

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

1. Civil Writ Petition No.1986 of 2020
Date of decision: 23rd November, 2020.

Sonu Kumar

....Petitioner

Versus

State of Haryana and Others

...Respondents

2. Civil Writ Petition No.8501 of 2020

Rajan and Another

...Petitioners

Versus

State of Haryana and Others

...Respondents

3. Civil Writ Petition No.1510 of 2020

Ram Mehar

...Petitioner

Versus

Haryana Staff Selection Commission

...Respondent

4. Civil Writ Petition No.34593 of 2019

Prasoon Sharma

...Petitioner

Versus

Housing Board Haryana & Another

...Respondents

5. Civil Writ Petition No.2277 of 2020

Mukesh Sharma

...Petitioner

Versus

State of Haryana & Others

...Respondents

6. Civil Writ Petition No.1041 of 2020

Vishwas Malik

...Petitioner

Versus

State of Haryana & Another

...Respondents

7. Civil Writ Petition No.20098 of 2019

Devender

...Petitioner

Versus

State of Haryana & Others

...Respondents

8. Civil Writ Petition No.16959 of 2019

Sunita

...Petitioner

Versus

State of Haryana & Others

...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Dinesh Kumar Jangra, Advocate
for the petitioner in CWP No.1986 of 2020.
Mr. Sushil Jain, Advocate,
for the petitioners in CWP No.8501 of 2020.
Mr.Samrat Malik, Advocate,
for the petitioner in CWP No.1510 of 2020.
Mr. Anurag Goyal, Advocate,
for the petitioner in CWP No.34593 of 2019.
Mr.Mohit Rathee, Advocate for
Mr. Mayur Karkra, Advocate,
for the petitioner in CWP No.2277 of 2020.
Mr. Surender Pal, Advocate,
for the petitionoiner in CWP No.1041 of 2020.
Ms.Amarjit Kaur, Advocate,
for the petitioner in CWP No.20098 of 2019.

Mr.Kuldeep Sheoran, Advocate,
for the petitioner in CWP No.16959 of 2019.

Mr.Deepak Manchanda, Advocate,
for the respondents in CWP No.34593 of 2019.

Mr.Kanwal Goyal, Advocate,
for respondent-Haryana Public Service Commission.

Mr. Baldev Raj Mahajan, Advocate General, Haryana with
Ms. Shruti Jain Goyal, DAG, Haryana.

* * * * *

MEENAKSHI I. MEHTA, J. :

By way of this judgment, we shall be deciding the aforementioned eight Civil Writ Petitions as common question of law is involved in all these cases.

2. The petitioners in CWPs No.1986, 1510 and 8501 of 2020 were the applicants for the Group-C posts (Clerks) as advertised by the Haryana Staff Selection Commission (for short “the HSSC”) on 20.06.2019 vide advertisement No.5 of 2019 whereas in CWPs No.34593 of 2019 and 1041 & 2277 of 2020 the petitioners had applied for the posts of Junior Engineers in pursuance of advertisement No.10 of 2019 issued by the HSSC on 15.06.2019 and the petitioners in CWPs No.20098 and 16959 of 2019 were the aspirants for the posts of Assistant Professor (College Cadre) as advertised by the Haryana Public Service Commission (for short, “the HPSC”) on 08.03.2019 and had applied for the same. In all these cases, the petitioners had applied for the above-mentioned respective posts under the category of Eligible Sports Persons (for short, “ESP”).

3. Before advertng to the discussion on the merits of the cases in hand, we deem it expedient and appropriate to have a bird’s eye-view of the facts, in the backdrop, giving rise to the entire instant litigation. On

30.11.1993, the Government of Haryana had issued certain instructions (here-in-after referred to as “the old instructions”) for the issuance of the Sports Gradation Certificates to the outstanding sports persons for the purpose of the reservation of the seats for them in the Technical/Medical Institutions as well as in the State Government services. However, the Government, in supersession of these old instructions, issued a fresh policy (here-in-after referred to as “the new policy”) on 25.05.2018 providing the guidelines for issuing the Sports Gradation Certificates to the ESPs for jobs and also for other purposes which has, subsequently, been modified vide the notification dated 15.11.2018 (here-in-after referred to as “the modified new policy”). The core question, which has arisen out of the above-mentioned facts and circumstances and now requires to be answered for the purpose of deciding all the CWPs in hand, is as under:-

“Whether the Sports Gradation Certificate issued to or sought by the petitioners to be issued to them in terms of the old instructions dated 30.11.1993 would entitle them for being considered to be eligible for the afore-mentioned respective posts, advertised after the notification of the new policy and the modified new policy, under the ‘Eligible Sports Person’ category or the Sports Gradation Certificate issued under the new Policy/modified new policy would be required for this purpose ?”

