IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) **CWP No.24036 of 2016 (O&M)**

Promila Sharma ... Petitioner

Versus

State of Punjab and others ... Respondents

(2) **CWP No.17013 of 2020**

Raman Kumar Kochhar ... Petitioner

Versus

State of Punjab ... Respondent

(3) **CWP No.573 of 2019**

Krishan Gopal ... Petitioner

Versus

State of Punjab and others ... Respondents

Reserved on : 27.11.2020
Pronounced on : 11.12.2020

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

Present: Mr.Sanjay Majithia, Sr.Advocate
with Mr.Shailendra Sharma, Advocate,
for the petitioner (s) in CWP-24036-2016.

Mr.D.S.Patwalia, Sr.Advocate
with Mr.Kannan Malik, Advocate,
for the petitioner(s) in CWP-17013-2020
and for respondent No.5 in CWP-24036-2016.

Mr.Amit Arora, Advocate, for the petitioner(s) in CWP-573-2019.

Ms.Anu Chatrath, Addl.A.G., Punjab.

G.S. Sandhawalia, J.

This judgment shall dispose of CWP-24036-2016, CWP-573-2019 and CWP-17013-2020, as common facts and question of law are

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2020.12.11 17:46
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involved. CWP-573-2019 pertains to common question of law but different facts and decision in the first two would have a bearing on it, since question of law would be common and therefore, they are being decided together.

2. The issue, in summarized manner, relates to the appointment to a post of the Punjab Civil Services (Executive Branch) from Register A-II in which, the petitioner-Raman Kumar Kochhar (hereinafter to be referred to as the 'selected candidate'), in CWP-17013-2020 has been appointed vide letter dated 29.09.2016 (Annexure P-13). The representation of the petitioner in CWP-24036-2016, Promila Sharma (hereinafter to be referred to as the 'contesting petitioner'), to declare him ineligible on the ground that he does not fulfill the basic eligibility criteria as given in Rule 10(4)(c) of the Punjab Civil Services (Executive Branch) 1st Amendment Rules, 2011 and declare her eligible, has been rejected vide order dated 12.10.2016 (Annexure P-14), which has, thus, been challenged by the said petitioner. She has also sought directions for appointment to the said post as she comes within the selection zone.

3. During the pendency of the first writ petition, filed by Promila Sharma, the State had issued a show cause notice dated 28.11.2018 (Annexure P-18) to the selected candidate and thereafter, vide order dated 05.10.2020 (Annexure P-31), his appointment has been cancelled. He has been directed to rejoin his parent cadre on the ground that he was not qualified to be appointed as he does not have the basic educational qualification of "Graduation". However, his service benefits

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2020.12.11 17:46
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have been protected as if he had served in his parent cadre for the purpose of continuity and it was not to be treated as break in service. The State Government had also, vide the order passed by the Chief Secretary which is now impugned by Raman Kumar Kochhar, had come to the conclusion that the MA degree in History from Annamalai University cannot make him eligible without the basic first degree of Graduation and therefore, he cannot be considered as qualified under the PCS Rules.

4. The case has a chequered history as the selected candidate was apparently some one's blue eyed boy who managed to get his appointment to the coveted post of the PCS (EB) without even being eligible. In order to appreciate the controversy, reference will have to be made to the background of the case, which is as under.

Summary of facts

5. Vide advertisement No.2 issued by the Punjab Public Service Commission (hereinafter to be referred to as the 'Commission') dated 21.04.2014 (Annexure P-1), applications were invited from eligible employees from Groups-A and B of the Ministerial Cadre of the Punjab Government in Punjab Civil Service (Executive Branch) to be filled through Register A-II and Register C, for the process year from period 2008-2012-2013. The dispute herein is only qua Register A-II for which 25 posts were advertised. The cut-off date for determining the eligibility criteria was fixed as 01.11.2013. The last date for filling the online application forms was 12.05.2014 and the last date for depositing the application fee was 16.05.2014. The hard copy duly filled through proper

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2020.12.11 17:46
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channel had to be submitted by 30.05.2014. The Commission was to conduct a screening test of 100 marks to short-list the candidates as per the syllabus notified by the State Government and a list of eligible candidates 3 times the number of vacancies was to be prepared.

6. The selected candidate, who is only a +2 pass and was not a Graduate, filled his online application form dated 05.05.2014 (Annexure P-4) whereby as per the qualification details he gave out that he has done MA History as per certificate showing his year of passing as May, 2005 from Annamalai University, Annamalai Nagar, Tamil Nadu. He had also signed as declaration that he was fully aware of the particulars/information furnished by him and if he is found indulging in unlawful act, his candidature for the post is liable to be summarily rejected and cancelled in case it was found false or incorrect and that his appointment was liable to be terminated without any notice. He also ticked the column "Yes" whereby the copy of the Graduation decree certificate was attached. Thereafter, the hard copy duly signed by the Principal Secretary to the Government of Punjab, Department of General Administration, where he was working as Senior Assistant, was also forwarded to the Commission on 30.05.2014 (Annexure P-4) wherein in Column D, it was submitted that he had cleared the basic qualification of Graduation from a recognized University as on the cut-off date. The summary of the service record wrongly showing that he was a Graduate and eligible for Register A-II was also attached.

7. His screening test was, thereafter, held on 06.07.2014

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2020.12.11 17:46
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whereby 77 candidates were shortlisted for interview for the 25 posts of Register A-II. At that point of time, the selected candidate, as per the bio-data sheet, which was to be submitted, gave the details of his degrees obtained by him in which the additional details of MBA (Marketting) from Punjab Technical University, Jalandhar and MA (Punjabi) from Panjab University were attached. Photocopy of the said bio-data sheet is marked as Annexure P-33 and placed on record in CWP-17013-2020.

