.

(16) Similarly, Mr. DS Patwalia, Senior Advocate defended the appointment of respondent No.4. It is pointed out that apart from the initial certificate issued for the participation in Asian level games in the year 2002 (R4/4) the said respondent had been constantly representing the State and reference was made to the further certificates whereby his participation is shown in West Bengal in the year 1999 for the State of Punjab and similarly, in Madhya Pradesh in National School Games in the year 2000. Reference was also made to the certificate of 47th National School Games conducted at Delhi in 2001 and subsequent certificate at the Panjab University Inter College Level in 2005. It was submitted that the said respondent was a genuine sportsperson and had rightly been appointed. Reliance was placed upon certificate dated 22.07.2013 (R4/3) that SGFI had been given recognition but the same had been withdrawn only on 12.02.2011.

(17) By falling back on the Rule, it was held that admittedly, respondent No.4 belonged to the State of Punjab and had also won the national championship in the team while representing the State of Punjab and the event as such had been conducted by the respective national federation, namely, SGFI which had been recognized by IOA from 1998 to 12.02.2011 for the relevant period. Merely because it was not affiliated as such which only provided voting rights as per the letter dated 12.11.2014 (Mark A), would not entitle the petitioner to contend that the private respondents were not genuine sportspersons.

(18) It was thus contended that SGFI being the controlling sports body and Cricket being a recognized sport as per the gradation policy, the

gradation certificate had been rightly granted which was not subject matter of challenge. Reliance has been placed upon the judgment of the Apex Court in **Surinder Singh vs. Central Government & Ors. (1986) 4 SCC 667**. It was submitted that it is not a case of fraud and it was a genuine certificate issued and therefore reliance was placed upon **P.Raghava Kurup & Anr. vs. V.Ananthakumari & Ors. (2007) 9 SCC 179** that Rule had to be read harmoniously and the object sought to be achieved should be kept in mind as 7½ years have gone by since the appointment. Reference was made to letter dated 18.08.2008 (R4/5) whereby under Category A the certificate had been granted and which was in continuation of the earlier policy dated 10.12.1997 (R3/4).

(19) Similarly, subsequent instructions dated 29.06.2010 (R4/6) which provided that the sportspersons who had participated and got a position in the National Games organized by the SGFI were to be given the benefit.

(20) It is in such circumstances justification is sought regarding the appointment made and for the validation of the same rather than upsetting the position after period of more than 7 years.

(21) From the facts referred to above, it would be clear that the tussle between the petitioners and the private respondents is on account of having achieved laurels in the sport and having represented the State at the national level at the point of time when the candidates as such were in school. The petitioner did his Mechanical Engineering in May, 1997 and the certificate on the basis of which he claims appointment is of the year 1993, four years before he became an Engineer. At that point of time, it would have not been in his mind as such that the said certificate would give him a

chance as such to seek appointment for the coveted post in PCS. The gradation certificate of 23.06.1993 was issued in pursuance to the policy of the State and the instructions issued which are dated 07/12.06.1991 and 04.08.1992 at that point of time.

(22) Vide instructions dated 07/12.06.1991 which was issued by the Department of Education V Branch, the criteria which was made on 12.07.1990 was revised for grant of sports gradation certificate for entitlement to concessions against reserved seats in Technical/Medical and Preferential Treatment in services of the State Government. The certificates were to be in the ascending order of merit and for Grade-B certificates at Serial No.(i) and (x) Asian Federation Cup Tournament and National School Games figured. The relevant part of the said letter reads as under:-

*"No. 47/26/83-5 Edu(5)/1450
PUNJAB GOVERNMENT
DEPARTMENT OF EDUCATION
(EDUCATION V BRANCH)*

To

*All Heads of Departments,
Registrar, Punjab and Haryana High Court,
Commissioners of Divisions, Deputy
Commissioners and Sub-Divisional Officers
(Civil) in the State of Punjab*

Dated, Chandigarh, the 7.6.1991/12.6.1991.

Sub : Issuing of Sports Gradation Certificates & Reservation of seats for sportsmen/women in Technical/Medical and Preferential treatment in service of the State Govt.

