

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

103

**LPA No.838 of 2021 (O&M)
Decided on : 01.11.2021**

Kapil

... Appellant

Versus

Haryana Public Service Commission and others

... Respondents

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

Present: Mr.Vikram Sheoran, Advocate, for the applicant-appellant.

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

G.S. Sandhawalia, J. (Oral)

CM-2045 & 2046-LPA-2021

Applications for condonation of delay of 68 days in filing and 15 days in re-filing the present appeal, are allowed, in view of the averments made in the applications, duly supported by affidavit. Delay of 68 days in filing and 15 days in re-filing the present appeal, is hereby condoned.

CMs stand disposed of.

CM-2047-LPA-2021

Allowed, as prayed for.

LPA-838-2020 (O&M)

The appellant is aggrieved against the judgment of the Learned Single Judge dated 20.04.2021 passed in CWP-22531-2020, wherein challenge had been laid to the awarding of 6 additional marks to the candidates possessing higher qualifications. The writ had been

dismissed while coming to the conclusion that it is for the Selecting Body to work out the way and manner to select the candidates and therefore, judicial review to go into the said fixation of the criteria, was limited.

Counsel for the appellant has vehemently submitted that the rules of the game were changed during the procedure of selection and therefore, the Learned Single Judge was not justified in dismissing the writ petition.

After hearing counsel for the appellant, this Court is of the opinion that the reasons given by the Learned Single Judge were well justified. Nothing can be shown to the effect that the criteria was changed after the process was set into motion and rather, it was only fixed at the relevant point of time, before the written examination and when the interview was to take place.

Advertisement No.5 dated 29.12.2018 (Annexure P-2) was issued for 96 posts of Horticulture Development Officer (Class-II) and the closing date was 05.02.2019. It is the case of the appellant-petitioner that he was applicant under the BCA category for which 12 posts were advertised out of 96. In pursuance of the application forms which had been received, the Commission firstly issued a public notice dated 11.09.2019 (Annexure A-1) wherein it prescribed that the written examination/screening test will be comprising of 100 MCQs (Multiple Choice Questions) in English language only, carrying one mark each and there was to be no negative marking. In pursuance of the said criteria, written examination was held on 27.01.2020 and the appellant-petitioner

did not object to the same, at any point of time and sat in the said examination. The result was declared on 01.10.2020 (Annexure P-7) in which his roll number 71381 figured in the list of candidates who had qualified the recruitment test. He was, accordingly, called for the interview on 07.10.2020, vide letter dated 05.10.2020 (Annexure P-8). Before the interview, the Commission, in its wisdom, fixed the criteria for the academic qualifications/personal achievements at 37.5 marks whereas the written test, marks benefit was to be of 50 marks. The interview/ Viva-Voce was to carry 12.5 marks, taking the grand total to 100 marks. Thus, it would be apparent that the criteria was fixed for one and all, for the 96 posts advertised. The said criteria reads as under:

“The HPSC lays down the following criteria for the post of Horticulture Development Officer (Class II) in the Horticulture Department, Haryana.

Total Marks :		100
(a) Written Test :		50
(b) Academic Qualifications/ :		37.5
Personal achievements		
Matric	Over 80	5
	70 to 79.99	4
	60 to 69.99	3
	50 to 59.99	2
	45 to 49.99	1
10+2	Over 80	5
	70 to 79.99	4
	60 to 69.99	3
	50 to 59.99	2
	45 to 49.99	1
B.Sc. Agriculture Over 60		10
(Hons.) with	55 to 59.99	8
Horticulture as one		50 to 54.99
		6

of the subjects OR 45 to 49.99	4
B.Sc. Horticulture.	
Consistency:	
60% and above in any two (Matric, 10+2 and Graduation)	5
55% and above in any two (Matric, 10+2 and Graduation)	4
50% and above in any two (Matric, 10+2 and Graduation)	3
M.Sc. Horticulture	
60 and above	6
55 to 59.99	4
50 to 54.99	2
Experience in Horticulture development work:	Half mark for every one year experience subject to a maximum of 1½ marks. Fraction of a year will not be counted.
M.Phil	1½
Ph.D	2½
Sports	1
Any candidate who won a medal in the Asian Games, Commenwealth Games or Olympic Games	
Viva Voce	12.5 marks”

In this criteria, it was prescribed that the benefit of the higher qualification of M.Sc. Horticulture was to be given to those candidates who had secured 60 marks and above. They would get 6 marks whereas the candidates who obtained 55 to 59.99 were to get 4 marks and those securing 50 to 54.99 marks were to get 2 marks. The grouse of the appellant-petitioner, thus, is that since he was possessing M.Sc. Horticulture Degree in Agriculture, he has been adversely affected.

It is not disputed that the petitioner was duly qualified, as per the Haryana Horticulture (Group-C) Service Rules, 1998, which provides

that 90% of the recruitment of the said officers was to be done by way of direct recruitment. Appendix B provides the academic qualifications to be B.Sc. Agriculture (Hons) with Horticulture as one of the subjects or B.Sc. Horticulture from any recognized University and knowledge of Hindi upto Matric standard. In such circumstances, the Commission has prescribed the benefit of high marks in the subject concerned i.e. Horticulture and thus, the appellant could have no grouse against the prescription of such additional marks as it is within the domain of the appointing statutory body to ensure that the best candidates are selected.

The appellant has no legal vested right to claim the benefit of additional marks on account of having higher qualification of M.Sc. Agriculture and only has a right of consideration and therefore, he cannot, as such, press forth his case in the absence of any discrimination. It is also to be noticed that the result was declared on 12.10.2020 (Annexure P-1) in which the name of the appellant did not figure. Thereafter, he had initiated the litigation after having taken the chance in the selection process and after sitting in the interview process. Representation dated 10.10.2020 (Annexure P-9) was filed and the writ petition was preferred once the appellant came to know that a higher criteria has been prescribed.

In the response filed by the Commission, it has been mentioned that the petitioner has got 56.515 marks and the last candidate had secured 58.995 marks. It is, at that stage, the appellant chose to raise this bogey of higher qualification, having been prescribed to his

disadvantage. It has time and again been held that if a candidate takes a chance, he cannot challenge the prescribed criteria of the selection process. Reference can be made to **Om Parkash Shukla Vs. Abhinash Kumar Shukla 1986 AIR (SC) 1043**, **Madan Lal & another Vs. State of Jammu & Kashmir and others 1995 (3) SCC 486**, **Chander Parkash Tewari & others Vs. Shakultla Shukla & others 2002 (3) SLJ 88**, **Devki Nanda Sharma Vs. State of Haryana & others 2002 (1) RSJ 64** and **Ajay Kumar Verma Vs. State of Haryana 2010 (1) RSJ 245**. In such circumstances, the appellant was precluded to raise challenge to the criteria fixed subsequently, having taken a chance and not made the cut. Even otherwise, this Court is of the opinion that the criteria was fixed at the relevant time when the next stage of the selection process was to take place, which was never challenged. Neither any facts have been pointed out or placed on record that the criteria was changed adversely, by which, the principle of changing the rules once the game had started would come into place.

Resultantly, in view of the above discussion, finding no merit in the present appeal, the same is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

November 1, 2021
Sailesh

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No