4. For the sake of precision and also to avoid the repetition of the facts, the brief factual-matrix, as canvassed by the petitioner in CWP No.1986 of 2020, is being culled out here. The petitioner, in pursuance of

advertisement No.05 of 2019 as published on 20.06.2019 for inviting the applications for 4858 posts of Clerks (Group-C), had applied for the same under the ESP category. He was issued the admit card for appearing in the written examination. He appeared in the said exam, qualified the same and was called for the verification of the documents on 15.01.2020. However, at the time of the verification/scrutiny of the documents, the competent committee rejected the sports certificate, as submitted by him to seek his selection under the ESP category, on the ground that the said certificate was not in accordance with the new sports policy and therefore, he was not entitled to be considered as eligible for the post reserved for the ESP, despite the fact that this certificate had been duly issued to him under the sports policy dated 30.11.1993, i.e the old instructions, on the basis of his participation in the sports events whereas the new sports policy has been notified on 25.05.2018 and therefore, the said certificate, as issued to him in accordance with the policy as prevalent at the relevant time, i.e the old instructions, was valid one and on the strength thereof, he deserved to be considered as eligible for his recruitment to the said post under the ESP category.

5. In CWP No.16959 of 2019, respondents No.1 & 2 have filed the short reply contesting the claim of the petitioner therein, inter-alia, on the grounds that the selection process has already been completed on the receipt of recommendations of the names of 102 candidates for recruitment to the posts of Assistant Professors and the appointment letters have also been issued to them on 10.07.2019. It is pertinent to mention here that learned Advocate General, Haryana has preferred to address arguments in

the present petitions without filing the written-statements in the remaining petitions.

6. We have heard learned counsel for both the parties in the instant petitions and have also perused the files thoroughly.

7. Learned counsel for the petitioners have contended that the petitioners had participated in the sports events during the period when the old instructions were in vogue and they had, accordingly, been issued the certificates/were entitled to be issued the same, in lieu thereof and therefore, they deserved to be considered as eligible for the said posts on the basis of the Sports Gradation Certificates issued in terms of the old instructions and the new policy, which was notified on 25.05.2018 and had, further, been modified on 15.11.2018, could not be taken to have divested the petitioners of their right to be selected on the above-said posts as reserved for the sports persons and hence, the rejection of their candidature for the said posts under the ESP category, on account of non-submission of the said certificates issued under the new policy, is unreasonable, arbitrary as well as illegal.

8. However, learned Advocate General, Haryana as well as Ms. Shruti Goyal, DAG, appearing on behalf of the respondents, have pointed out that Annexure P-5 (in CWP No.1986 of 2020) is the copy of the instructions issued by the Chief Secretary Haryana on 30.11.1993, i.e the old instructions, providing guidelines for the issuance of Sports Gradation Certificates in view of the performance of outstanding sports persons in the games at different levels, for the purpose of ascertaining their eligibility for the Government jobs besides other purposes as specified therein but

thereafter, on 25.05.2018, the Government has notified the new policy (Annexure P-6 in CWP No.1986 of 2020) for the issuance of the Sports Gradation Certificates to the 'Eligible Sports Persons' for the jobs under the Sports Quota and also for other purposes which has been further modified vide the notification dated 15.11.2018 (Annexure P-11 in CWP No.8501 of 2020), i.e 'the modified new policy' and after the issuance of the afore-said notifications, the HSSC issued the advertisements bearing No.5/2019 on 20.06.2019 (Annexure P-1 in CWP No.1986 of 2020) and No.10/2019 on 15.06.2019 (Annexure P-1 in CWP No. 2277 of 2020) inviting applications for the posts of the Clerks and the Junior Engineers respectively wherein, in Note 6 as appended to Condition 2.4 pertaining to Regulatory Frame-Work, it has been categorically mentioned that the candidates applying under the ESP Category were required to upload the Sports Gradation Certificate, duly issued by the competent Authority and similarly, in the advertisement issued by the HPSC on 08.03.2019, Note 6(a) in the 'General Instructions to Candidates' clearly provides that the candidates, applying under the ESP category, would be required to produce the Sports Certificates as per the Govt. Notifications dated 25.05.2018 and 15.11.2018 and they have argued that these facts make it quite explicit that the requisite Certificates were to be obtained under the Government's policy prevailing at that time, i.e. the new policy as modified on 15.11.2018. To buttress their arguments, they have placed reliance upon the observations as made by the Apex Court in **Deepak Aggarwal and another vs. State of UP and others, 2011(6) SCC 725** and **N. C. Santosh vs. State of Karnataka and others, 2020(5) SCALE 293.**