8. Thereafter, the result was declared on 09.06.2016 (Annexure P-6) and the name of the selected candidate figured at Sr.No.23 whereas Promila Sharma, the contesting candidate's name figured at Sr.No.26 at the merit-list. The Commission, in the result, mentioned that the eligibility criteria had been referred to the Government on account of queries raised by the Commission in the final result. While forwarding the selected candidates name on 10.06.2017 (Annexure P-7) to the Secretary, Punjab Government (Personnel Department) by the Secretary of the Commission for the process year 2013, a condition was put that the selected candidate had not presented the proof of Graduation asked by the Commission and had presented the certificates of MA and MBA and as per the 2011 Rules, he should have passed Graduation.

9. Resultantly, the ball was put in the Government's court that before issuing appointment letter, a decision may be taken on the candidate regarding this issue as per Clause 3. The selected candidate along with others were asked to submit the certified copies of the educational qualifications along with the original BA/MA certificate on

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2020.12.11 17:46
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14.06.2016 (Annexure P-8). The same was followed up by reminder on 23.06.2016 (Annexure P-9) that he had not provided the information and the original certificate be sent to the PCS (Executive Branch) for necessary action.

10. The contesting petitioner, in the meantime, had submitted a representation dated 22.06.2016 (Annexure P-10) that the selected candidate did not have the qualifications and she being at Sr.No.26, the appointment letter be issued to her. Resultantly, she filed CWP-12861-2016 seeking quashing of the result qua the selection of the selected candidate which was disposed of on 29.06.2016 (Annexure P-11) by directions to dispose of the representation made by her within one month from the date of the receipt of the certified copy of the order.

11. The Legal Remembrancer to the State Government, in his advise dated 08.07.2016 (Annexure P-15) came to the conclusion that the subsequent degrees in MBA/MA have been taken on the basis of the degree of MA (History) from Annamalai University. The said degree could not be termed as a valid and recognized degree as the selected candidate had to possess the basic degree of Graduation and then he could be said to be eligible and qualified as per the rules. Reliance was placed upon the judgment of the Apex Court in **Annamalai University represented by Registrar Vs. Secretary to Government Information & Tourism Department & others 2009 (4) SCC 590**, to buttress the opinion.

12. The Government Special Secretary (Personnel) thought it

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2020.12.11 17:46
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appropriate to summon the entire application and documents pertaining to MA Punjabi degree from the Panjab University and the application pertaining to the Punjab Technical University so that the matter could be produced before the competent authority for further orders (Annexure P-12). The opinion of the UGC was also sought vide letter dated 18.08.2016. A meeting was held on 26.09.2016 and the matter was referred to the Advocate General for giving advise which came in favour of the selected candidate that since he had the higher qualification of Master's degree, he should be considered eligible and since Panjab University had also recognized his qualification done from Annamalai University and he had also done his MBA from PTU.

13. Resultantly, the selected candidate was offered the appointment to the post of Assistant Commissioner (under training) on 29.09.2016 (Annexure P-13). Thereafter, the then Chief Secretary vide order dated 12.10.2016, decided the case in view of the orders passed in CWP-12861-2016, taking the shelter of the advise of the Advocate General and the fact that the order was received from the Chief Minister and filed the representation. Thereafter, vide letter dated 23.10.2018 (Annexure P-17), the UGC, while replying to the reference dated 18.08.2016, came to the conclusion that the 2003 Regulations provided that for admission in Master's degree, no student was eligible for admission in any other faculty unless he has successfully completed the 3 years of under-graduate degree or had the prescribed number of credits for the under-graduate course. Therefore, the Master's degree without

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2020.12.11 17:46
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the basic first degree was opined not to be equivalent to Graduation degree by the UGC also.

14. The selected candidate was, thereafter, posted as Assistant Commissioner (General) Tarn Taran against a vacant post by curtailing his training on 08.11.2016. Resultantly, CWP-24036-2016 came to be filed by the contesting candidate challenging the result dated 09.06.2016, the appointment letter dated 29.09.2016 and for quashing the order dated 12.10.2016 in which the original record was called for, by the Co-ordinate Bench.

15. The respondent-State gave a detailed reply showing the factual aspect and also brought on record that the UGC on 03.11.2016 had also opined against the eligibility of the selected candidate. It was further submitted that the advise of the Legal Remembrancer had again been taken who had reiterated his advise on 13.12.2016 and similarly, the office of the Advocate General had also reiterated its opinion. The buck was then passed on to the Commission that it was the competent authority to adjudge the eligibility and suitability of the candidate and the application had been forwarded by the respective department as per the relevant provisions of Rule 10(2). The appointment letter was issued on 29.09.2016 on account of the legal opinion of the Advocate General and a final decision was taken by the competent authority to issue the appointment letter.

16. The Commission's stand was that the copy of the degree of Graduation had not been attached with the application form at the time of

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2020.12.11 17:46
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scrutiny and it was made clear that the selected candidate had not produced any degree of passing of Graduation. He had produced the Post-graduate certificate and the Commission had recommended to the Government to take appropriate action before granting him appointment. It was the stand of the Commission that he was admitted provisionally in the selection process on the basis of a Post-Graduation certificate, subject to the production of the Graduation degree which is the minimum required qualification. The hard copy of his documents had been supplied to the Commission by the Department and thus, his name was sent to the Government that it should take appropriate action before granting him the appointment letter because as per the 2011 Rules, the candidate must have qualification of Graduation but he had only produced the MA/MBA passing documents.

17. The private-respondent justified the eligibility of the selected candidate by stating that the competent authority who was to assess the eligibility was the State Government. It had considered all the relevant facts including the educational qualifications and the advise of the Advocate General. Reliance was placed upon the judgment of the Full Bench of this Court in **Manjit Singh Vs. State of Punjab & others 2010 (3) SCT 703**, wherein it was held that to deny consideration of appointment to a candidate having higher qualification would result in breach of Articles 14 & 16 of the Constitution of India. It was further held out that the degree of Post-Graduation from Panjab University, PTU was not disputed and reliance was placed upon public notice dated

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2020.12.11 17:46
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19.07.2016 (Annexure P-6) of the UGC that equivalence of degrees and diplomas are not determined by it and it is to be decided by the University concerned and in case of employment, the qualification is to be decided by the employer. The locus standi of the contesting candidate was, thus, challenged. It was further held out that no fact was withheld with anyone including the Government or recruitment agency.

