

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

CWP No. 239 of 2018 (O&M)

Date of decision:29.05.2019

Dr. Pardeep Kumar

...Petitioner(s)

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Nehra, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Ritu Bahri, J. (Oral).

The petitioner is seeking writ of certiorari for quashing the appointment of respondent No. 4 to the post of PGT Hindi pursuant to the advertisement No. 1/2012 (Annexure P-1) on the short ground that petitioner should have been awarded 59.04 marks and the last selected candidate under the general category has been awarded 56.01 marks. Pursuant to the advertisement No. 1/2012 (Annexure P-1) against category No. 13, 1700 posts of PGT Hindi were advertised. Out of 1700 posts, 1054 posts were reserved for general category. The petitioner applied for the said post and was given roll No. 13016408 as per Annexure P-2. As per the certificates of M.A., M.Phil and Ph.D and HTET (Annexure P-3 colly), he was eligible for the post of PGT Hindi. The final result was declared on 01.01.2014 (Annexure P-4). The cut off marks of the last candidate under the general category was 56.01 as is evident from Annexure P-5 where cut off marks of the last selected candidate under general category have been mentioned. The petitioner gave an application under RTI (Annexure P-6)

on 17.11.2017 seeking marks given as per the criteria for different degrees.

The petitioner was awarded following marks:-

Academic			Higher			NCC/Sports				Grading		
Graduation	Master	B.Ed	STET	M.Phil	Ph.D	NCC-B	NCC-C	SP-N	SP-I	Total	Viva	G.Total
5.55	22.40	0.00	4.09	0	0	0	0	0	0	32.04	22	54.04

The grievance of the petitioner is that he has not been awarded any mark for M.Phil and Ph.D. If petitioner had been awarded two marks for M.Phil and three marks for Ph.D, the petitioner would have got 59.04 marks and would have in the zone of selection. He had also submitted his provisional Ph.D degree to the Scrutiny Committee at the time of interview and even as per the RTI information, the photocopy of his provisional Ph.D. is missing from the record. In his application form, he had duly mentioned that he had passed his M.Phil for which two marks ought to have been given to him. The marks obtained by respondent No. 4-Poonam Rani have also been placed on record as Annexure P-8.

On 10.01.2018 when notice of motion was issued on the limited issue whether the result sheet for the post of PGT (Hindi) was put in public domain under advertisement No.1/2012 (category No. 13) and whether the M.Phil degree from Sri Venkateswara University earned through distance education mode is recognized by the Haryana Government for appointment to the public post.

Pursuant to the order dated 10.01.2018, an affidavit dated 21.12.2018 has been filed by the Secretary, Haryana Staff Selection Commission, Panchkula. The stand taken by the Commission is that the petitioner has got 32.04 marks for the academics out of 50 marks and 22

marks out of 33 marks in the interview and he has got total 54.04 marks out of 100 marks. In his application form, he has not mentioned that he has done M.Phil in the column whereas in the remarks column of attendance sheet of verification/scrutiny-cum-interview he has mentioned his M.Phil in 2009 instead of M.Phil column and in this backdrop, two marks for higher education were not granted inadvertently. The attendance sheet of the petitioner is Annexure R-3/1. The final result was declared on 01.01.2014 and the names of the selected candidates were recommended to the Education Department on 13.01.2014. The Board uploaded the data of the selected and unselected candidates on its website on 19.05.2014 and thereafter withheld the uploaded data on 18.06.2014.

The petitioner has filed this writ petition on 07.01.2018 i.e. after four years of declaration of the final result and his petition is barred by limitation. It is further clarified that M.Phil degree from Sri Venkateswara University earned through distance education mode is recognized or not by the Haryana Government for appointment to the public post is to be clarified by the Education Department.

Learned counsel for the petitioner has placed on record instructions dated 14.10.2013 issued by University Grants Commission (Annexure P-9) and additional affidavit of the petitioner. As per the additional affidavit of the petitioner, the petitioner has given details of the candidates who have done degrees from the same University i.e. Sri Venkateswara University are as under:-

- (1) Manju Bala with roll number 11039, who was a candidate for the post of PGT, English (Category No. 12) has also done her degree from the same University and was given weightage in the selection process.