9. We find the contentions of learned counsel for the petitioners to be untenable because admittedly, the new policy, notified on 25.05.2018 as well as the modified new policy, as notified on 15.11.2018, were already in existence on the dates of publication of the above-said advertisements No.5 and 10 of 2019 by the HSSC, i.e on 20.06.2019 and 15.06.2019 respectively and also at the time of the issuance of the said advertisement by the HPSC on 08.03.2019. A bare perusal of the new policy (Annexure P-6) reveals that it begins with the following words:-

“In supersession of the instruction No. 12/44/88-2GSI dated 30th November, 1993 issued by Chief Secretary to Government of Haryana.....”

Thus, the very opening line of the above-said policy makes it crystal clear that it had been notified while superseding the old instructions (Annexure P-5). Further, Note 6, as appended to Clause 2.4 pertaining to Regulatory Frame-Work in advertisement No. 5/2019 issued qua the posts of Clerks (Annexure P-1 in CWP No.1986 of 2020) and in advertisement No.10/2019 issued for the posts of Junior Engineer (Annexure P-1 in CWP No.34593 of 2019), also requires the candidates, applying under the ESP category, to submit their sports certificates as under:-

“The SC/BCA/BCB/EWS/ESP and PwD (Person with Disabilities) candidates are required to upload SC/BCA/BCB/EWS/ESP and PwD (Person with Disabilities) Certificate duly issued by the competent authority.....”

These clauses in the afore-mentioned advertisements provide

that the candidates applying for the seats reserved under the ESP category, were required to upload/submit the Sports Gradation Certificate duly issued by the competent Authority meaning thereby that the Sports Gradation Certificate, issued by such Authority in terms of the policy which was prevalent at the time of the issuance of the above-said advertisements, i.e the new policy dated 25.05.2018 and the modified new policy dated 15.11.2018, was required to be submitted for being considered as eligible to apply under the afore-said category.

As regards the advertisement dated 08.03.2019 issued by the HPSC for the posts of Assistant Professors (Annexure P-1 in CWP No. 16959 of 2019), it has been clearly provided at Sr. No. 6(a) in the General Instructions to Candidates that :-

“.....The Eligible Sports Persons shall be required to produce the Sports Certificate as per the Govt. Notification dated 25.05.2018 & 15.11.2018 duly issued by the competent authority”

10. The Apex Court has made the following observations in Deepak Aggarwal (supra):-

“22. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the 'rule in force' on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The

requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah's case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants have been taken away by the amendment. The judgments cited by learned counsel for the appellants namely B.L. Gupta Vs. MCD (supra), P. Ganeshwar Rao Vs. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (supra) are reiterations of a principle laid down in Y.V. Rangaiah's case (supra).

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28. *Similarly, this view has been reiterated by this Court in the cases of State of M.P. & Ors. Vs. Raghuveer Singh Yadav & Ors. (supra), H.S. Grewal Vs. Union of India & Ors. (supra) and Rajasthan Public Service Commission Vs. Chanan Ram & Anr.*

(supra). This Court in Rajasthan Public Service Commission's case (supra) has held that it is the rules which are prevalent at the time when the consideration took place for promotion, which would be applicable. In Para 17, it has been held as follows :

“In the case of State of M.P v. Raghuveer Singh Yadav, a Bench of two learned Judges of this Court consisting of K.Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In paragraph 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the Court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct

selection in accordance with the changed rules and make final recruitment. Obviously, no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.....””

Further, in the recently handed-down judgment in N. C.

Santosh (supra), the Hon'ble Supreme Court has observed as under :-

“19. In the most recent judgment in State of Himachal Pradesh & Anr. v. Shashi Kumar, (2019) 3 SCC653, the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y.Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State’s policy.

20. Applying the law governing compassionate appointment culled out

from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.”

