

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 18041 of 2021

Date of Decision: 10.09.2021

Parth Manu

....Petitioner

Versus

State of Haryana and another

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. M.S. Kathuria, Advocate, for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

JASGURPREET SINGH PURI, J.

The present civil writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of Certiorari/Mandamus for directing the respondents to quash/modify Rule 12 (2) (b) of Haryana Civil Services (Executive & Allied Services) Rules, 2008 alongwith impugned condition No.14 of Advertisement No.3/21 dated 26.02.2021 (Annexure P-4) wherein a condition has been imposed that the candidate must possess a Bachelor Degree in Arts/Science/Commerce or an equivalent degree from a recognized University as on 02.04.2021 which is the closing date for receiving the applications. Apart from the same, a prayer for issuance of a writ of Mandamus is also sought to consider the petitioner as eligible to apply for the Haryana Civil Services (Executive Branch) Group-A and other Allied Service Examination as he has acquired all the

necessary eligibility qualifications.

Before advertizing to the submissions made by the learned counsel for the petitioner it would be necessary to note the factual matrix of the case in brief. The petitioner graduated in 5 years B.B.A. LLB (H) from Guru Gobind Singh Indraprastha University, New Delhi in June, 2021 as per the consolidated grade sheet (Annexure P-3). However, a degree of Integrated Bachelor of Business Administration has not been attached with the writ petition but only grade sheet has been attached as Annexure A-3 which shows the year of completion as June, 2021. The petitioner has also been admitted to be an Advocate with the Bar Council of Delhi provisionally vide intimation letter dated 13.08.2021 (Annexure P-9). The Haryana Public Service Commission advertised the post of HCS (Executive Branch) and other Allied Services vide Annexure P-4 dated 26.02.2021. The opening date for submission of online applications has been stated to be 03.03.2021 and closing date for submission of online applications has been stated to be 02.04.2021. Vide condition No.1 it has been specified that the candidates applying for the examination should ensure that they fulfill all eligibility conditions for admission to the examination and their admission to all the stages of the examination would be purely provisional subject to satisfying the prescribed eligibility conditions. The tentative schedule for the conduct of the examination has also been provided in para No.7 of the advertisement. Para No.14 of the advertisement provides the minimum educational qualifications which provide that the candidates must possess a Bachelor Degree in Arts/Science/Commerce or an equivalent degree from a recognized University as on **02.04.2021 (closing date)**. Alongwith the aforesaid condition No.14 a note has also been appended which provides

that the candidates are directed to ensure that they are in possession of all the certificates/documents in support of their claim, which have been issued on or before the closing date i.e. 02.04.2021 and the candidates issued after the closing date will not be accepted by the Commission. The aforesaid condition No.14 alongwith the appended note is reproduced as under:-

14. Minimum Education Qualifications:-

Candidates must possess a Bachelor Degree in Arts/Science/Commerce or an equivalent degree from a recognized University as on 02.04.2021 (Closing date).

Note: Candidates are directed to ensure that they are in possession of all the certificates/documents in support of their claim, which have been issued on or before the closing date i.e. 02.04.2021. The certificates issued after the closing date will not be accepted by the Commission.”

The Haryana Civil Services (Executive Branch) Rules, 2008 (hereinafter called as 'Rules of 2008') which have been framed under Article 309 of the Constitution of India also provide that as per Rule 12 (1), the applications shall be made in such form and manner and accompanied by such documents as may be prescribed by the Commission and as per Rule 12 (2) (b) it has been provided that no person shall be allowed to sit in the examination who does not possess a degree of Bachelor of Arts, Bachelor of Science or Bachelor of Commerce or an equivalent degree of a recognized University. Rule 12 is reproduced as under:

“12.(1) The Commission shall invite applications for appearing in the examination. The applications shall be made to such form and manner and accompanied by such documents as may be prescribed by the

Commission.

(2) No person shall be allowed to sit in the examination:-

(a) who is less than twenty-one years or more than forty years of age or such age limit as may from time to time be fixed by Government for entry into service, on or before the first day of January next preceding the last date appointed by the Commission for the submission of applications:

Provided that the age limit for a person belonging to the Scheduled Castes, Scheduled Tribes or Backward Classes shall be such as may be fixed by Government from time to time;

(b) who does not possess a degree of Bachelor of Arts, Bachelor of Science or Bachelor of Commerce or an equivalent degree of a recognized University.