Sir,

I am directed therefore Punjab Government instructions contained in the circular letter No. 47/26/83-5 Edu(5)/3309, dated the 12th July, 1990 on the subject cited above, and to say that after careful consideration, Government have revised as

follows, the criteria for the grant of sports gradation certificates for entitlement to the concessions based thereon :-

2. The Certificates shall be in the following descending order of merit:-

Grade A :- Sportsmen/Women of International Standing i.e. those who have represented India in the following International Tournaments/Meets/Competitions/Championships etc. :-

- i) Olympic Games*
- ii) Commonwealth Games*
- iii) Asian Games*
- iv) Test Matches/One day matches in Cricket*
- v) Davis-Cup-in Tennis*
- vi) World Cup Tournaments in respective Games.*

Grade-B :- Sportsmen/Women who have participated in the following Tournaments/Meets/Competitions/Championships etc.

- i) Asian Federation Cup Tournaments.*
- ii) International Tournaments other than those, mentioned against grade-A.*
- iii) All India Combined Universities team which participated in the Senior National.*
- iv) K.V.S. team participation in National School Games.*
- v) National Championships/Inter-State*
- vi) International Meets/Championships for Juniors.*
- vii) National Games organised by I.O.A.*
- viii) All India combined Universities team participating in World Universities Championships.*
- ix) National Championships for Women/National Sports Festival for Women organised by SAI from 1990-91 onward.*
- x) National School Games.”*

(23) Thereafter on 04.08.1992, the criteria was further revised.

(24) As noticed, these instructions have been supplemented over a period of time in as much as on 10.12.1997 (R3/6) the sport gradation

Sports Men/Women in Technical/Medical and Preferential Treatment in Services of the State Government were revised. The relevant portion of the same reads as under:-

“A copy of letter No.47/26/83-5 Edu/2036, Government of Punjab Department of Sports and Youth Services, to All Heads of Departments, Registrar, Punjab and Haryana High Court, Commissioners of Divisions, Deputy Commissioners and Sub Divisional Officers (Civil) in the State of Punjab.

Dated, Chandigarh the 10th December, 1997.

Subject:- ISSUING OF SPORTS GRADATION CERTIFICATE-RESERVATION OF SEATS FOR SPORTS MEN/WOMEN IN TECHNICAL/MEDICAL AND PREFERENTIAL TREATMENT IN SERVICES OF THE STATE GOVERNMENT.

Sir,

I am directed to refer to Punjab Govt. instruction contained in circular letter No.47/26/83-5 Edu-(5) 199, dated 4th August, 1992 and No.47/26/83-7-IB/2238, dated 14-5-93 on the subject cited above and to say that after careful consideration government have revised as follows, the criteria for the grant of Sports Gradation Certificate for entitlement to the concessions based there on:-

3. The certificates shall be in the following descending orders of merit:-

GRADE-A

Sportsmen/women of International Standing i.e. those who have represented India in the following international tournaments/ meets/ Competitions/ Championships conducted by recognized International Federation/ Committees:-

- | | |
|-------------------------|--|
| <i>1. OLYMPIC GAMES</i> | <i>2. WORLD CUP.</i> |
| <i>3. ASIAN GAMES</i> | <i>4. COMMONWEALTH GAMES</i> |
| <i>5. DAVIS CUP</i> | <i>6. TEST/ONE DAY CRICKET MATCHES</i> |

GRADE-B.

(xv) Position Holders of Punjab School teams/Kendriya Vidyalaya Schools and Novodhya Sangathan Schools teams participated in school National Championship. Participation in these competitions will not be graded.

xxxx xxxx xxxx xxxx

3. Performance of following sports disciplines only will be considered for the purpose of Sports Gradation:-

- 1. Athletics 2. Badminton*
- 3. Basketball 4. Cricket..."*

(25) Clause 31 further provided that the entire State would have uniform gradation policy and all institutions would not deviate or form separate criteria or guidelines. Clause 31 reads as under:-

"31. The entire State of Punjab will have uniform gradation policy as specified in this order no Educational/institution or otherwise will deviate or form a separate criteria or guidelines from the criteria/policy as laid down in this order."