- (2) Roshan Lal with roll number 14383 who was a candidate for the post of PGT, English (Category No. 12) has also done his degree from the same University and was given weightage in the selection process.
- (3) Ganesh Dass with roll number 19940 who was a candidate for the post of PGT, Hindi (Category No. 13) has also done his degree from the same University and was given weightage in the selection process.
- (4) Saroj Kumari with roll number 23632 who was a candidate for the post of PGT, Hindi (Category No. 13) has also done her degree from the same University and was given weightage in the selection process.

Learned counsel for the petitioner has further referred to the University Grants Commission instructions dated 14.10.2013 (Annexure P-9) where the University Grants Commission has clarified that the degrees /diplomas/certificates awarded for programmes conducted by the ODL institutions, recognized by DEC (erstwhile) and UGC, in conformity with UGC Notification on specification of Degrees should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional Universities/institution in the country.

The replication has been filed by the petitioner reiterating delay in filing of the petition was on account of the fact that cut off marks of the last selected candidate were disclosed lately and the result sheet was not put in the public domain.

The petitioner had a cause of action to approach this Court only when RTI information was received by him on 22.12.2017 (Annexure P-7) and he filed the writ petition on 07.01.2018. Learned counsel for the

petitioner had further referred to judgments of the Supreme Court passed in *N. Balakrishnan v. M. Krishnamurthy*, 1999(2) R.C.R. (Civil) 578, *Dr. M.S. Patil v. Gulbarga University* 2010(6) SLR 782 and *State of U.P. v. Ravindra Kumar Sharma* 2016(4) SCC 791.

The judgment in the case of *State of U.P. (supra)* cannot be applied to the facts of the present case as in that case, the appointments have been made to the number of posts which were reserved for disabled persons and after verification, it has been found that certificates of 21% of selected candidates of handicapped category were fraudulent. The candidates after being selected, were given training and thereafter offered appointments in the primary School run by the State Government. Thereafter complaint was received from the Bhartiya Viklang Sangh of illegal usurpation of the quota reserved for handicapped persons. The State Government has issued an order for making a provision for constitution of fresh Medical Board and this order was questioned by way of filing writ petition. This writ petition was dismissed by the Single Bench and the Division Bench allowed the appeal filed by the selected candidates. However, the Supreme Court allowed the SLP filed by State of U.P. keeping in view that once the verification of disability certificate has already been done by the State Government, there was no scope for the Division Bench to interfere with that order. However, State Government was given liberty to issue show cause notice to the individuals and take a final decision in accordance with law. In this case, the complaint was made against the selected candidates with the allegation of fraud. However in the present case, there is no such allegation of fraud. It is only a case where inadvertently marks have not been awarded to the petitioner for having done M.Phil and Ph.D.

Thereafter in the judgment of ***Dr. M.S. Patil (supra)***, the challenge was to the wrong appointment of the group-B post which lawfully did not belong to the appellant and he had continued to work on the post for 17 years. Even this judgment will not be of any help to the petitioner since in the present case, respondent No. 4 was duly eligible and was appointed having 56.01 marks. Finally the judgment passed in the case of ***N. Balarishan (supra)*** cannot help the petitioner as in this case, it has been held that in every case of delay, there can be some lapse on part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

In the present case, the result of the petitioner was declared on 01.01.2014 (Annexure P-4) and as per the reply filed by the Commission, the data of the selected and unselected candidates was uploaded on the website on 19.05.2014. The petitioner had every occasion to see all the marks of the candidates which were on website till 18.06.2014 and thereafter he could have approached the Court within a period of one year seeking direction to Commission to inform him about his marks. The criteria of awarding marks was in the knowledge of the petitioner.