18. During the pendency of the first petition, on 10.07.2018, it was brought to the notice of this Court that vide letter dated 27.06.2018, addressed to the Advocate General that the Government had decided to review the appointment of the selected candidate. Resultantly, State was directed to file a specific affidavit in this regard. Resultantly, affidavit dated 28.11.2018 was filed by the Secretary to Government of Punjab that it had decided to review the appointment of the selected candidate. Resultantly, show cause notice dated 28.11.2018 was issued for reviewing the appointment. Initially, the same was challenged by the selected candidate by filing CWP-30713-2018 which was disposed of on 04.12.2019 as being premature. Eventually, the order was passed on 05.10.2020, annulling the appointment of the selected candidate which led to filing of CWP-17013-2020 by him.

Agruments

19. Mr.Majithia, Senior Counsel for the contesting candidate has, thus, submitted that in the absence of Graduation degree and as per the provisions of the 2011 Rules, the Commission had abdicated its responsibility while permitting the petitioner to take part in the screening

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2020.12.11 17:46
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test. Thereafter, it had passed the responsibility to the Government vide communication dated 10.06.2016 who had initially wrongly forwarded his name for consideration. It was, thus, submitted that the appointment of the selected candidate was void-ab-initio and the Rules specifically provided that there was no rule for relaxation.

20. Mr.Patwalia, Senior Counsel for the selected candidate, on the other hand, defended his client's appointment on the ground that the degree from Annamalai University was a valid degree from a recognized University which was a equivalent degree treated by the Panjab University and by PTU who had granted the MBA degree in March, 2008 (Annexure P-3) to the petitioner. Similarly, Panjab University had also recognized the said degree and permitted the petitioner to appear in the MA course for Punjabi which he has successfully obtained on 27.09.2011 (Annexure P-4). It was submitted that the subsequent degrees were not subject matter of challenge and had not been withdrawn and therefore, the same could not be ignored.

21. He placed reliance upon the judgment of the Full Bench in Manjit Singh's case (supra) to claim the benefit of higher qualification. His defence was that his case had been scrutinized at the highest level of the office of the Advocate General and had been approved by the then Chief Minister and the controversy had unnecessarily been raised again and the review of appointment was bad. Reliance was placed upon the instructions issued by the UGC to submit that the earlier opinion taken was not justified. Reliance was placed upon the UGC Regulations 2003

SAILESH RANJAN
2020.12.11 17:46
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pertaining to the grant of Master's degree to submit that Clause 2.1 provided that the eligibility for admission could be on account of the prescribed credits for under-graduate degree to the examinations conducted by the University/autonomous institutions or where candidate possessed such qualifications as recognized by the concerned University as equivalent to a under-graduate degree. It was submitted that there was no such provision under the 2003 regulations that the three year BA Graduation degree had to be available which was prevalent in the earlier Regulations of 1985. Thus, the judgment in Annamalai University's case (supra) was sought to be distinguished. Similarly, the judgment in **Guru Nanak Dev University Vs. Sanjay Kumar Katwal & another 2009 (1) SCC 610** was also sought to be distinguished on the ground that there was specific requirement for a Bachelor's degree of not less than 45% of marks.

22. The facts of CWP-573-2019 would go on to show that the State has taken a diametrically opposite stand in the case of candidate namely Krishan Gopal who had applied for the PCS (Executive Branch) Register A-II and not forwarded his case to the Commission for the process year 2018. Resultantly, the petitioner in the said writ petition has challenged the impugned order dated 19.12.2018 (Annexure P-12) whereby since the petitioner did not have the Graduation certificate the hard copy of the online application form submitted was not forwarded to the Commission which has thus been impugned by the petitioner in the said writ petition. In the said case, petitioner was initially appointed as

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2020.12.11 17:46
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Clerk and was working as Senior Assistant in the office of the Minister of Co-operation and Jail's at Punjab Civil Secretariat, Chandigarh. He had, vide advertisement dated 18.10.2018 (Annexure P-3) applied against 3 posts vide online application form on 02.11.2018 (Annexure P-5) in which, against the Graduation clause, he has claimed that he has a Bachelor's degree from the Annamalai University dated 25.10.2005 (Annexure P-9).

23. A perusal of the said degree (Annexure P-9) would actually go on to show that he has a degree of Master’s of Arts, History and he had passed in the examination held in May, 2005 from Annamalai University. Thereafter, he has also done his Master’s in Business Administration from the Punjab Technical University on 20.11.2008 (Annexure P-10). Resultantly, on account of his application not being forwarded, he had filed a representation dated 13.11.2018 (Annexure P-11). Thus, he is aggrieved that having done his Master’s in Business Administration from the Punjab Technical University, he has higher qualifications than the qualification asked for under the Rules. Therefore, his counsel, Mr.Amit Arora, also placed reliance upon the judgment of the Full Bench in Manjit Singh's case (supra). He had been granted interim relief that his candidature would be provisional and subject to the outcome of the writ petition and his result was to be kept in sealed cover. It was also noticed vide the interim order dated 29.05.2019 that he had to place on record documents to show the clarification issued by the Director, Annamalai University (Annexure P-8) was approved by the

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2020.12.11 17:46
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University Grants Commission (UGC) as it was his case that he had cleared the entrance test which is equivalent to Bachelor's degree. However, no further documents have been placed on record from the UGC in support of his case.

24. The State, in its response to his writ petition, has fallen back on the 2011 Rules that the qualification required is Graduation but he is not a graduate from a recognized University and therefore, his application was rightly not forwarded to the Commission. Reliance has been placed upon the letter dated 03.11.2016 issued by the UGC that no student is eligible for admission to the Master's degree in any of the faculty unless he has successfully completed 3 years' of Graduate degree or has the prescribed number of credits for the under-graduate degree which the contesting petitioner in the connected matter is also relying upon.