(26) In the year 2008 vide instructions dated 18th August (R3/7), in continuation of the earlier instructions and with the purpose to ensure that only genuine sportspersons would get gradation the categories A & B with which we are concerned were specifically changed. The same reads as under:-

"Category 'A'

The Gradation Certificate should be awarded to the:-

- (i) Medal winners of Olympics Games, World Cup and Asian Games.*
- (ii) Gradation certificate should be awarded only to the first three position holders of Commonwealth Games, Afro Asian Games and Asian Championships.*
- (iii) Gradation certificate should be awarded to the participants of Olympic Games, World Cup and Asian Games.*

(iv) Gradation certificate should be awarded to the participants of Common Wealth Games, Afro Asian Games and Asian Championship.

(v) Gold, Silver and Bronze Medalist in SAF Games, World University Games, Junior World Championships, Asian School Games and International National Recognised Competitions where at least 10 teams participate.

Category 'B'

(iii) Gradation certificate should be awarded only to the first three position holders of the Senior National Championships, National Games, Junior World Championships, All India Inter Universities Competitions/National Championships under 19, National School Games under 17/All India Rural Sports.

(iv) and to the first three position holders of National Games where the competition held amongst eight or more than eight teams.

3. The other terms and conditions/eligibility will remain the same as specified in earlier instructions contained in circular No.47/26/83-5 Edu/2036 dated 10-12-97.

4. These instructions will come into force with immediate effect."

(27) Similarly vide letter dated 29.06.2010 it was clarified while taking into account the earlier instructions right from the year 1992 that sports men/women who had participated and got 1st, 2nd and 3rd position in the National Games organized by SGFI would be entitled for reservation for admission and jobs in the Department or Organisation. The relevant portion of the communication reads as under:-

"No.8/33/09-133887
Govt. of Punjab
Department of Sports and Youth Affairs

To

*All Heads of the department,
Registrar, Punjab and Haryana High Court,
All Divisional Commissioner/Deputy Commissioners,
And Sub Divisional Officer(C), Govt. of Punjab.*

Dated 29.6.10

Sub: Regarding issuance of Sports Gradation certification – for giving reservation to the sportsmen/sportswomen for admission into technical/medical Institutes and jobs in department or organization of the State Govt.

Sir,

In the aforementioned subject, the instructions issued by the Govt. of Punjab vide No.47/26/83-5(s) 1999 dated 4.8.1992, 47/26/83-71B/2238 dated 14.5.93, 47/26/83 1ss/2036 dated 10.12.97, No.47/26/83 SS/1457 dated 18.8.2008 and No.47/26/83-1SS/646 dated 12.5.2009 after appreciating the same very carefully, it has been decided those sportsmen/sportswomen with immediate effect who have participated in Indian Public School Council (IPSC)/Central Board of Secondary Education (CBSE) and National teams of Vidya Bharti and who have got first, second or third position in the national games organized by School Games Federation of India (S.G.F.I.) in individual or team representation.

2. In this regard rest of the instructions/condition and eligibilities shall be the same as incorporated in sports gradation policy dated 10.12.97.

*Sd/-
PS Auja
Secretary, Govt. of Punjab,
Department of Sports and Youth Affairs.”*

(28) Instructions dated 18.08.2008 would also show that when the change was made in Category A & B there was mention of the Asian School Games for Category A and National Games under 17 for Category B which would be clear from Clause (v) & (iii) reproduced above. The Full Bench of this Court in **Amardeep Singh Sahota vs. State of Punjab 1993(2) PLR**

dealing with the admissions to MBBS/BDS/BAMS courses in Government Medical/Dental Colleges of Punjab for the year 1992-93. The issue before the Full Bench was whether a sportsperson was entitled for admission on the strength of their grading as such granted irrespective of their merit and whether they had to have minimum marks for being eligible. The Government as such had issued the notification dated 13.07.1992 which had waived off the requirement of minimum qualifying marks which was resultantly quashed and it was held that the admission to the sports category cannot be made purely on the basis of achievements in sports but it should be made in accordance with the instructions dated 07/12 June, 1991. Along with the issue which was discussed in detail and had led to the overruling of the view taken in **Miss Maninder Kaur & Ors. vs. State of Punjab, AIR 1985 P&H 46**, wherein it was held that the admission should be made on the rating of the candidates in the light of their performance in the field of sports and only the said criteria was relevant and the marks obtained in the Pre-Medical Entrance Test was irrelevant and the candidate should be admitted purely on the basis of rating which they obtained under the policy decision in sports.