11. From the above-discussed observations as made by the Apex Court, it becomes quite explicit that the policy in force at the time of the advertisement of the posts for the Government jobs, would be relevant and shall be taken into consideration for the purpose of ascertaining the eligibility of the candidates for the category of the posts/seats covered under it. Resultantly, it is held that the Sports Gradation Certificate issued or sought to be issued under the old instructions, as circulated on 30.11.1993, would no more be relevant for applying for the above-said posts under the ESP category and rather, such certificate is required to be obtained in terms of the afore-discussed new policy as well as the modified new policy so as to become eligible to apply for the same.

12. In the light of the fore-going discussion, we deem it expedient to take up all the afore-said 08 (eight) civil writ petitions one-by-one and to

adjudicate the claim as set-forth therein by the respective petitioners accordingly.

CWP No.1986 of 2020

13. Petitioner **Sonu Kumar** has prayed for the issuance of a writ in the nature of certiorari quashing the action of respondent No.2 in rejecting his candidature for the post of Clerk under the ESP category, on the ground that he was not having the requisite Sports Gradation Certificate duly issued under the latest new policy and he has made a further prayer for issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to consider his candidature for the post of Clerk under ESP category on the basis of his Sports Gradation Certificate (Annexure P-2) as issued under the old Sports Policy dated 30.11.1993, i.e the old instructions. However, in the light of our above-discussed observations, his afore-said prayers are declined and this petition stands dismissed.

CWP No.8501 of 2020

14. The petitioners **Rajan** and **Rinku** herein have prayed for the issuance of a writ in the nature of mandamus directing the respondents to issue the Sports Gradation Certificates to them, as per their entitlement, in terms of the old policy dated 30.11.1993 and not to make the new policy as well as the modified policy as published on 25.05.2018 and 15.11.2018 respectively, applicable to their candidature and also to direct respondent No.6 to consider their candidature for the post of Clerk under the ESP category on the basis of the Sports Gradation Certificates, so issued in their favour.

However, in view of our observations as discussed in the

preceding paragraphs, their above-mentioned prayers are hereby rejected. Resultantly, this petition stands dismissed accordingly.

CWP No.1510 of 2020

15. Petitioner **Ram Mehar** has sought the indulgence of this Court for issuance of a writ in the nature of certiorari quashing the action of the respondent-Commission in rejecting his claim for selection on the post of Clerk under ESP category, on the ground that his Sports Gradation Certificate (Annexure P-2) was not in accordance with the new policy dated 25.05.2018 and he has also made a prayer for directing the respondents to consider him to be eligible for the afore-said post under the above-mentioned category on the basis of his certificate Annexure P-2.

Again, keeping in view the observations as made by us earlier in this judgment, this petition also stands dismissed.

CWP No.34593 of 2019

16. Petitioner **Prasoon Sharma** has made a prayer for issuance of a writ in the nature of certiorari quashing the action of the respondent-Commission in neither considering his candidature under the ESP category nor the General category and he has further prayed for the issuance of a writ in the nature of mandamus directing the respondent-Commission to consider his candidature for the post of Junior Engineer (Civil) under the ESP as well as the General category.

17. However, in view of our fore-going observations regarding the Sports Gradation Certificate required to be submitted for being considered as eligible for selection on the posts reserved for the ESP category, it is held that in absence of the requisite certificate, as duly issued under the new

policy dated 25.08.2018 as modified on 15.11.2018, the petitioner cannot claim his selection under the ESP category.

18. Further learned counsel appearing for the afore-named petitioner has contended that in case the candidature of the petitioner is not considered under the ESP category, then he is entitled to be considered for his recruitment on the post meant for General category. He has placed reliance upon the observations as made by the Single Benches of this Court in *Pearl Sidhu vs. State of Punjab, 2014 (11) RCR (Civil) 221* and *Guneet Pal Singh Sodhi vs. Punjab State Power Corporation Ltd & Anr., 2015(3) SCT 726* and also by Bombay High Court in *Asha vs. The President, District Selection Committee/Collector, Beed, Distt. Beed & Others, (2016) 3 AIR Bom. R 376* and also by Gujarat High Court in *Tamannaben Ashokbhai Desai vs. Shital Amrutlal Nishar, 2020(3) SCT 622*.