25. The State has further held out that the degree of MBA from the PTU cannot be taken into consideration as the basic qualification required for the post is of a Graduate from a recognized University which the petitioner has failed to obtain. Thus, apparently, the petitioner in the said case is not a blue eyed boy in any manner as his case was never forwarded by the concerned Department and rather held back. A totally diametrically opposite stand has been taken by the State and a ineligible candidate's name has been recommended in the case of Raman Kumar Kochhar which only goes on to demonstrate that the argument raised by the counsel for the contesting petitioner is correct as to how the State was bending backwards for clearance of his name inspite of the fact that he

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2020.12.11 17:46
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does not have the prescribed qualifications as per the rules.

26. It is in this background the issue arises whether the petitioners are eligible for appointment to the post of PCS (Executive Branch) in Register A-II and whether the MA degrees of the petitioners, issued by the Annamalai University can be considered to be in consonance with the regulations of the UGC and on the basis of which, the petitioners can be granted the benefit of higher qualifications which could entitle them to qualify and clear the statutory bar under the Rules.

Terms of advertisement

27. The factual background having been noticed, reference to the advertisement can now be made as to how the selected candidate had stolen a march for appointment and his appointment has rightly been cancelled. Clauses 2, 4, 5.2, 5.4 to 5.6, 8, 10.1, 11.3 to 11.5 read as under:

> "2. CRITERIA FOR ELIGIBILITY:-
> As provided in Rule 10(4) of Punjab Civil Service (Executive Branch) First Amendment Rules, 2011 for Register A-II and Register C respectively.
> xxxx xxxx xxxx
> 4..0 Criteria for eligibility
> The criteria for eligibility for these posts as provided in Rule 10 of the Punjab Civil Services (Executive Branch) (First Amendment) Rules, 2011 is as under:-
> The name of a person shall not be included in the final list unless he-
> a) is a confirmed hand and has completed eight years continuous service under the Government;
> b) is under the age of fifty four years on the first day of

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2020.12.11 17:46
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November immediately preceding the date of submission of names by the concerned authorities; and

c) is a Graduate of a recognized university.

Note: Before applying for ibid posts, the candidate is advised to ensure from his/her respective Department that:

(a) xxxx xxxx xxxx

(b) fulfills the eligibility conditions as mentioned in para above.

xxxx xxxx xxxx

5.2 The eligible candidate after making himself/herself well acquainted with the "General Information for the candidates" and "Instructions for filling Online Application Forms", may apply online if he/she fulfills the criteria for eligibility and is holding ministerial appointment not below the level of Group A and Group B services, serving in connection with the affairs of the State of Punjab.

xxxx xxxx xxxx

5.4 After filling online application form and depositing fee, the candidates are required to submit the hard copy (i.e. the print) of duly filled online application form along with copy of certificates/documents/bank challan etc. through proper channel i.e. through Head of the Department.

5.5. Check list of certificates/documents, which are required to be filled and deposited along with hard copy of the application form, is as follows:

5.5.1 xxxx xxxx xxxx

5.5.2 Copy of Graduation Degree Certificate.

5.5.3 Summary statement of Service Record.

5.5.4 Certificate from Head of Department (Original). (Format mentioned at Page No.9/10)

5.5.5. xxxx xxxx xxxx

5.5.6 xxxx xxxx xxxx.

5.6 Failure of a candidate to submit the hard copy of his/her Online Application Form along with requisite

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2020.12.11 17:46
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certificates/documents through Proper Channel by or before the closing date in the office of PPSC, Patiala, SHALL result in rejection of his/her candidature summarily.

xxxx xxxx xxxx

8.0 Criteria for short-listing of candidates:-

As provided in Rule 10(2) of the Punjab Civil Services (Executive Branch) (First Amendment) Rules, 2011, the Commission shall conduct a screening test to shortlist the candidates and shall prepare a list of eligible persons, three times the number of vacancies.

9.0 Scheme and Syllabus for the Screening Test.

a) The Screening Test shall consist of 100 Questions.

b) xxxx xxxx xxxx

c) xxxx xxxx xxxx

d) The level of Questions shall be Graduation standard.

e) The commission shall conduct a common Screening Test for all the process years to shortlist the candidates. However, merit of the candidates shall be prepared for each process year.

xxxx xxxx xxxx

10.1 As provided in Rule 10(2) of the Punjab Civil Services (Executive Branch) (First Amendment) Rules, 2011, for final selection of the candidates from the list prepared on the basis of screening test, the Commission shall determine the suitability of candidates on the basis of Annual Confidential Reports, Seniority, Experience and Performance in the Interview by associating two representatives of the State Government; one serving as Secretary, Personnel and General Administration and the other senior IAS officer nominated by the Chief Secretary to Govt. of Punjab.

xxxx xxxx xxxx

11.3 If any document/certificate/statement of the candidate is found false or forged, his/her candidature will be rejected and further action will be taken as per law.

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> 11.4 The following conditions, among others, shall render the candidates ineligible for these posts:-
>
> 11.4.1 xxxx xxxx xxxx
>
> 11.4.2 xxxx xxxx xxxx
>
> 11.4.3 Wrong/incomplete information given in the application form;
>
> 11.4.4 xxxx xxxx xxxx
>
> 11.4.5 Non-fulfillment of any of the eligibility conditions, including those of age, experience, confirmation and educational qualification."

28. The format of the certificate to be issued by the Head of the Department has to be forwarded as per Clause 5.4 which would go on to show that the Head of the Department has to give a certificate as to whether the person is a graduate or not on the cut-off date and in the absence of the hard copy, the application had to be rejected as per Clause 5.6. Relevant portion reads as under:

> "It is further certified that:
>
> a) the Applicant employee is working in the "Ministerial Cadre" on a Group "A/B" post of the Government of Punjab as on the cut-off date i.e. 1st November, 2013 (refer para 5 of the circular letter dated 21.04.2014);
>
> b) is a confirmed hand as on the cut-off date i.e. 1st November, 2013;
>
> c) has the required experience for the posts applied for i.e. has completed eight years continuous service under the Government as on the cut-off date i.e. 1st November, 2013;
>
> d) has acquired the basic qualification i.e. graduation from a recognized university, as on the cut-off date i.e. 1st November, 2013;
>
> e) is under the age of 54 years for the posts applied for as on the cut-off date i.e. 1st November, 2013;

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2020.12.11 17:46
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f) his/her Integrity is satisfactory as per official record;

g) No criminal case, vigilance Inquiry and/or departmental proceedings are pending against him/her. (If pending, then give details) and

h) Information given by the Applicant employee in Online Application Form (hard copy attached) is true and correct as per office record.