(29) Thus the decision of the Division Bench in **Ranbir Singh v. Thapar Institute of Engineering and Technology, Patiala, AIR 1988 Punjab and Haryana 51** wherein the case of **Maninder Kaur** (supra) was overruled was approved taking the view that the admission was being sought by a student in a professional college and not in a sports college. Merit in sports no doubt was to be considered for admission in a professional college but the marks obtained in an examination had also to be given due

weightage. Thus in principle the criteria which had been framed for grading was approved by the Hon'ble Full Bench.

(30) As noticed above, the criteria was initially formulated by the Education Department and thereafter had been supplemented time and again by respondent No.5 and in such circumstances the certificates which have been issued by the said respondent giving grading under Category B & A are valid certificates and have not been challenged. It is on the basis of the said certificates the official respondents have proceeded to appoint respondent No.3 & 4 to the posts of PCS (EB) and Excise and Taxation Officer and therefore no fault can be found with the said action.

(31) The respondents as noticed have also in their school time represented the State of Punjab. Respondent No.3 had participated in the game of Basketball and has a certificate issued by SGFI whereby he had represented the State of Punjab and the team had come first at Kolhapur, Maharashtra in a tournament held in December, 2004. At that point of time the said respondent was only around 17 years old his date of birth being 12.03.1987. On the strength of the said certificate he had been given B-grading having represented Punjab State in 50th National School Games and was given certificate dated 02.06.2005 (P9).

(32) Similarly, respondent No.4 had excelled in the game of Cricket. The SGFI had issued necessary certificate for the participation in Asian School Games Championship which was held at Ludhiana in the year 2002 when the Indian School Cricket Team had come first. On the strength of said certificate he had been issued the Gradation certificate 'A' dated 23.12.2009. As noticed it was not a flash in the pan and he had been consistently representing the State of Punjab as his participation was there in

45th National School Games 1999-2000 in Vinoo Mankad Cricket Under 16 Yrs. at Gayeshpur & Kalyani, Nadia, West Bengal. Thereafter he also played the 46th National School Games, 2000-2001 at Datia, Madhya Pradesh in the year 2000. Similarly, he represented the State in the year 2001 in the 47th National School Games held at Delhi and also represented the Panjab University and secured first position in Cricket-A Division in the competition held in January, 2005.

(33) As noticed both the sports of Basketball and Cricket have been recognized by the State in their instructions on the basis of which Sports Gradation Certificates have been issued from the year 1991. Merely because the SGFI is not affiliated with IOA as such would not be a ground to hold that their achievements in the field of sports is to be done away with. The purpose of the Rule and the instructions is to be kept in mind. As noticed the achievements were at school level and at that point of time the petitioners and the private respondents would have never had this aspect in mind they would be vying for appointment of Government jobs. Its not that the certificate as such has been obtained by fraud or misrepresentation. In such circumstances the purpose of rule would have to be kept into consideration.

(34) A closer reading of the Rule would show that to claim the reservation of the Sportsman for recruitment to Class-I or Class-II posts, a candidate is to belong to the State of Punjab having won a National Championship in team or individual events. While representing the State of Punjab the sports event as such has to have been conducted by such respective National Federation. The only disadvantage that the petitioners

are facing is that the SGFI is not affiliated with the IOA. Out of 4 other criterias, they have fulfilled all except the fifth.

