

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No.1569 of 2019 (O&M)

Date of Decision: December 01, 2021

Baljit Kaur

....Appellant

VERSUS

State of Punjab and others

....Respondents

210-A

LPA No.526 of 2020 (O&M)

State of Punjab and others

....Appellants

VERSUS

Jatinder Kaur and others

....Respondents

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

Present: Mr. Amitabh Tiwari, Advocate
for the appellant in LPA No.1569-2019.

Ms. Anju Arora, Addl.A.G. Punjab for the appellant(s) in LPA-526-2020 and for respondent(s) in LPA-1569-2019.

Mr. H.S. Saggu, Advocate
for respondent No.1 in LPA-526-2020.

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

G.S. SANDHAWALIA, J(Oral).

CM-1390-LPA-2020 in LPA-526-2020

Application for exemption is allowed subject to all just exceptions.

CM-1389-LPA-2020 in LPA-526-2020

Application for condonation of 19 days delay in filing the appeal has been filed.

In view of the averments made in the application, supported by affidavit of official of the department, the application is allowed. Delay of 19 days in filing the appeal is, hereby, condoned.

CM stands disposed of.

Main cases:

The challenge in the present set of appeals is to two different orders passed by the two learned Single Judges taking altogether contrary views. LPA-1569-2019 has been filed by Baljit Kaur, wherein her claim for weightage towards academic qualification of having 10+2 was denied to her on account of the fact that she only had qualification of higher secondary. The learned Single Judge accordingly dismissed the writ petition No.24890 of 2014 on the ground that having passed higher secondary examination, it could not be considered to be equivalent to 10+2. The common claim, as such, of the writ petitioners, who are working as Aanganwari Workers, was for consideration for selection against the post of Supervisors, advertised vide public notice dated 08.07.2013.

In the Letter Patent Appeal No.526 of 2020, the State is aggrieved against the judgment of the learned Single Judge dated 28.01.2020, wherein another learned Single Judge has held that since the petitioner had passed the Prep class and there was no 10+2 system prevalent, which had been introduced at a later stage, the petitioner be granted the benefit by treating as 10+2 and her merit be assessed accordingly.

Counsel for the writ petitioners have relied upon the judgment of the Division Bench of this Court in ***Ram Niwas vs. State of Haryana and another 1998 (2) RSJ 239***, wherein it was held that the qualification of 10+2 was equivalent to intermediate and reliance was placed upon the equivalence certificates issued by Kurukshetra University and Panjab University.

Counsel for the State, on the other hand, has submitted that learned Single Judge was not justified in issuing such direction and has supported the order dated 10.06.2015, whereby the claim of the writ petitioner namely Jatinder Kaur had been rejected by the authorities.

The facts of Civil Writ Petition No.24890 of 2014 would go on to show that the challenge has been made to the order dated 24.09.2014, (Annexure P-9) wherein the claim of the petitioner Baljit Kaur qua the marks of Prep (wrongly mentioned, as it should have been 'higher secondary') had been deleted. The claim of the said candidate for appointment/promotion to the post of Supervisor on the basis of higher qualification as has been raised in the legal notice was also rejected by the Director, Social Security, Women and Child Development, Punjab, which order was challenged by filing the writ petition.

It is not disputed that Baljit Kaur-appellant had done her higher secondary examination in 1986 (Annexure P-2) and thereafter, had also done her degree of Bachelor of Arts in the examination held in the year 2009 as per certificate issued on 26.07.2011 (Annexure P-3). The public notice dated 08.07.2013 (Annexure P-5) was floated for selection of 286 supervisors from Aanganwari workers and the selection was to be made from two categories i.e. 50% from graduates and 50% from matriculates. The criteria for selection was fixed as 10% of the percentage of the marks obtained in the

10th class and similarly 10% of the percentage of the marks obtained in 10+2 along with the necessary diploma.

It is specifically pleaded that after 1989-90, system of 10+2 has been introduced and the candidates do graduation only after clearing the 10+2 examination and the qualification of higher secondary or equivalent to 10+2 was for all intent and purposes. The introduction of new system would not take away the qualification acquired by the candidates prior in time and therefore, the petitioner could not be denied the benefit of higher qualification on account of not having 10+2 qualifications. The petitioners claimed consideration of 10% marks on the ground that the higher secondary is equivalent to 10+2 examination.