Signature_____

Full Name_____

(Head of Department)

Designation.....

Name of the Department.....

Stamp:"

29. The eligibility criteria mentioned is as per the Rules of 1976, duly amended in the year 2011. Rule 10 reads as under:

"10. Preparation of Register A-II of accepted candidates.- (1) The Commission shall invite the applications from amongst the members of Group 'A' and Group 'B' services, holding ministerial appointments not below the level of Senior Assistants, which shall be submitted to the Commission through proper channel alongwith their service record.

(2) The applications received alongwith the service records of the candidates shall be processed by the Commission for adjudging the suitability of such candidates, and after conducting a screening test, the Commission shall prepare a list of eligible persons, three times of the number of vacancies.

(3) For final selection of the candidates from the list prepared under sub-rule (2), the Commission shall determine the suitability of candidates on the basis of Annual Confidential Reports, Seniority, Experience and Performance in the Interview by associating two representatives of the State Government; one serving as Secretary, Personnel and General

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2020.12.11 17:46
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> Administration and the other senior IAS officer nominated by the Chief Secretary to Government of Punjab:
> Provided that the members of the Commission and representatives of the State Government involved in the selection, shall certify in respect of each candidates that they have no relation with him.
> (4) The name of a person shall not included in the final list unless he-
> "(a) is a confirmed hand and has completed eight years continuous service under the Government;
> (b) was under the age of fifty four years on the first day of November immediately preceding the date of submission of names by the concerned authorities; and
> (c) is a Graduate of a recognized university.
> xxxx xxxx xxxx"

30. Similarly, Rule 28 talks about relaxation of any other provisions with respect to any clause or category of persons and does not give the liberty to relax eligibility pertaining to any particular individual. Neither it is the case of the petitioner also that there was any relaxation of any norms. Rather the amended rules would further go on to show that for selection of candidates and preparation of Registers of A-I, A-II, A-III being a graduate from recognized University, is a common factor. Similarly also, for Register-C, for the selected candidates, graduation is a necessary requirement. Rule 28 reads as under:

> "Where the State Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

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31. A perusal of the above rules would go on to show that as per Rule 10(2), the applications received along with the service records of the candidate were to be processed by the Commission adjudging the suitability of the said candidate and after conducting the screening test, the Commission was to prepare the list of eligible candidates which was 3 times the number of vacancies. As per Sub-clause (3), the final selection of the candidates were to be done from the list prepared on the basis of the ACR, qualification and performance in the interview. The name of the person was not to be included in the final list, as per Sub-clause (4) unless he was a graduate from a recognized University. As per Clause 1, the applications were to be submitted with the Commission through proper channel along with the service record and the same was to be processed, as noticed under Clause 2. The petitioner, thus, filled in his online application format on 05.05.2014 wherein not only he filled up the column of Graduation by incorporating his qualifications of MA, History from the Annamalai University and even further giving a declaration that his application is true and complete to the best of his knowledge. The relevant portions read as under:

> "I do hereby declare that all the statements made in the application are true and complete and correct to the best of my knowledge and belief. I also declare that I have submitted one application only. I am duly aware that if any particulars or information furnished by me is found to be false/incorrect/incomplete or I would be found indulging in some unlawful act at any time, my candidature for the post is liable to be summarily rejected/cancelled and in the event of

SAILESH RANJAN
2020.12.11 17:46
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any statement/information submitted is found false/incorrect even after my appointment, my services are liable to be terminated without any notice.

Place:

Date: Signature of the Applicant

(a) Have you attached the following certificates?

(1) Proof of Date of Birth Certificate (Matriculation) Yes

(2) Copy of Graduation Degree Certificate Yes

(3) Summary of Service Record. Yes/No

(4) Certificate from Head of Department (Original) Yes/No

(5) Copy of Reserve Category Certificate issued by the Competent Authority (if Applicable for fee concession only) Yes/No

(6) Copy of fee deposit receipt issued by the Bank (Original) Yes

Place:

Date: Signature of the Applicant"

32. To further compound the favourtism, the Principal Secretary to the Government of Punjab, Department of General Administration gave a certificate that he had the basic qualifications from a recognized University as on the cut-off date which was against the record. The relevant communication reads as under:

"The Secretary,

Punjab Public Service Commission,

Baradari Gardens, Patiala-147001

Memo No.2/10/2014-5 Estt.1/893

Date: Chandigarh, the 30/5/14

Subject:- Forwarding the hard copy of Online Application Form of Sh. RAMAN KUMAR KOCHHAR, candidate employee, for the posts of PCS (Executive Branch) to be filled through Register A-II (Process Year 2008/2012/2013).

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2020.12.11 17:46
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Memo.

With reference to Circular Letter No.PR 586/2013/A-II/307-507 dated 21.04.14 issued by the Punjab Public Service Commission, Patiala for the selection of candidates to the posts of PCS (Executive Branch) Register A-II (Process Year 2008/2012/2013), hard copy of Online Application Form along with copies of certificates/documents of the Applicant employee of this Department is forwarded herewith for consideration.

It is certified that the Applicant Employee Sh. RAMAN KUMAR KOCHHAR S/o Smt. JANAK RANI and Sh. NAND GOPAL is now working as SENIOR ASSISTANT w.e.f. 13.03.1989 in PUNJAB CIVIL SECRETARIAT, CHANDIGARH. The summary of service record of the Applicant employee is also enclosed herewith.