(35) In **P.Raghava Kurup & Anr.** case (supra), the intention of the Rule-framing authority was kept in mind while reading the rules as such while dismissing the appeal. The challenge was to the setting aside of the appointment by the Division Bench. It was held that two rules could be read harmoniously if the object sought to be achieved can be achieved without violation of the rules then both the rules could be read together. It was held that the object was to provide promotional avenue to non-teaching staff to the post of Teachers provided they fulfilled the requisite qualifications and if a person was not available then any non-teaching staff being available could be considered for appointment of language teacher which had been done by the DPI. In the present case as noticeable, the private respondents in principle fulfilled all the four conditions and for reasons beyond their control as such since achievements in sports was at the point of time when they were in school and the certificates were issued by the SGFI for which they had been given necessary gradation as per the instructions they cannot be held to be ineligible as such.

(36) It is not that the SGFI is a body which is not recognized and the certificates issued by the SGFI are not worth its salt. Admittedly, the same was recognized from 26.10.1998 by IOA and the recognition has only been withdrawn in the Annual General Meeting held on 12.02.2012 which would be clear from the certificate dated 22.07.2013 (R4/3). The same reads as under:-

“TO WHOMSOEVER IT MAY CONCERN

As per record, Indian Olympic Association has given recognition to the School Games Federation of India in the

Annual General Meeting held on 26th October, 1998 and the same have been withdrawn in the Annual General Meeting held on 12th February, 2011.”

(37) Thereafter IOA has also clarified vide communication dated 12.11.2014 (Mark A) as to what is the difference between the affiliated bodies and the recognized Associations. The same reads as under:-

“This is to certify that the difference between the Affiliation/Recognition that the affiliated Associations are entitled to attend and vote at the General Body Meeting of IOA whereas the recognized Associations are the Sports bodies which control that particular Sport and conduct/participate at the National/International events.”

(38) Thus it is apparent that the SGFI as such is an Association which is conducting the sport at the national/international level and the private respondents have got their certificates from it. The certificate (R3/4) would show that it is recognized by Ministry of Youth Affairs and Sports, Government of India. As noticed above from the year 2004, it was recognized by IOA till 2011 and there has been a subsequent withdrawal. At the point of time, when the certificates were issued the SGFI as such was recognized which has recognized the respondents No.3&4 as genuine sports person. This Court is of the opinion that to hold that they were ineligible as such and not entitled for appointment on the strength of the games they played for the State of Punjab at the national/international level would be a travesty of justice.

(39) Merely, because the games had been conducted at the school level there is no such disadvantage that the respondents would face and the genuineness as such of the certificates as such has not been questioned. In such circumstances, counsel for the private respondents are well justified to

fall back upon the law laid down in **Vikas Pratap Singh & Ors.** case (supra) which was a case pertaining to the evaluation of the answer-scripts.

(40) The appellants in the said case had appeared in the examination held for recruitment in Police for the State of Chhattisgarh and had been selected. On account of the defects/mistakes in several questions of the Main Examination Papers, a Committee had been set up and re-evaluation had been carried out. The revised merit list had been prepared and the appellants were already undergoing training having been selected in the first list. They did not figure in the revised merit list and their appointments were cancelled. The said decision was upheld and the writ petitions were dismissed. Accordingly the Apex Court came to their rescue that it was not a case that employment had been obtained by fraud, mischief, misrepresentation or *mala fide* and sympathetic consideration as such had to be taken. The error having not been committed by them and they having been appointed they were allowed to continue and the only disadvantage they faced were that they were put at the bottom of the seniority list keeping in view the fact that it would have obviously affected their careers. The relevant portion of the judgment reads as under:-

“25. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

26. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation.”

(41) The respondent-State was also justified in holding out that in such circumstances a Division Bench in **Varinder Kaur** (supra) had allowed the writ petition by noticing that the petitioner had as such represented the State of Punjab and participated in the 14th National School Games 1968-69 and the team had won games in the event of Volleyball (girls). Resultantly, it was held that because she did not participate in the sports event in college would not as such debar her from claiming reservation as sportsperson. Though the Division Bench was not seized of the affiliation with the IOA but in essence held that the participation and being a winner in the National School Games by the writ petitioner clearly brings her within the scope of “sportsman” and thus her claim for appointment could not be ignored.

(42) Keeping in view the above discussion, there is no merit in the present writ petition and the same is accordingly dismissed.

05.08.2019

vvishal

(G.S. Sandhawalia)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No