(3) A Government servant, who is holding an appointment either in a substantive or officiating (excluding ad-hoc) capacity under the Haryana Government or the High Court or any Court subordinate thereto, shall be eligible to appear in the examination if he possesses a degree of Bachelor of Arts, Bachelor of Science or Bachelor of Commerce or an equivalent degree of a recognized University, and has not attained the age of forty-five years and also has not less than four years service whether in a substantive or officiating (excluding ad-hoc) capacity under the Haryana Government or the High Court or any Court subordinate thereto, on or before the 1st day of January next preceding the last date for the submission of application subject to a limit of three chances in addition to those which he might have availed of under sub-rule (2). Any person, who is eligible under this sub-rule and wishes to appear in the

examination, shall submit his application in the prescribed form through the Head of his office, to the Commission.”

Although the schedule for examination was provided in the advertisement but the same was revised for conducting preliminary examination on 30.05.2021 vide Annexure P-10. Thereafter, the same was deferred due to Novel Corona Virus (Covid-19) vide Annexure P-11. Thereafter, vide Annexure P-12 it was announced by the Haryana Public Service Commission that the examination will be held on 12.09.2021.

The learned counsel for the petitioner has submitted that although the petitioner did not fulfill the condition of having a Bachelor Degree on the cut off date i.e. 02.04.2021 which he has been granted much afterwards but he possesses the qualification before the conduct of the preliminary examination which is fixed for 12.09.2021. He submitted that the cut off date is bad in law and fixation of a cut off date is arbitrary and discriminatory. He further submitted that since he has completed the degree before the conduct of the preliminary examination, he may be considered for applying for the HCS (Executive Branch) Examination and permitted to take the exam which is scheduled for 12.09.2021. He submitted that other Public Service Commissions have also permitted the candidates to appear for preliminary examination after the cut off date even though they were not holding a degree before the cut off date. In the present petition, he has referred to the examinations that are conducted by UPSC, Rajasthan Public Service Commission and Punjab Public Service Commission although the relevant provisions/rules of UPSC and Rajasthan Public Service Commission have not been attached alongwith the present writ petition.

However, the Rules of Punjab Public Service Commission have been attached. He submitted that the cut off date is violative of Article 14 and 16 of the Constitution of India and, therefore, he may be permitted to take the examination. He further submitted that prejudice has been caused to the petitioner at the hands of the Haryana Public Service Commission as he was not permitted to apply for the examination as he did not possess the degree prior to the cut off date.

We have heard the learned counsel for the parties.

Mr. M.S. Kathuria, Advocate has appeared on behalf of the petitioner and Mr. Hitesh Pandit, Additional Advocate General, Haryana has caused appearance on behalf of the respondents on being supplied advance copy of the petition.

Admittedly, the petitioner did not possess the requisite degree as on 02.04.2021 which was the closing date for submission of online applications. Admittedly, the petitioner did not apply for the post in pursuance of the advertisement vide Annexure P-4. Although the petitioner has not even attached his degree with the present writ petition to show as to whether he is still possessing the degree or not but he has attached one grade sheet (Annexure P-3) which shows the year of completion as June, 2021 which is much after the cut off date provided by the Commission. Alongwith in this writ petition, the petitioner has also attached one intimation letter by the Bar Council to show that his name has been provisionally entered in the Roll of Advocates but this letter is dated 13.08.2021, which is also much after the cut off date fixed by the Commission. The preliminary examination is going to be held on 12.09.2021 and the petitioner has filed the present petition now which is listed on 10.09.2021.

The petitioner seeks to take preliminary examination by challenging the conditions imposed by the Commission in the advertisement as well as specific provision under the Statutory Rules which has been framed under Article 309 of the Constitution of India. However, a perusal of the writ petition as well as the submissions made by the learned counsel for the petitioner would show that the petitioner has not been able to make out even a single ground as to how Rule 12 (2) (b) imposing a condition of possessing a degree is ultra vires the Constitution of India. The writ petition does not spell out any real & justiciable ground or any reason to show as to how the aforesaid provision is unconstitutional. In this way, the petition is totally vague and in the absence of any valid reason, the plea taken by the petitioner cannot be sustained. The petitioner did not even apply or may be, could not have even applied prior to the last date fixed by the Commission and now just two days before the holding of the examination, the petitioner cannot be permitted to raise these pleas by filing the present writ petition.