It is further certified that:-

a) the Applicant employee is working in the "Ministerial Cadre" on a Group "B" post of the Government of Punjab as on the cut-off date i.e. 1st November, 2013 (refer para 5 of the circular letter dated 21.04.2014);

b) is a confirmed hand as on the cut-off date i.e. 1st November, 2013;

c) has the required experience for the posts applied for i.e. has completed eight years continuous service under the Government as on the cut-off date i.e. 1st November, 2013;

d) has acquired the basic qualification i.e. graduation from a recognized university, as on the cut-off date i.e. 1st November, 2013;

e) is under the age of 54 years for the posts applied for as on the cut-off date i.e. 1st November, 2013;

f) his integrity is satisfactory as per official record;

g) No criminal case, vigilance Inquiry and/or departmental proceedings are pending against him; and

h) Information given by the Applicant employee in Online

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2020.12.11 17:46
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Application Form (hard copy attached) is true and correct as per office record.

Signed
Sanjay Kumar, IAS
Principal Secretary to Government of Punjab
Department of Central Administration"

33. Apart from the above, in the service record appended, educational qualification was shown as Graduation and it was further held out that he was eligible in the A-II register, by the Superintendent of the Establishment Branch. Thus, it is apparent that his name could not have been forwarded at the first instance itself as he was not eligible as per the rules and rather the declaration submitted by him was itself incorrect and as per the terms of the advertisement, his candidature was liable to be cancelled at any point of time. The rules also are categorical that he has to be a graduate from a recognized University and did not specify, as such, that he can be having a higher qualifications. In such circumstances, the initial application, as such, which would not be normally forwarded by the Government was apparently forwarded as the powers to be at that point were hell bent to forward the case in a positive manner inspite of the basic qualifications being lacked.

34. The Commission itself also abdicated its responsibility in not rejecting his case and permitting him to sit in the screening test and as has been noticed from the pleadings, conveniently rolled the ball back to the Government. The Commission wrongly admitted him provisionally in the selection process and later on raised an objection against his name

SAILESH RANJAN
2020.12.11 17:46
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that the Government should take appropriate action, whereas the State has taken the stand that the Commission was the competent authority to adjudge the eligibility and suitability of the candidate as only the application had been forwarded by the respective Department. Thereafter, shelter of the legal opinion of the Advocate General was taken by the State and that a final decision had been taken by the competent authority. However, as noticed, in an identical case of the petitioner, in Krishan Gopal, the stand of the State is diametrically opposite. Rather his case was not even forwarded to the Commission so that he could sit in the screening test and resultantly, only interim orders were passed by this Court, which is subject to the final decision of the writ petition.

35. It is settled principle that eligibility is to be seen on the cut-off date which is to be as per the terms of the rules. In the absence of the basic eligibility of having a Graduation certificate, the declaration made that he was a graduate is, itself, incorrect and therefore, his appointment itself is void-ab-initio appointment. The Punjab Service (General and Common Conditions) Rules, 1994 which applies to the posts of Groups A, B & C, which is the feeder cadre further provide that the minimum educational qualification, as per Rule 15 is that no person is eligible to be given direct appointment even to the post of Clerk under the Punjab Government unless he possesses a Bachelor's degree from the recognized University or institution. Similarly, under Rule 19, there is a power of relaxation for reasons to be recorded in writing but the proviso provides that the educational qualifications shall not be relaxed. Rule 20 provides

SAILESH RANJAN
2020.12.11 17:46
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that these rules shall have over-riding effect. Rule 15(1), 19 & 20 read as under:

> "15. Minimum Educational and other qualification.- (1) (i) No person shall be given direct appointment to the post of Clerk under the Punjab Government unless he possesses the Bachelor's Degree from a recognized University or Institution; and
>
> xxxx xxxx xxxx
>
> 19. Power to relax.- Where the Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to the recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons; Provided that the provisions relating to educational qualification and experience, if any, shall not be relaxed.
>
> 20. Over-riding effect.- The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. "

36. Thus, it is apparent that even as per the Service Rules, the selected candidate had been appointed in violation of the said rules and therefore, there can be no equity in his favour and neither there can be any claim for appointment by Krishan Gopal, the petitioner in CWP-573-2019, on the same basis.

Validity of Post-graduate Degrees

37. The second limb of argument which has been raised by Mr.Patwalia is that MA, History degree from Annamalai University is recognized under the Open University System and he was eligible to

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2020.12.11 17:46
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apply for admission on the ground that he had been given admission on the basis of an entrance test and he was not required to pass a degree examination, is also without any basis. The eligibility clause for admission for MA, History, as per the brochure (Annexure P-1) of Annamalai University, reads as under:

> "2. ELIGIBILITY FOR ADMISSION
>
> Those who do not possess any basic educational qualification but are desirous of pursuing college level education are eligible to apply for the orientation programme preparatory to admission to these programmes, based on their age as given below:
>
> a) For M.A. & M.Com. (BIM), M.Com. (Co-op.Mgt.) Degree Programmes (Two Years)
>
> One should have completed the age of 21 years as on 01.07.2003 (born on or before 01.07.1982).
>
> b) For B.A., B.B.A., B.Lit., B.Com., B.M.M., B.Sc. (Maths), B.C.A., B.Sc. (Psychology) B.Com. (C.A.) B.B.A. (C.A.) (Three Years) and
>
> Diploma Programmes (One Year):
>
> One should have completed the age of 18 years as on 01.07.2003 (born on or before 01.07.1985).
>
> Provisional admission to these programmes will be confirmed only if the Applicant passes the Entrance Test conducted after the completion of the orientation programme.
>
> c) Candidates who have passed Plus 2 or an equivalent examination are eligible for admission to B.A. degree programme and those who have passed degree examinations are eligible for admission to M.A. Degree Programme and Diploma offered under the Open University System without appearing for the Entrance Test.
>
> d) Those who have passed the UG Programme under Open University System need not appear for Entrance Test, if they

SAILESH RANJAN
2020.12.11 17:46
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> opt to join any PG programme offered under Open University System and those who have passed a PG Degree under the Open University System need not appear for Entrance Test, if they opt to join any other PG programme offered under the Open University System except M.A. Tamil and M.Com. (BIM and Co-op. Mgt.)
>
> e) A candidate who has passed any M.A. & M.Com Degree Programmes through Open University System is eligible for admission to any M.A. & M.Com. Degree programmes offered through Directorate of Distance Education except M.A. Tamil & M.Sc. Applied Psychology.
>
> f) Those who have passed the P.G. Programme Under Open University System may be considered for admission to any of the U.G. Programmes only Under Open University System without Entrance Test."