In support of her case, an application (CM-376-LPA-2021) under Order XLI Rule 27 read with Section 151 of CPC has also been filed by petitioner Baljit Kaur along with the opinion of Punjabi University dated 23.12.2020 (Annexure A-2) that candidates, who had passed the higher secondary examination from any recognized Board prior to the implementation of 10+2 system (1989-90), are eligible for getting admission/examination in B.A. Part-I as per the Rules.

The application has been opposed by filing the reply by the State and in response, brought on record the opinion dated 31.10.2013 (Annexure R-1/T) of the Punjab School Education Board that students, who had passed higher secondary, would not be given admission in 10+2 and will have to pass both 10+1 and 10+2 under the present education system.

Keeping in view the controversy, this Court is of the opinion that a case under the provisions of Order XLI Rule 27 read with Section 151 of CPC is duly made out and the material placed on record, as such, would

help this Court in passing the judgment. Moreso, the State has also relied upon the opinion dated 31.10.2013 in its reply in CWP-18728-2015 as Annexure R-2. Accordingly, the application (CM-376-LPA-2021) is allowed.

The facts of LPA No.526 of 2021 go on to show that the writ petitioner Jatinder Kaur had challenged the order dated 10.06.2015 (Annexure P-6), whereby her case for selection as Supervisor had been rejected by the Director, Social Security, Women and Child Development, Punjab. As per the impugned order, the selection committee had cut the corresponding marks for the Prep class of the Aanganwari Workers, which marks were earlier added in the merit. Accordingly, the merit had come down to 25.58 by excluding 4.28 marks of Prep class of the petitioner whereas the last candidate selected had got 27.43 marks. The advertisement in question in the said case was dated 23.12.2010, which is also pertaining to the same number of 286 posts of Supervisors to be selected.

In the reply, the State has also placed reliance upon the opinion of the Punjab School Education Board dated 31.10.2013 (Annexure R-2/T), which has also been appended with the reply to the application for additional evidence.

The relevant portion of the judgment of Division Bench in ***Ram Niwas's case (supra)*** reads as under:-

“3. The question that calls for determination in this case is whether qualification I of 10+2 is equivalent to intermediate ? It may be observed here that previously the system was that a person would pass matriculation and after two years, he would take Intermediate examination and thereafter would join course of B.A.,

B.Sc. as the case may be, which was of two years duration. Now the system is that after matriculation, a candidate does higher secondary or senior secondary by putting in two years of education after matriculation and after passing the 10+2 examination (senior secondary) is entitled to get admission in B.A. course which is of three years duration. Now the question arises as to whether a person who has done Intermediate in the old system and not 10+2 is entitled to admission in the B.A. course now in vogue in the various Universities ? Learned counsel for the petitioner drew our attention to a certificate issued by the Punjab University which is appended as annexure P/8, in which it is mentioned that a person, who has done Intermediate course with English as one of the subject is eligible to join B.A. course in Colleges affiliated to Punjab University. It has further been mentioned that a person who has done 10+2 examination can also join the B.A. course. This would indicate that intermediate has been treated by the Punjab University. Similarly, a certificate has been issued by the Kurukshetra University which has been appended as annexure P/9 in which it is mentioned that earlier Intermediate examination with English as one of the subjects of other Universities/Boards in India is equivalent to +2 examination of other Universities/Board etc. This would also indicate that 10+2 examination has been considered equivalent to Intermediate. No other document has been filed in rebuttal by the respondents. For such equivalence in educational qualification, we can rely on the equivalence as suggested by the education bodies like the Universities. The Universities are treating the old intermediate examination equivalent to 10+2 and there is no reason as to why the respondents should not consider the petitioner to be duly qualified for consideration for

the post of Zileadar, being 10+2 which according to us is equivalent to Intermediate.

4. For the foregoing reasons, we allow this writ petition and direct the respondents to treat the petitioner as duly qualified (academically) for the post of Zileadar and consider his case for promotion with effect from the date he was denied consideration for promotion on the ground that he did not have Intermediate qualification. Needless to mention here that if the petitioner is promoted, he would be entitled to all consequential benefits. Let these directions be carried out within a period months.”