The law with regard to fixing of a prescribed date for holding qualifications is no longer *res integra*.. The Hon'ble Supreme Court in '**Ashok Kumar Sharma Versus Chander Shekhar**' [1997(4) SCC 18] while deciding the review petition observed that a person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. Para No.6 of the judgment is reproduced as under:-

“6.The Review Petitions came up for final hearing on March 3, 1997. We heard the learned counsel for the review petitioners, for the State of Jammu and Kashmir and for the 33 respondents. So far as the first issue referred to in our order dated 1st September, 1995 is concerned, we are of the respectful opinion that majority judgment (rendered by the

Dr. T.K. Thommen and V. Ramaswami, JJ) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their application ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgment. This is also the proposition affirmed in [Rekha Chaturvedi \(Smt.\) v. University of Rajasthan and others, 1993\(2\) 279 \(SC\): JT 1993\(1\) SC 220 :1993 Suppl. \(3\) S.C.C 168](#). The reasoning in majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33

respondents could not have allowed to appear for interview”.

In '***Bhupinderpal Singh and others Versus State of Punjab***' [2000(5) SCC 262] the Hon'ble Supreme Court upheld the judgment of the High Court and held that cut off date for acquiring the degree is prescribed in the Statutory Rules and the same shall prevail and where no cut off date is mentioned in the Rules, then the cut off date notified in the advertisement is to be treated as a date for acquiring eligibility and in the absence of any stipulation in the Statutory Rules or advertisement, the last date for receipt of applications is to be considered as a date for acquiring the eligibility. The Hon'ble Supreme Court observed that the view taken by the High Court was supported by several decisions of the Supreme Court and is therefore well settled and hence cannot be found having fault. Para No.13 of the aforesaid judgment is reproduced as under:-

“13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar & Anr., JT 1997(4) SC 99 : 1997(2) SCT 208 (SC); A.P. Public Service Commission v. B. Sarat Chandra & Ors., 1990(4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi, 1990(4) SLR 237; Mrs. Rekha Chaturvedi v. University of Rajasthan & Ors., JT 1993(1) SC 220 : 1993(2) SCT 279 (SC); Dr. M.V. Nair v. Union of India & Ors., 1993(2) SCT 77 (SC); and U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana, JT 1994(1) SC 94 : 1994(1) SCT 701 (SC), the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public

employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice”.

In the present case, the petitioner has not applied for the post prior to the cut off date because admittedly he did not fulfill the eligibility conditions prescribed under the Rules as well as in the advertisement. Therefore, no ground is made out in the present petition to permit the petitioner to take the examination which is scheduled to be conducted on 12.09.2021 which is just two days from today. In case, the petitioner is permitted to do so, this will not only nullify the effect of the Statutory Rules as well as the condition of the advertisement but also adversely affect the rights of those candidates who are appearing for the examination in accordance with the eligibility conditions. Furthermore, it will lead to discrimination qua those who have attained the degree after the cut off date but did not apply because of the sanctity of the cut off date.

Once the petitioner admittedly did not fulfill the qualification by the date fixed by the Commission, he cannot be permitted to take the

examination. So far as the legality of the imposition of condition of holding a degree before the specified date is concerned, the same cannot be faulted at in view of the law laid down by the Hon'ble Supreme Court in aforementioned judgments. So far as the challenge to the vires of the Statutory Rules is concerned, the plea of the petitioner cannot be sustained especially at this stage where examination is going to be conducted after two days. Furthermore, a perusal of the petition would show that the challenge to the Statutory provision has been made in a mechanical manner and the pleas taken are totally vague and evasive. Merely by stating that it is violative of Article 14 and 16 of the Constitution of India would not become a ground for challenging the Statutory provisions. The petitioner has not been able to show as to how the fixation of cut off date and imposing a condition of holding a degree for applying for the post is unconstitutional.

So far as another argument raised by the learned counsel for the petitioner that various other Public Service Commissions permitted the candidates to take the preliminary examination is concerned, the petitioner has not attached any such Rules or provisions pertaining to UPSC or Rajasthan Public Service Commission alongwith the writ petition. So far as the Rules pertaining to the Punjab Public Service Commission are concerned, the same is a different Public Service Commission and, therefore, it itself cannot become a ground for challenging the Statutory Rules which have been framed by the competent authority under Article 309 of the Constitution of India unless there is any justifiable reason for challenge. Furthermore, the petitioner has filed the present petition at the time when the Haryana Public Service Commission is to hold the examination which is going to be conducted just two days from today and, therefore, the petitioner

cannot be permitted to apply and participate at this stage as it would prejudicially and adversely affect those candidates who are appearing in the examination and are not even in party in the present petition.

Therefore, finding no merit in the present petition, the same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

10.09.2021

rakesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No