38. A close reading of the above would go on to show that the entrance test requirement was provided for the Graduation courses of BA/BBA/MA courses etc. and the requirement is of completing 18 years on a particular date. For MA degrees, the age of completion is of 21 years as on 01.07.2003, but as per clause (c), candidates who had passed +2 examination are eligible for admission to BA degree without appearing in the entrance test. Similar is the condition for admission to MA degree as candidates have to have passed the degree examination to make them eligible without appearing in the entrance test. The admission to the programme is only provisional after passing the entrance test. The opinion was categorically taken from the UGC in this regard, on 18.08.2016 by the State Government, which was as under:

> "(i) Whether conferment of Master's degree by Annamalai is in accordance with the Regulations of the University Grants

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2020.12.11 17:46
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> Commission? If yes, a copy of the same may kindly be supplied.
> (ii) Whether a person holding such Master's degree by passing examination held by Annamalai University without the benefit of the basic degree or the first degree i.e. Graduation can be said to be eligible and qualified?
> (iii) Can this Master's degree from Annamalai University be considered equivalent/higher than the graduation degree?"

The response received on 03.11.2016 by the State Government reads as under:

> "Subject:- A categorical opinion in the matter of appointment of Shri Raman Kumar Kochhar-possession of M.A. degree from Annamalai University without having a basic graduation degree.
>
> With reference to your letter No.3/5/2012-2 PCS/821687/1 dated 18.08.2016 on the above-subject, I am directed to say that extract of 2.1 under the head 'Admission' and 8.1 under the head 'Award of degrees' of master degree regulations, 2003 clearly stipulate that no student shall be eligible for admission to a master degree in any of the faculty unless he/she has successfully completed three years of an undergraduate degree or earned prescribed number of credits for an undergraduate degrees.
>
> Therefore the master's degree without the basic first degree cannot be considered eligible and nor equivalent to a graduation degree."

39. A reading of the UGC Minimum Standards of Instructions for the Grant of First Degree Regulations, 2003 would go on to show that as per Rule 8.1, a student is not to be awarded the First Degree unless he has successfully completed a programme of not less than 3 years' duration and secured the minimum number of credits prescribed for the award of

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2020.12.11 17:46
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the degree. Relevant clause reads as under:

> "8. Award of Degrees:
> 8.1 No student shall be eligible for the award of the first degree unless he/she has successfully completed a programme, of not less than three years duration and secured the minimum number of credits prescribed by the university for the award of the degree."

40. For admission in the Master's degree, as per Clause 2.1 of UGC Minimum Standards of Instructions for the Grant of Master's Degree Regulations, 2003, admission can only be granted in a MA course if a student has completed 3 years' of Graduation degree. Clause 2.1 reads as under:

> "2.1 No student shall be eligible for admission to a Master's degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree or earned prescribed number of credits for an undergraduate degree, through the examinations conducted by a university/autonomous institution or possesses such qualifications as recognized by the concerned university as equivalent to an undergraduate degree."

41. Thus, it is apparent on a conjoint reading of First Degree and Master's Degree of the UGC Regulations, 2003, a Bachelor's degree is only liable to be granted after a student has completed the programme of 3 years' duration, as per Clause 8.1. Therefore, the petitioner cannot claim that he is a graduate, in any manner, as per the 2011 Rules and the 1994 Rules. The admission in the Master's degree can also only be given after the completion of the 3 years' of under-graduate degree and therefore, if any provisional admission had been granted by the Annamalai University,

SAILESH RANJAN
2020.12.11 17:46
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the same was in violation of the UGC Regulations.

42. The issue was also considered by the Apex Court in Sanjay Kumar Katwal (supra) wherein the basic degree was again of MA, English from Annamalai University through Distant Education. The candidate had taken admission in the Law course which provided that there had to be a Bachelor's Degree from the said University or any equivalent examination recognized with not less than 45% marks. Master's Degree from Guru Nanak Dev University or any other University was recognized as equivalent, was also the academic qualification. It was, accordingly, held that the student cannot enroll for the Master's Degree course unless he has the basic Bachelor's Degree course, though some University may provide for enrollment without the basic Bachelor's degree. Relevant portions of the judgment read as under:

> "11. It is thus clear that under the OUS scheme, if a candidate had passed the preparatory course examination for admission to MA (English) literature, he need not have a basic Bachelor's degree. It is true that normally a student cannot enroll for a Master's degree course unless he has a basic Bachelor's degree in the chosen subject. But some universities may provide for enrolment to a Master's degree course without a basic Bachelor's degree course, if certain requirements are fulfilled. Annamalai University has in fact made such a provision for enrolment to M.A. course by distance education (OUS).
>
> xxxx xxxx xxxx
>
> 13. The appellant university has categorically stated that while regular courses and correspondence courses in MA conducted

SAILESH RANJAN
2020.12.11 17:46
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> by Annamalai university are recognized as equivalent to the corresponding M.A. course of the appellant university, M.A. (OUS) course through distance education conducted by Annamalai university is not recognized by the appellant university as equivalent to its M.A. course. The first respondent has passed his M.A. (OUS) from Annamalai University through distance education. Equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that appellant university has recognized the M.A. English (OUS) of Annamalai University through distance education as equivalent to M.A. of appellant university. Thus it has to be held that first respondent does not fulfil the eligibility criterion of the appellant university for admission to three year law course."