The respondents at the same time, have referred to a judgment passed by this Court in ***CWP No. 18353 of 2015 titled as Seema and another V/s. State of Punjab and another*** 2016(1) S.C.T. 292, ***CWP No. 11944 of 2013 titled as Kamlesh Rani V/s. State of Punjab*** 2018(1) SCT 222 and ***CWP No. 21935 of 2015 titled as Gurinder Singh V/s. State of Punjab and others*** on the proposition that in a direct recruitment,

appointments cannot brook delay as that would be against public interest and would defeat very purpose of recruitment even if waiting list cannot be operated after passage of four years. The petition is liable to be dismissed as discretionary relief of the Constitution cannot be granted after lapse of time. In the case of *Seema (supra)*, the posts were advertised in the year 2007 and the claim for appointment was made in the year 2015 while referring to the judgment passed by Hon'ble the Supreme Court in the case of *P.S. Sadasivaswamy v. State of Tamil Nadu, AIR 1974 SC 227* the writ petition was dismissed by observing that delay cannot unscramble a scrambled egg. The Supreme Court was considering the case of promotion. However in the case of direct recruitment, delay disentitles the discretionary relief under Article 226 of the Constitution and it can be fatal. In the case of *Kamlesh Rani (supra)*, applications for 208 posts of Multi Purpose Health Workers (Female) were invited on 28.05.2006 and thereafter another advertisement dated 31.08.2006 was published, the petitioner was never called for scrutiny of documents and she sought information under RTI on 31.07.2011 and thereafter legal notice was sent through counsel on 09.01.2012. The petitioner was not called for scrutiny of documents despite the fact that her merit was 76.55 under SC category which was more than the last selected candidate called for scrutiny who has secured 75.67 marks. The selected candidates had joined their duties on 30.12.2006 and the petitioner for the first time sought information on 31.07.2011 after a delay of 5 years. The writ petition was dismissed by holding that petitioner had not made selected candidates as party and there was no explanation for long delay in filing the petition. While dismissing the writ petition, this Court held that petitioner could have challenged the action of respondents

when she had not been called for scrutiny of documents but no remedy was availed by the petitioner. In the case of **Gurinder Singh (supra)**, petitioner was seeking appointment on the post of Constable on the ground that three persons from the waiting list have been granted appointment in a clandestine manner. The writ petition was dismissed on the ground that it was filed after a delay of more than 4 years of the direct recruitment process. In para 4, observations have been made as under:-

“4. It is the petitioner's say that appointment was offered to the first three candidates in a clandestine manner. Even if that is so, no facts have been pleaded in the petition to ignite the jurisdiction of this Court at a distance of more than four years of the direct recruitment process and with the passage of time the claim of the petitioner has become stale and therefore the petition suffers from the vice of delay and laches in approaching the Court belatedly. If the only dispute was with respect to the height of the petitioner it could easily have been resolved well in time had the petitioner taken effective steps for redressing his grievance either before the superior authorities in the police department or by recourse to law. In direct recruitment appointments cannot brook delay as that would be against public interest and would defeat the very purpose of recruitment and in any case, a waiting list cannot be operated after the passage of four years. It is trite law that a waiting list is not a source of recruitment and it can be operated only when a selected candidate does not accept the offer of appointment and leaves an unfilled vacancy otherwise a waiting list has no value and most certainly not after a lapse of 4 years when the recruitment process has become a dead ball.”

In the facts of the present case, respondent No. 2-Director Secondary Education Haryana has not chosen to file written statement to clarify whether the benefit of M.Phil degree acquired from Sri

Venkateswara University earned through distance mode, can be denied to the petitioner.

The petitioner in his affidavit dated 06.02.2018 filed in CM No. 2037-CWP-2018 has given details of 4 selected candidates who have got degrees from the same University. Even if this fact goes in favour of the petitioner, this writ petition deserves to be dismissed on the ground of delay. The final result was declared on 01.01.2014 (Annexure P-4) and individual marks was declared on 19.05.2014. The petitioner for the first time sought information under RTI on 17.11.2017 (Annexure P-6) and he was given this information on 22.12.2017 (Annexure P-7). Hence, from the date of declaration of the result till he filed RTI information, there is a delay of more than three years and in direct recruitment, delay is fatal.

Dismissed.

Since the main case is dismissed, pending application (if any) also stands dismissed.

29.05.2019

Divyanshi

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned
Whether reportable

:
:

Yes/No
Yes/No