19. On the other hand, learned State counsel have argued that the selection process for the posts of Junior Engineer, in pursuance of advertisement No.10 dated 15.06.2019, has already been concluded and the appointment letters have been issued to most of the successful candidates and some of them have also joined the service accordingly and even otherwise, the petitioner, who had initially claimed his eligibility under the compartmentalized horizontal reservation, i.e under General-ESP category, cannot subsequently seek his recruitment on the basis of the principle, applicable in the case of the vertical reservation, by claiming for consideration of his candidature under the General category in the eventuality of his having not been found to be eligible under the ESP category. They have also placed reliance upon the observations made by the

Apex Court in **Mamta Bisht and Others vs. State of Uttaranchal, (2010)12 Supreme Court Cases 204** in support of their arguments.

20. As observed earlier, the petitioner cannot be considered to be eligible for his selection to the post reserved under the ESP category. As regards his claim for being considered for the post under the General category, it would be relevant and worth-while to mention here that in para No.8 of this petition, he has averred that at the time of appearing before the Commission on 17.11.2019 for scrutiny of the documents, he was taken aback on being informed that neither he could be considered under the ESP category nor under the General category and he could be considered only for those posts of General category where there was no advertisement for reservation of any post under ESP category. However, he has not placed any material on the record to apprise the Court as to whether his name was considered under the General category as mentioned above or not and also to show that he had scored higher marks than the last candidate selected under the General category. Thus, his above-discussed averments remain mere apprehensions whereas during the course of the arguments, learned State counsel have categorically submitted that the selection process for the posts of Junior Engineers in pursuance of advertisement No.10 of 2019 already stands completed/concluded and even the appointment letters have been issued to the most of the successful candidates and many of them have also joined the job meaning thereby that even if just for the sake of arguments, it is presumed that the petitioner is eligible to be considered for his selection on the post under the General category, then undisputedly, the last candidate selected in the said category is certainly going to be

adversely affected in such eventuality but the petitioner has failed to implead such candidate in this petition, even subsequently and it is well settled principle of natural justice that no one should be condemned unheard.

21. In **Mamta Bisht (supra)**, the Hon'ble Supreme Court has made the following categoric observations:-

“8. It is settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate after joining resigns or dies, the vacancy, so occurred cannot be filled up from the panel, which stood already exhausted.....

*9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in **Udit Narain Singh Malpaharia v. Board of Revenue**, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to*

ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure 1908 (hereinafter called “CPC”) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable.”

These observations are fully applicable to the petition in hand and in the light of the same, it becomes quite explicit that the present petition is not maintainable, so far as it pertains to the prayer of the petitioner for considering his candidature under the General category, on account of the non-joinder of the candidate, who would be adversely affected in such an eventuality, as party (respondent) in this petition. The observations as made in *Pearl Sidhu, Guneet Pal Singh Sodhi, Asha* and *Tamannaben Ashokbhai Desai (supra)* are of no avail to the petitioner to substantiate his claim in this petition in view of the above-discussed observations as made by the Apex Court in *Mamta Bisht (supra)*. Resultantly, this petition stands dismissed.

CWP No.2277 of 2020

22. Petitioner **Mukesh Sharma** has prayed for issuance of a writ in the nature of certiorari for quashing the action of the respondent-Commission in not considering his Sports Gradation Certificate dated 05.06.2012 (Annexure P-3) as valid one for his selection on the post of

Junior Engineer (Civil) under the ESP category, on the ground that he did not have the Sports Gradation Certificate issued in terms of the new Sports Policy dated 25.05.2018 and 15.11.2018 and he has also sought the issuance of a writ in the nature of mandamus directing the respondents to consider his candidature for the said post under the ESP category on the basis of his certificate Annexure P3.

However, in view of the observations as made by us in the preceding paragraphs, this petition stands dismissed accordingly.

CWP No.1041 of 2020

23. Petitioner **Vishwas Malik** has also prayed for issuance of a writ in the nature of certiorari quashing the action of respondent No.2 in rejecting his candidature for the post of Junior Engineer (Civil) under the ESP category on the ground that his Sports Certificate dated 30.07.2015 (Annexure P-2) was not in accordance with the new policy dated 25.05.2018 and he has also made a further prayer for issuance of a writ in the nature of mandamus directing respondents No. 1 & 2 to consider his candidature for the said post under the above-said category on the basis of his Sports Gradation Certificate Annexure P-2.

However, keeping in view the observations as made earlier, this petition also stands dismissed accordingly.

CWP No. 20098 of 2019

24. Petitioner **Devender** has made a prayer for issuance of a writ in the nature of certiorari quashing the order dated 15.06.2019 (Annexure P-12) whereby his candidature for the post of Assistant Professor (Commerce), College Cadre, has been rejected on the grounds as mentioned

therein and he has also prayed for issuance of a direction to the respondents to consider his claim for the said post under the ESP category.

