

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

211

**CWP No.10307 of 2019
Decided on : 16.09.2020**

Manmeet Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Mohan Singla, Advocate for the petitioner (s).

Mr. Shivendra Swaroop, AAG, Haryana.

(The proceedings are being conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The petitioner in the present writ petition filed under Articles 226/227 of the Constitution of India seeks directions for issuance of a writ in the nature of certiorari to quash the action of the respondent No.3- Haryana Staff Selection Commission (for short 'the Commission'), whereby his B.Com degree has not been considered for granting the additional weightage of 4 marks for the post of the Constable in the Haryana Police against the Advertisement No.3/2018 (Annexure P-1).

It is the case of the petitioner if the benefit of these 4 marks is given, his cut off would come to 51.4 marks in the S.C. Category for which 900 posts have been advertised and he would fall within the zone of consideration. As per the relevant pleadings, it is his case that when he had applied online (Annexure P-4) in pursuance to the advertisement No.3 dated 16.04.2018 (Annexure P-1), in which the last date of online application was 28.05.2018, he had mentioned that he had graduated in B.Com (Commerce)

on 19.09.2016 from Chaudhary Devi Lal University, Sirsa (CDLU) and had obtained 2115 marks out of 3600 marks, which worked out to a percentage of 58.75 marks. There is no dispute as such that in the criteria for selection of the post of the Constable, additional weightage is to be granted for the graduation degree, as per Clause b (i) (page No.20), as per the advertisement.

It is his case that in the written examination conducted on 23.12.2018 he had got 42.4 marks out of 80 marks and had got another 5 marks for the Socio-Economic benefit, which would apparent from Annexure P-7, wherein his valid eligibility against Roll No.9031092115 has been mentioned by respondent-Commission. He had been called for physical screening test on 10.02.2019 and physical measurement test. Scrutiny of documents had taken place on 12.02.2019, but when the final result was declared on 28.02.2019 (Annexure P-9), he did not make the cut. He had requested that he may be granted 4 additional marks of qualification as per representation dated 05.04.2019 (Annexure P-8) and had been orally informed that since the total number of six semesters has not been mentioned in his certificates and only marks of each semester have been mentioned, therefore, the benefit of additional marks could not be given to him. It is his case that he had applied to the CDLU for Combined Marks Card (DMC) vide application dated 18.03.2019 (Annexure P-9) and, thus, he has approached this Court.

It is pertinent to mention that Detailed Marks Card dated 02.07.2016 showing him securing 2115 marks out of 3600 marks and

showing him passed which was issued/dispatched to the petitioner on 24.06.2019 has been placed on record as Annexure P-10, by way of an application.

The defence of the State in its reply as such is to the extent that the petitioner had appeared for scrutiny on 12.02.2019 and he had enclosed result-cum-DMC for the B.Com 6th semester dated 02.07.2016, whereby the result was mentioned as 'Pass-PROV/RL-LOWER' and the said mark-sheet have also been appended as per Annexure P-3 colly. at page No.35. It is the case of the State that the petitioner had not attached the Bachelors Degree or a document showing that the result has been finalized. Thus, the stand of the State is that detailed mark-sheet for B.Com which was issued at the end of the Course, had not been produced. The advertisement had been issued on 16.04.2018 and he had applied for the issuance of the detailed mark-sheet on 18.02.2019 and, therefore, he had failed to procure the documents and produce the same at the time of the scrutiny. Thus, he had been rightly denied the benefit of the graduation marks. It is further submitted that as per the terms and conditions of the advertisement the qualification/eligibility conditions would be determined with regard to the last date fixed i.e. 28.05.2018 and, therefore, the benefit has not been granted.

The said stand as such has been vehemently defended by the counsel for the State for the denial of recommendation to the petitioner for appointment.

Noting this stand as such on 02.09.2020 the following order

was passed to find out whether there were vacancy available as such since apparently the petitioner had also faulted to some extent in not producing the graduate degree at the time of scrutiny:-

“Counsel from the paper-book has pointed out that he had obtained 2115 marks out of total 3600 marks in B.Com degree as per Annexure P-10 which has been issued on 24.06.2019 by the university showing that the petitioner is a commerce graduate. It is accordingly contended that the benefit of the said degree, for additional four marks has not been granted and if the same is granted he would get 51.40 marks which is same as the last candidate who has been declared successful.

Counsel for the State on the other hand submitted that the date of scrutiny of documents was 12.02.2019 (Annexure P-5) and on that date Annexure P-10 was not in existence.

Counsel for the petitioner has pointed out from page 30 to page 35 that the petitioner had already done his graduation on 02.07.2016 and certificate (page-35) issued on 13.07.2016 showed that he had cleared 6th Semester.

