

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-204-2021 (O&M)

Date of decision:12.03.2021

Haryana Staff Selection Commission

....Appellant

V/s.

Manmeet Kumar and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Hitesh Pandit, Additional Advocate General, Haryana.

Ritu Bahri, J.

CM-547-LPA-2021

Allowed as prayed for.

LPA-204-2021 (O&M)

The Haryana Staff Selection Commission (for short 'Commission') has come up in appeal against the judgment of learned Single Judge passed in CWP-10307-2019 decided on 16.09.2020 whereby the writ petition filed by Manmeet Kumar has been allowed.

The petitioner in the above said writ petition was seeking benefit of grant of additional weightage of four marks on account of his B.Com (Commerce) degree while participating for the post of Male Constable (General Duty) under SC category pursuant to advertisement No. 3/2018 dated 16.04.2018, category No. 1 (Annexure P-1). The petitioner had made his application online (Annexure P-4) pursuant to the above-said advertisement and he had also mentioned therein that he had done graduation 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 58.75% and as per the criteria for the selection to the post of Constable, additional weightage is to be granted for graduation degree according to Clause b(i) (page No.7) of above said advertisement (Annexure P-1).

The Commission is not disputing that in the written examination conducted on 23.12.2018, the petitioner got 42.4 marks out of 80 marks and 5 marks under socio-economic criteria as reflected from Annexure P-7. He was called for physical screening test on 10.02.2019 and scrutiny of documents took place on 12.02.2019. The final result was declared on 28.02.2019 (Annexure P-9) and he did not make a cut. He made a representation on 05.04.2019 (Annexure P-8) seeking grant of additional four marks for B.Com (Commerce) degree. Thereafter, he applied for Detailed Marks Card (DMC) vide application dated 18.03.2019 (Annexure P-9) and filed writ petition. The Detailed Marks Card dated 02.07.2016 showing him securing 2115 marks out of 3600 marks and showing him passed was dispatched on 24.06.2019 which has been placed on record as Annexure P-10.

Learned counsel for the State has argued that the Detailed Marks Card which was issued to the petitioner on 24.06.2019 (Annexure P-10) could not be made basis for allowing the writ petition which was filed after declaration of the final result on 28.02.2019 (Annexure P-9). He has further argued that the detailed mark-sheet which was issued at the end of the course, had not been produced at the time of scrutiny of documents and the petitioner was rightly not given additional four marks for not being graduate at the time of declaration of the final result. The last date for submitting the online application was 28.05.2018. He has referred to a

judgment passed by Hon'ble Supreme Court in ***Civil Appeal No. 344 of 2020*** titled as ***Karnataka State Seeds Development Corporation Limited and another V/s. Smt. H.L. Kaveri and others***, on the proposition that non-enclosure of the experience certificate alongwith the application would be sufficient to deny appointment to a candidate if it is not done before the last date of filing application as per the advertisement. The experience certificate produced before the High Court cannot be made a ground to give appointment to a candidate and even out of 900 posts reserved for Scheduled Caste category, 44 posts remain vacant, the petitioner was not entitled for vacant post on the basis of detailed mark-sheet awarded to him on 24.06.2019 (Annexure P-10).

Heard learned counsel for the appellant.

A perusal of the judgment passed by learned Single Judge shows that as per the documents (Annexure P-3 colly) attached with the petition, the petitioner had given exam of sixth semester of B.Com in May, 2016 in which he obtained 300 marks out of 600. The certificate is of 2nd July, 2016 and had endorsement of "Pass-PROV/RL-LOWER" and this certificate was dispatched on 13.07.2016.

The petitioner, for all intents and purposes, had the necessary mark-sheet of all semesters with him when he made online application pursuant to advertisement (Annexure P-1) before the cut off date i.e. 28.05.2018. A perusal of the application form (Annexure P-4) at page 78 of the paper-book shows that the petitioner had mentioned that he had done his B.Com from Chaudhary Devi Lal University and qualified on 19.09.2016 and had secured 58.75% marks. The Detailed Marks Card issued on 24.06.2019 (Annexure P-10) carries the date of passing in the exam of May

2016 and the marks obtained by the petitioner were 1815 out of 3000 for semesters 1 to 5 and 300 marks out of 600 marks in sixth semester. The total marks obtained by the petitioner were 2115 out of 3600. Hence the Detailed Marks Card (Annexure P-10) is reflecting the same marks as written by the petitioner in the application form (Annexure P-4) which he had filled pursuant to advertisement (Annexure P-1). Further as per the mark-sheet of sixth semester (Annexure P-3 colly), the marks are shown as 300 out of 600 but it did not carry the detailed marks of semesters 1 to 5. Hence, for all intents and purposes, the petitioner had not made any wrong statement with respect to his marks when he made online application (Annexure P-4).

The learned Single Judge has rightly come to the conclusion that the petitioner had given the total marks of graduation rightly in his application form (Annexure P-4) and the same was reflected in Detailed Marks Card (Annexure P-10). Hence, on the last date of submitting online application i.e. 28.05.2018, the petitioner was a graduate in Commerce and had the certificate of sixth semester with him. It was only the Detailed Marks Card which was issued to him on 24.06.2019 (Annexure P-10). The learned Single Judge has allowed the writ petition by referring the judgment of Hon'ble Supreme Court passed in ***Dolly Chhanda V/s. Chairman, JEE'2005(9) SCC 779*** whereby the Hon'ble Supreme Court was considering a case in which the Zila Sainik Board had not issued a correct permanent disability certificate to the father of the candidate who was an ex-serviceman and had been discharged from the armed forces when the fresh correct certificate was issued to him. The Hon'ble Supreme Court held that the benefit of appointment cannot be denied on the ground of mistake done by Zila Sainik Board in not issuing correct permanent disability certificate

and it was further observed that where necessary certificates are issued; there can be relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains the domain of procedure.

Further, the judgment of *Karntakata State Seeds Development Corporation Limited's case (supra)* referred by learned counsel for the State will not be applicable to the facts of the present case as in that case the Hon'ble Supreme Court was examining a case where the Corporation had invited applications for various posts including two vacancies of Senior Assistant and 10 vacancies of Junior Assistant. The applicant had to furnish a certificate of work experience of 3 years/2 years in a reputed company but at the time of making applications, the candidates did not enclose the certificate of the requisite period which was required at the time of submitting applications. Since as per the advertisement, the experience certificate was essential, hence the application was rejected at the time of scrutiny itself. The Hon'ble Supreme Court also observed that even if there was a reasonable justification for which the certificate could not have been enclosed by the candidate alongwith application form, there were several candidates whose applications were rejected on the ground of non-enclosures of self-attested documents. The Hon'ble Supreme Court set aside the judgment of Division Bench by holding that for the post of Junior assistant, 106 applications have been rejected for non-enclosing self attested copies including experience certificate.

In the present case, the Detailed Marks Card in favour of the petitioner/respondent No.1 was issued on 02.07.2016 (Annexure P-10) which was dispatched on 24.06.2019. It is not the case of the appellant that the marks reflected in the application (Annexure P-4) i.e. 2115 marks out of

3600 marks have been altered in the Detailed Marks Card (Annexure P-10) which was issued on 24.06.2019. Hence for all intents and purposes, on the date of filing application (Annexure P-4), the petitioner/respondent No.1 was graduate in Commerce and he ought to have been awarded additional four marks. Moreover, in the present case, out of 900 posts reserved for Scheduled Caste Category, 44 posts are still lying vacant when petitioner-Manmeet Kumar had approached this Court and the last candidate in the waiting list who has been appointed, has got 51.4 marks and in case petitioner/respondent No.1 is awarded four marks, his cut off marks come to 51.4 (42.4 marks in the written examination, 5 marks in socio-economic criteria and 4 marks for graduation) under the Scheduled Caste category.

Hence, no ground to interfere in the order dated 16.09.2020 is made out.

The Letters Patent Appeal is dismissed.

Civil Miscellaneous No. 548-LPA-2021 also stands dismissed.

(RITU BAHRI)
JUDGE

12.03.2021

Divyanshi

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No