25. A perusal of Annexure P-12 reveals that it had been issued by respondent No.2 to the petitioner intimating him therein regarding the grounds for the rejection of his candidature. Annexure P-13 is the representation as preferred by the petitioner against Annexure P-12. Annexure P-14 is the letter sent by respondent No.2 to the petitioner informing him therein that the Commission had considered his said representation and had decided that his candidature had been rightly rejected as he did not submit Ph.D. degree in accordance with the UGC (Minimum Standards and Procedure for the Award of Ph.D. Degree) Regulation, 2009 (for short 'UGC Regulation of 2009') and also the ESP certificate according to Government notifications dated 25.05.2018 and 15.11.2018, i.e the new policy and the modified new policy.

26. As regards the rejection of the candidature of the petitioner on the ground that he did not submit the ESP certificate according to the new/modified new policy and his prayer to direct the respondents to consider him to be eligible for recruitment under the ESP category, it is pertinent to point it out here that he has averred in para 20(iii) of the petition that he had been awarded the Sports Gradation Certificate dated 23.11.2010 in terms of the old instructions and he claims his eligibility on the strength of the same. However, keeping in view the observations as made earlier, it is clear that the said ground can not be held to be illegal and hence, his above-said prayer is hereby declined.

27. So far as the ground of non-submission of the Ph.D. degree in

accordance with the UGC Regulation of 2009 is concerned, a perusal of Annexure P-1, which is purported to be a provisional degree certificate and is shown to have been issued by Modan University, reveals that it bears the date 25.06.2013 whereas the said posts of the Assistant Professor were advertised by the HPSC on 08.03.2019, i.e almost six years after the date as mentioned on the said provisional degree certificate. Moreover, even the provisional degrees can be granted only by the competent authority having the requisite approval for doing so in terms of the UGC Regulations in vogue at the relevant time, for the same being considered during the interregnum of becoming eligible for the award of the degree till it is actually awarded.

28. However, the petitioner has neither come forward with any fair, candid and plausible reason or explanation for his having not been awarded the Ph.D. degree even six years after the issuance of Annexure P-1 nor he has placed any document on the file to show that the said provisional degree, which has actually been described as the provisional degree certificate, had been issued by the afore-named University in his favour in accordance with the above-said Regulation. It being so, the said provisional degree certificate can, by no stretch of imagination, be taken to be sufficient at all for holding the petitioner to be entitled to the relief of consideration of his candidature for the said post.

In the light of the fore-going discussion, this petition stands dismissed accordingly.

CWP No.16959 of 2019

29. Petitioner **Sunita** has also sought the relief of issuance of a

writ in the nature of certiorari quashing the notice dated 15.06.2019 (Annexure P-8) qua the rejection of her candidature for the post of Assistant Professor and she has also prayed for issuance of a writ in the nature of mandamus directing the respondent-Commission to call her for the interview by considering her to be eligible for selection under the ESP category on the basis of her Sports Gradation Certificate Annexure P-3.

30. However, Annexure P-8 is, infact, the announcement (notice) qua the rejection of the candidature of several applicants for the posts of Assistant Professors and Annexure P-7 is the copy of the letter as issued by respondent No.2 to the petitioner on 15.06.2019 intimating her therein regarding the rejection of her candidature on the grounds that she did not possess the ESP certificate according to the above-said notifications dated 25.05.2018 and 15.11.2018 and that she had not submitted the requisite BC-B certificate of Haryana from her parental side.

31. So far as the rejection of the candidature of the petitioner under the ESP category on the above-mentioned ground of not having the ESP certificate as per the new/modified new policy as well as her prayer for considering her to be eligible under the said category on the basis of her certificate Annexure P-3, as issued under the old instructions, are concerned, it is crystal clear in view of the fore-going discussion that the said certificate can no more be considered to be valid to entitle her for her selection on the post reserved under the ESP category and accordingly, her above-mentioned prayer is hereby declined.

32. As regards the rejection of the candidature of the petitioner on the score of non-submission of the requisite BC-B certificate of Haryana

from her parental side, the petitioner has not been able to show as to how the same is illegal, unreasonable or against the relevant reservation policy.

33. In view of the afore-discussed facts and circumstances, it is held that the petitioner has also not been able to establish that Annexure P7 is liable to be quashed for rejection of her candidature on the afore-said count. Accordingly, this petition also stands dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

23rd November, 2020.
seema

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No