Perusal of the above would go on to show that the Division Bench had taken into account that at an earlier point of time, the system which was prevalent that the course of intermediate examination was of two years duration after matriculation and a person who had pursued intermediate in the old system and not 10+2, was entitled for admission in the B.A. course. It was noticed that certificates had been issued by both Panjab University and Kurukshetra University that the earlier intermediate examination with English as one of the subjects is equivalent to +2 examination of other Universities/Board. Resultantly, the benefit was granted to the writ petitioner that he was duly qualified for consideration for the post of Zileadar being 10+2 since the requirement under the 1995 Rules was of the intermediate qualification or its equivalent.

The opinion of the Punjabi University dated 23.12.2020 reads as under :-

“The applicant Mohan Lal son of Sh. Brij Lal had requested for obtaining equality certificate for the purpose of getting admission in B.A. by considering Higher Secondary

(11th) equivalent to the 10+2. No rules are available in the office for considering Higher Secondary (11th) equivalent to the 10+2. In such case, as per the approved decision of the Syndicate vide S.No. 3 of para No. 26.14, the students, who have passed the higher secondary (11th) examination from any recognized Board prior to the implementation of +2 system (1989-90), they are eligible for getting admission/examination in B.A. Part-1 as per the rules.”

Both the writ petitioners herein having done their higher secondary after which one could take admission in graduation of three years course would also get the benefit of said judgment and nothing contrary has been cited qua the said issue specifically before us. The writ petitioner Baljit Kaur had an additional advantage as such regarding the fact that she had also done her graduation (Annexure P-3) as noticed above and in view of the judgment of Full Bench in *Manjit Singh vs. State of Punjab and others, 2011 (1) PLR 656*, in which it was held that the candidate possessing a higher qualification in the same line cannot be excluded from consideration for selection. The reference was dealing with the selection of Physical Training Instructor for which certificate in Physical Education was the requirement and the petitioner's as such had higher qualification of M.P.Ed, B.P.Ed., D.P.Ed. The defence of the State that the post was for imparting physical education at primary level was rejected and it was held that the candidates, who have higher qualifications in the same line cannot be excluded from consideration for selection.

In such circumstances, petitioner Baljit Kaur once having a degree of graduation, the impugned order passed in her case on 29.04.2019, rejecting her claim for the benefit of higher qualifications cannot be held to

be justifiable and was not appreciated in proper aspect by the learned Single Judge. The advantage is to be given of consideration of the higher secondary certificate and to be treated as 10+2 qualification, in the case of Baljit Kaur, as she had also done her graduation after having qualified higher secondary examination in 1986 but not having done her 10+2. The opinion given by the Punjabi University (Annexure A-2), as such, placed on record would also further strengthen the line of thought which we have taken, which would be preferred over the opinion of the Punjab School Board.

In the case of writ petitioner Jatinder Kaur, the benefit of the judgment in ***Ram Niwas (supra)***, as such, would apply and therefore, the case of the respondents, as such, was not justified in rejecting her case on 10.06.2015 and reducing the marks which she had got in Prep/Higher Secondary Class.

To be fair to the State counsel, who had relied upon the recent judgment of the Apex Court in ***Devender Bhaskar and others vs. State of Haryana and others (Civil Appeal No.7031 of 2021 arising out of SLP(c) No.8670/2007 decided on 24.11.2021)***, which also relied upon the earlier view of the Apex Court in ***Zahoor Ahmad Rather & Ors vs. Sheikh Imtiyaz Ahmad & Ors, (2019) 2 SCC 404***, is to be noticed.

However, keeping in view the fact that we have relied upon the opinion of the Punjabi University and the fact that earlier a Division Bench had also held that there are equivalence certificates from the two Universities Panjab and Kurukshetra, the benefit as such would have to flow to the petitioners of the higher secondary qualifications for which due consideration would be given. The same be treated as 10+2 for the purposes

of educational qualification and award of corresponding marks be given for the same.

Accordingly, the present appeals are disposed of in the above terms, by dismissing LPA No.526 of 2020 and allowing LPA No.1569 of 2019.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 01, 2021
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No