43. The said judgment was then distinguished in Annamalai University's case (supra) by noticing that the relevant Regulations had not been taken into consideration. Though the regulations may have been of 1985, at that point of time and the issue in question was for appointment to the post of Principal in the Film & Television Institute as the basic graduation degree was required. The appellant was seeking the benefit of the Post-Graduation degree conferred upon him by the Annamalai University. The Chennai High Court had held the person not to be eligible for the post of Principal on the basis of the MA Degree without their being a First Bachelor's Degree. Resultantly, reference was made to the fact that the said University had been granting Post-Graduate degrees to candidates who had not completed 3 years course and a letter had been

SAILESH RANJAN
2020.12.11 17:46
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issued that Master's Degree under the Open University System was to be discontinued from the forthcoming session, from July, 2004. Resultantly, it was held that the Chairman, Distant Education Council of the Indira Gandhi National Open University had accepted the letter dated 05.05.2004 that the UGC Regulations would prevail. Therefore, post-facto approval could not have been granted and the University had no jurisdiction to confer such degrees. It was also further noticed that the UGC did not recognize the MA Course and therefore, the eligibility criteria was not fulfilled. Relevant portion of the judgment reads as under:

> "44. It has not been denied or disputed before us that in the matter of laying down qualification of the teachers, running of the University and the matters provided for under the UGC Act are applicable and binding on all concerned. Regulations framed, as noticed hereinbefore, clearly aimed at the Open Universities. When the Regulations are part of the statute, it is difficult to comrehend as to how the same which operate in a different field would be ultra vires the Parliamentary Act. IGNOU has not made any regulation; it has not made any ordinance. It is guided by the Regulations framed by the UGC. The validity of the provisions of the Regulations has not been questioned either by IGNOU or by the appellant - University. From a letter dated 5.5.2004 issued by Mr. H.P. Dikshit, who was not only the Vice-Chancellor but also the Chairman of the DEC of IGNOU it is evident that the appellant - University has violated the mandatory provisions of the Regulations.
>
> xxxx xxxx xxxx
>
> 58. The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant -

SAILESH RANJAN
2020.12.11 17:46
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> University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5.5.2004 that the appellant - University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of UGC ACT. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect."

44. Lastly, coming to the argument that the petitioner also has MBA degree from PTU and MA degree from Panjab University, which was not challenged in any manner and reliance is placed upon the equivalence which was given in the prospectus of Panjab University (Annexure P-5). It is to be noticed that the petitioner never got his case forwarded on the basis of the MBA from PTU/MA degree from the Panjab University. His basic claim was only for eligibility on the basis of the MA degree from Annamalai University which, as noticed, was a misrepresentation of facts. He was wrongly allowed to sit in the screening test by the Commission and his name had been forwarded in the absence of the basic eligibility by the Government and only at the stage of interview he had furnished the other 2 degrees. Secondly, as per the Regulations of the UGC, the said degree could not have been granted without doing a 3 years Graduation course. The subsequent degrees which have now been relied upon on the strength of the MA Degree which he had obtained from Annamalai University and passed direct after matriculation, had the same flaws and violated the norms of the UGC

SAILESH RANJAN
2020.12.11 17:46
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Regulations which are binding upon all the Universities. Therefore, the subsequent degrees which have also been obtained by the petitioner, are based on the degree of the Annamalai University which was obtained without having the basic qualifications of a 3 years' Graduation Course and in the absence of the same, admissions taken in the other courses would also be liable not to be recognized.

45. The reliance upon the Full Bench judgment in Manjit Singh's case (supra) would not help the petitioner as the said judgment was considering the issue of higher qualifications of the Bachelor's of Physical Education, Master’s in Physical Education, which was higher than the certificate of Basic Physical Certificate and it was in the same stream, as such. Herein, as noticed, the higher certificate of Master’s degree has been obtained without having obtained the 3 years' degree course of Graduation and cannot be treated as valid degrees. In such circumstances, it can be safely held that the petitioner did not have the prescribed qualifications as required under the Rules and the State Government had rightly annulled his appointment vide the impugned order dated 05.10.2020.

46. The argument raised that the petitioner's case had been rightly filed by the then Chief Secretary on 12.10.2016 and had wrongly been reopened on 05.10.2020 without any basis, is not liable to be accepted. It has already been noticed in the earlier part of the judgment that the appointment was on the basis of wrong forwarding of the case of the petitioner against the rules and he was allowed to sit in the screening

SAILESH RANJAN
2020.12.11 17:46
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test by the Commission. It has also been noticed that wrong declaration had been given not only by the petitioner but also by the Department concerned, which led to the ineligible candidate's name being forwarded. The conditions of application itself would also go on to show that if it is found that any of the particulars or opinion furnished are false or found incorrect or incomplete, his candidature for the post is liable to be summarily rejected and cancelled. Similarly if the information is found incorrect even after the appointment, his services are liable to be terminated without any notice. The issue, thus, goes to the root of the matter and once there is fraud, this Court would not interfere, in view of the law laid down by the Apex Court in **S.P Chengalvaraya Naidu Vs. Jagannath 1994 (1) SCC 1** wherein it has been held as under:

> "5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains

SAILESH RANJAN
2020.12.11 17:46
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> indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.
>
> 6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

47. Resultantly, in view of the above discussion, CWP-573-2019 and CWP-17013-2020 are dismissed.

48. Accordingly, necessary directions are issued in CWP-24036-2016, to consider the petitioner-Promila Sharma, for appointment to the

SAILESH RANJAN
2020.12.11 17:46
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vacancy which has been caused against the post which has been vacated by Raman Kumar Kochhar, as she is the next eligible candidate, being at Sr.No.26 in the merit-list against the 25 candidates which had been forwarded for appointment.

49. The necessary consideration be made for her appointment by the State Government, within a period of 2 months. Needless to say, since the said petitioner has been denied the appointment, which would have naturally flowed to her, on account of the illegal appointment of the selected candidate, she would be given all necessary benefits of seniority from the date similarly situated candidates were appointed of the said batch.

50. Keeping in view the unnecessary controversy which has been created, the contesting candidate is entitled for costs of Rs.1 lakh, which shall be shared equally by the State Government and the selected candidate, to the tune of Rs.50,000/- each, which shall be deposited within a period of 2 weeks and disbursed to her.

Writ petitions stand disposed of, in the above-said terms.

(G.S. SANDHAWALIA)
JUDGE

11th December, 2020
sailesh

Whether speaking/reasoned: Yes

Whether Reportable: Yes

SAILESH RANJAN
2020.12.11 17:46
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