Counsel for the State on the other hand submitted that the said certificate (page-35) only depicts that the petitioner was provisionally passed. Thus on the date of scrutiny he did not possess the degree/certificate issued by the university nor the detailed marks card showing that he had passed finally without any endorsement. It is accordingly submitted that in such circumstances, the respondents are justified in not granting the benefit of the four marks for graduation.

Let, affidavit be filed by the respondent Nos.2 and 3 as to whether all the 900 posts for Constable (SC category) have been filled or not.

Adjourned to 16.09.2020.

Needful be done on or before the next date.”

In pursuance of the said order respondent No.2-Director

General of Police, Haryana has filed his affidavit, wherein it had been mentioned that out of 900 candidates from the S.C. Category only 854 persons had joined and 45 had resigned after joining. Therefore, 91 posts (46+45) remained vacant in the S.C. Category. It was further submitted that the waiting list was also operated to the extent of 47 persons and, thus, out of 91 vacant posts 44 still remained vacant. The validity of the selection/waiting list was one year, as per instructions dated 07.10.1998 issued by the Chief Secretary. It is further averred that Commission had vide communication dated 21.01.2020 requested his office not to give joining to the candidates from the waiting list till further orders.

The above document (Annexure P-5) would go on to show that between August, 2014 to July, 2016 the petitioner had given his exams for the course Bachelors of Commerce, which is a three year course. He had been issued a certificate for the 6th semester, whereby he had obtained 300 marks out of 600. The said certificate which is dated 02.07.2016, however, had endorsement of 'PASS-PROV/RL-LOWER'. and was dispatched on 13.07.2016. Admittedly, the cut off date as per the advertisement was 28.05.2018 and at that point of time he had the necessary certificate of 6th semester with him, which is the specific averment. In the online application form, which he had submitted before the cut off date (Annexure P-4), it had been mentioned that he had got 2115 marks out of 3600 marks, percentage of which worked out to 58.75. This is in consonance with the certificate, which has now been placed on record (Annexure P-10), which says that the petitioner has passed and the

certificate is dated 02.07.2016, which is also before the cut off date. The certificate has, however, been issued and dispatched on 24.07.2019, which is after the cut off date. The said certificate would further go on to show that the petitioner had got 300 marks out of 600 marks in the 6th semester, but till 5th semester he had got 1815 marks out of 3000 marks. It is, accordingly, clear that he had got 2115 marks out of 3600 marks, as he had filled up in the online form well before the cut off date.

It is, thus, apparent that before the cut off date the petitioner had been declared pass from the CDLU and in such circumstances, this Court is of the opinion that reliance upon the judgment passed by the three Judges Bench the Apex Court in '**Dolly Chhanda Vs. Chairman, JEE' 2005 (9) SCC 779**', is justified. In the said case, the candidate had applied under the reserved MI category being daughter of an ex-serviceman, who was discharged from the armed forces. The certificate which she had furnished did not satisfy the requirement of reserved MI Category and her candidature had been rejected. Her father had requested Zila Sainik Board to rectify the mistake and a fresh certificate dated 16.07.2003 had been issued, whereby it had been mentioned that he had been 'Permanently Disabled'. The stand of the appellant in the said case was that on account of the Zila Sainik Board mistake, she could not be denied admission as candidates securing lower ranks had already been admitted.

Resultantly, the Apex Court came to the conclusion that a person must possess the eligibility qualification on the last date fixed for

such purpose and there can be no relaxation in this regard and there is no rigid principle, which pertains to the domain of procedure and once necessary certificates are issued the benefit is to be granted and there can be relaxation in the matter of submission of proof. Relevant para of the said judgment reads as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

The said view has been consistently followed by this Court in '**Nitika Vs. The State of Punjab and others**' 2014 (3) PLR 847 and in '**Kiran Bala Vs. State of Punjab and others**' 2014 (3) SCT 803.

The said observations can be squarely applied to the facts and circumstances of the present case. As noticed the certificate in favour of the petitioner (Annexure P-10) was issued on 02.07.2016 which

is well before the cut off date. But it was dispatched to the petitioner at a later stage on 24.07.2019, on which account his candidature has not been accepted. Even if the equity is seen, in his category 900 posts had to be filled and 44 posts are still vacant. Even the waiting list was operated, whereby the merit would have further dropped below 51.4, which is the categorical case of the petitioner that the last selected candidate had secured 51.4 marks. Thus, the petitioner would make the cut, if the benefit of 4 marks is given, on account of the graduation certificate.

Resultantly, the present petition is allowed by issuing a writ in the nature of mandamus directing the respondent No.3-Commission to grant the necessary benefit of 4 marks for graduation. The said respondent shall thereafter forward the claim of the petitioner to the respondent No.2 for consideration for appointment as Constable in the S.C. Category against Advertisement No.3 dated 16.04.2018 (Annexure P-1). The said exercise be completed within a period of 3 months from the receipt of the certified copy of this order.

September 16, 2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes