

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

LPA No. 552 of 2021 (O & M)

Reserved on: 17.11.2021

Date of decision: 01.12.2021

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Haryana Public Service Commission

....Appellant(s)

Versus

Sandeep Sharma and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Gurminder Singh, Sr. Advocate,
with Mr. Kanwal Goyal, Advocate,
for the appellant.

Mr. Sanjay Kaushal, Sr. Advocate,
with Mr. A.P. Setia, Advocate,
for respondent no. 1.

Ms. Palika Monga, DAG, Haryana.

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

G.S.SANDHAWALIA, J.

The present letters patent appeal by the Commission is directed against the judgment of the learned Single Judge passed in ***CWP No. 27507 of 2019, Sandeep Sharma vs. State of Haryana and others*** dated 23.04.2021. Vide the said order, the writ petitioner (respondent no. 1 herein) has been held entitled to the benefit of the improved marks in Class 10th and 12th and directions have been issued that if he has secured higher marks than the last selected candidate, he would be granted the benefit of appointment. It has also been noticed that two vacancies exist for the post of Naib Tehsildar and, therefore, it has also been further recorded that respondent no. 3 therein need not be dislodged.

The question of law which had arisen for consideration with the learned Single Judge was “whether on improvement of marks of a particular qualification, the same is to relate back to the date of acquiring the said qualification or not”. Having answered the same in the positive, directions were accordingly issued for appointment of the writ petitioner to the post of Naib Tehsildar.

The reasoning which prevailed with the learned Single Judge was the earlier binding view in the judgment of the Division Bench in ***CWP No. 23896 of 2012, Preeti Gulia vs. State of Haryana and another*** decided on 10.01.2013 wherein, it had been held that the improvement of score relates back to the date on which the qualification was acquired. The reliance on the provisions of Haryana Civil Services (Executive Branch) and Allied Services and Other Services Common/Combined Examination Act, 2002 by the Commission were distinguished that it pertain to the number of candidates to be called for the advertised posts and that no candidate has a right to seek appointment beyond the advertised posts. The judgment of the Division Bench of Allahabad High Court in ***Special Appeal No. 733 of 2010, Km. Anjuman Upadhyay vs. State of U.P. and others***, dated 21.02.2018 was distinguished by holding that it was not a question of acquisition of eligibility after the cut off date but of improving the score after the cut off date which would relate back to the date of examination in which the score was improved. Even otherwise, on account of the binding precedent of the Division Bench of this Court, the learned Single Judge had also rightly followed the said view to grant the necessary relief.

Senior counsel, Mr. Gurminder Singh in his usually persuasive manner for the appellant-Commission tried to convince this Court to take a different view from the judgment in *Preeti Gulia's case (supra)* to argue that the

conditions were laid down in the advertisement regarding eligibility with regard to the qualification. The same were to be determined on the last date of the submission of the application form, which was initially 22.08.2015 and then had been extended upto 15.05.2018. It was, thus, submitted that thereafter in the interview letter dated 06.08.2019 (Annexure P-4), there was a note that the documents on which marks were to be awarded and produced at the time of interview had to be issued on or before the closing date which, in the present case, was 15.05.2018. It was accordingly contended that the benefit of improvement which had been granted by the confidential result which was produced by the writ petitioner on 14.08.2019 (Annexure P-6) at the time of interview and for which a request had been made, had rightly not been considered by the Commission in view of the condition that had been put forth in the interview letter and, therefore, the learned Single Judge had erred in issuing such directions.

Mr. Sanjay Kaushal, Sr. counsel, on the other hand, has submitted that the judgment of the learned Single Judge was well reasoned and justified. There was no reason why the benefit of the improved marks should not be awarded to the candidate once he had the necessary eligibility by the cut off date and necessarily improvement of the marks which had been granted would relate back to the declaration of the result. It was further contended that as per the criteria which had been fixed before the interview, the norms of giving the marks of both matric and 10+2 had been fixed and, therefore, the same had to flow to the writ petitioner. It was accordingly submitted that as per the affidavit filed by the appellants before the learned Single Judge, there was no dispute that 3 posts of 'A' Class Naib Tehsildars in the General category were still lying vacant, since the offers of appointment made to the two candidates had not been accepted within the prescribed time.

Though in the impugned judgment, the facts, as such, have been referred to, to which there is no dispute. The same are, however, summarized as that against advertisement dated 23.07.2015 (Annexure P-1), 70 posts of Naib Tehsildars were advertised with the cut off date of 22.08.2015. The age was to be considered as on 01.01.2018. The eligibility with regard to qualifications and other conditions of eligibility were to be determined on the last date of submission of online application forms. The same had been extended to 15.05.2018 by corrigendum dated 01.05.2018. The petitioner being eligible, had applied and submitted his application and sat in the written test on 26.05.2019. In June, 2019, the Haryana School Education Board, Bhiwani decided to give chance to students to improve marks in one subject who had passed from March, 2001 to September, 2008. The writ petitioner had taken a chance and appeared in the examination, the result of which was declared on August, 2019 and improved his marks in English in the secondary examination as also in the senior secondary examination. The Commission, in the meantime, has declared the result of the written examination and accordingly issued interview letters on 06.08.2019 (Annexure P-4) to the petitioner to come for interview on 14.08.2019.

Admittedly, the Commission had fixed the criteria for grading of the marks for Matric and 10+2, with the academic qualifications to carry 37.5 marks and the total marks of the personality test/viva voce were to be 12.5 marks. For recruitment in the short listing test which had been held, 50% of the marks obtained had to be taken subject to maximum of 50 marks. The relevant portion of the grading of matric and 10+2 with which we are concerned read thus:-

“b) Academic Qualifications/Personal Achievements

37.5 marks

Matric

45.0% to 49.99%

05 mark

50.0% to 59.99%

06 mark

	60.0% and above	07 marks
10+2	45.0% to 49.99%	05 mark
	50.0% to 59.99%	06 mark
	60.0% and above	07 marks”

In the meantime, the petitioner had applied for confidential result from the Haryana Education Board and when he appeared for interview on 14.08.2019, he submitted the same in an envelope and prayed for giving the benefits of the improved marks for the 10th and 12th class. The result was declared on 16.08.2019 (Annexure P-7) and against the 38 posts of general category for 'A' Class Naib Tehsildar, the petitioner's roll number did not find mention. Resultantly, he applied for information under the Right to Information Act, 2005 and was informed that he had secured a total of 77.75 marks whereas the cut off was 78.46. It was his case that he had improved his marks in the 10th class from 330 to 382 and in the 10+2 from 290 to 328. The benefits of the improved marks had not been accordingly awarded as per the criteria fixed.

The stand of the respondents, in the written statement, was that he had been awarded 6 marks by not taking into consideration his confidential result, mainly on the ground that qualifications would have to be seen on the last date of submission of application forms i.e. 15.05.2018 and not thereafter. It is in such circumstances, the writ petition was preferred, which has been now allowed.

The first issue which is to be dealt with is whether the entitlement of the confidential marks is to be granted to the petitioner. The position now stands settled by the judgment of the Apex Court itself in ***Civil Appeal Nos. 5065-5095, Haryana Staff Selection Commission vs. Priyanka and others*** decided on 01.09.2021. The issue therein was the appeals preferred by the Commission against the directions issued by the learned Single Judge of this Court and been upheld by the Division Bench that the applicants had applied for the posts of Post

Graduate Teachers for which the qualifying degree was B.Ed. and that they were entitled for the benefit of the provisional/confidential result declared by the Universities which was prior to the cut off date. The view taken by this Court was accordingly upheld, however, with a caveat that directions which had been issued by the Division Bench that Rules should be amended and that the date of eligibility should be as on the date of screening or interview was held not to be justified and that direction of the Division Bench, as such, was quashed. The relevant portion reads thus:-

“The short question which was raised before the High Court and also before us is as to whether the provisional/confidential result declared by the Universities would be a validly declared result or not. The question has been considered by the High Court in detail and it has been held in favour of the candidates. In our view also, as long as the authenticity of the provisional/confidential result declared by the Universities is not in doubt, which in the present case has been confirmed by the Universities on the request made by the appellant/commission, the view taken by the High Court is perfectly justified. It cannot be said that the respondents were not qualified as on the cut off date, which was 12.10.2015, as the provisional/confidential result had been declared by the respective Universities in favour of the candidates prior to the said date and the applications were filed by the respondents well within time, along with such provisional/confidential result. As such, to this extent, we are not inclined to interfere with the order impugned in these appeals.”

Thus, from the above, it would be clear that the writ petitioner had a legal right, as such, to ask for the benefit of his confidential result. It is not disputed that the writ petitioner was qualified as such possessing necessary

educational qualifications before the cut off date as per the advertisement dated 23.07.2015 which provided that he had to be Graduate from a recognized university and had to have knowledge of Hindi/Sanskrit upto matric standard or higher. The eligibility clause of the advertisement, as such, reads thus:-

“The online application can be filled upto 22.08.2015 by using Commission's website after which the link will be disabled. The candidates are strictly advised to apply online well in time without waiting for last date of submission of online application. No offline application form will be accepted by the office. Eligibility with regards qualifications and other conditions of eligibility etc. will be determined as on last date of submission of online application forms i.e. 22.08.2015 and age will be reckoned as on 01.01.2015.”

As noticed, the cut off date had been extended till 15.05.2018 and there is no change in the eligibility criteria, as such, regarding the educational qualifications which were to be then obtained and there is no dispute regarding the petitioner's eligibility having been a Graduate etc. Merely because there was a note as such in the interview letter that marks would be awarded only for those certificates and documents which were to be produced at the time of interview and should have been issued on or before the closing date could not entitle the Commission, as such, to deprive the petitioner of the benefit of the confidential result.

The Division Bench of this Court in ***Nidhi Sharma vs. Guru Nanak Dev University, Amritsar and others, 2004 (4) SCT 468***, while examining the concerned Calendar of the University, which provided that the score and re-evaluation is to supersede the original one, held that the previous result in the paper and in the aggregate shall no longer be the result of the candidate.

Therefore, the examinee could not be denied the right/entitlement to the Gold

Medal and resultantly, struck down the provisio on the strength of which the benefit was denied to the writ petitioner.

In *Preeti Gulia's case (supra)*, the post in question was Post Graduate Teachers (PGTs), which had been advertised and the candidate had the prescribed qualifications on the cut off date which were M.Com. with Accounting/Cost Accounting/Financial Accounting as a major subject of study with at least 50% marks alongwith B.Ed. The petitioner had improved her marks from 55.52% to 57.6% in M.Com. The cut off, as such, had been raised from 50% to 57% on account of large number of applications having been received and the same was enhanced. The rejection of the candidature had been done by the respondents that the marks had to be seen as on the last date of submission of the application. Resultantly, the Division Bench answered the question in favour of the writ petitioner that the result of the improved marks had to be taken into consideration and the cases could not be governed by the earlier marks. It was held that the subsequent appearing in the examination would relate back to the earlier date and, therefore, the result of improvement had to be given effect to and taken to its logical end. Resultantly, directions were issued to call the petitioners for interview and to consider for the posts.

We see no valid reason or justification that the said benefit, as such, should not flow to the writ petitioner herein. To be fair to the senior counsel for the Commission, the judgment in *Km. Anjuman's case (supra)* would not be applicable in the facts and circumstances. In the said case, the successful candidate, as such, had got more marks than the appellant before the Division Bench. The writ petition was accordingly allowed in favour of Guru Priya Singh by noticing that in the second counseling, she had not been permitted to participate. It had accordingly been held by the learned Single Judge that the

appellant Km. Anjuman could not have been offered admission on 06.03.2009 as she was lower in merit and there was no explanation that any communication, as such, had been sent by the Principal to Guru Priya Singh, though letters had been written to the appellant Km. Anjuman on account of a supplementary argument which was raised that she had improved her marks, it was held that marks of the appellant had increased after the last date of submission of applications for preparation of merit and the judgment of the learned Single Judge was challenged. The learned Division Bench had disagreed, as such, with various other judgments passed by Co-ordinate Benches and distinguished the same by holding that they were *per incuriam*. It is settled principle that a Co-ordinate Bench, as such, should refer the matter to a larger Bench rather than distinguishing the judgments. The judgments also relied upon by the said Division Bench of the Allahabad High Court pertain to the facts that the suitability and eligibility has to be taken into consideration on the last date of submission of applications on which there is no quarrel. Therefore, this Court is of the opinion that the view laid down by this Court in *Nidhi Sharma's and Preeti Gulia's cases (supra)* has to be preferred rather than taking the view of the Division Bench of the Allahabad High Court, which this Bench respectfully disagrees with, as the requisite eligibility was available on the date of application. Specially keeping in view the law laid down in *Priyanka's case (supra)*, the benefit of confidential result, as such, has to be necessarily awarded. In view of the settled principle, as such, and, therefore, it would be more appropriate to follow the Division Benches of this Court by which keeping in view the principle of judicial discipline and in the absence of any other contrary view of this Court and, therefore, there being no justifiable reasons as such to refer the matter to a Larger Bench.

Reference can also be made to the judgment in *Dolly Chhanda vs.*

Chairman, JEE, 2004 (4) SCT 546 wherein, a three-Judge Bench of the Apex Court held that the eligibility qualification on the last date fixed for the purpose has to be seen and the necessary certificates and documents produced or marks secured can be relaxed and it would not be proper to apply the rigid principle of cut off date as it pertains to the domain of procedure. In the said case, the candidate, as such, belonged to reserved MI Category and the certificate issued by the Zila Sainik Board was not satisfying the requirement of the reservation. She was higher in merit but on account of the said fact, she was not given chance at the time of counseling. She had got a fresh certificate which showed disability of the ex-serviceman but her candidature was not considered on the ground that the second certificate was dated 16.07.2003 and it was post the date when she was called for counseling. Resultantly, it was held 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.”

If the said principles are applied, this Court is of the opinion that the learned Single Judge has not erred in any manner in granting the benefit to the writ petitioner by directing that he be considered for appointment after counting the improved marks in classes 10th and 12th.

Resultantly, in the absence of any illegality, as such, we do not see any valid ground to interfere in the well reasoned order passed by the learned Single Judge. Accordingly, the present letters patent appeal stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

01.12.2021
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No

