

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

C.W.P.No. 27507 of 2019

Date of Decision:- 23.04.2021

Sandeep Sharma

....Petitioner

vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Sanjay Kaushal, Senior Advocate with
Mr. A.P. Setia, Advocate,
for the petitioner.

Mr. N.S. Behgal, Asstt. Advocate General, Haryana.

Mr. Rajender Singh Malik, Advocate,
for respondent No.3.

Mr. Kanwal Goyal, Advocate for HPSC.

SUDHIR MITTAL, J.

The State Government and its functionaries always complain that pendency in Courts is on the rise and that steps need to be taken to reduce the same. The blame is laid at the doorstep of the Judiciary, without realising, that pendency in Courts is contributed to the maximum level by its own actions. In the present case, there is a binding precedent of a Division Bench of this Court, covering the question of law arising in the present petition, however, the same has been ignored. Had the ratio of the binding precedent been taken into consideration, filing of this writ petition could have been obviated.

The question of law which arises for consideration in this writ petition is whether upon improvement of marks of a particular qualification, the same shall relate back to the date of acquiring the said qualification or not? If yes, whether the petitioner is entitled to be considered for appointment to the post of Naib Tehsildar?

The facts are not in dispute and are briefly enumerated hereinafter. The Haryana State Public Service Commission (hereinafter referred to as 'the Commission') advertised 70 posts of Naib Tehsildar vide advertisement dated 23.07.2015. Closing date for submission of online applications was 22.08.2015. For some reason, the process of appointment could not be completed and thus corrigendum dated 01.05.2018 was issued. The closing date for submission of online applications was disclosed as 15.05.2018 and eligibility with regard to qualifications and other conditions of eligibility was to be determined as on last date of submission of online application forms. Age was to be reckoned as on 01.01.2018. Essential qualifications for the post mentioned in the advertisement published on 23.07.2015 were:

- (a) Graduate of a recognised University and
- (b) Knowledge of Hindi/Sanskrit upto Matric Standard or higher.

Being eligible in all respects, the petitioner submitted his application and was invited for the recruitment test held on 26.05.2019. Thereafter, the Haryana School Education Board issued a press note, sometime in June 2019, providing a golden chance to students who had passed their Secondary/Senior Secondary Examination between March 2001 to September 2008, for improving their marks in one subject. The petitioner applied and appeared in the examination held between 18.06.2019 and 28.06.2019. Result was declared in August 2019 and the petitioner improved his marks in English in the Secondary Examination as also

the marks of the same subject in the Senior Secondary Examination. Consequently, in both the said examinations, he scored more than 60% marks. Soon thereafter, the petitioner was invited to appear for the interview on 14.08.2019. He did so along with the result of the Secondary/Senior Secondary Examination, revised after improvement of marks in the English subject. The said result was addressed to the Secretary of the Commission and was produced in a sealed cover along with application of the petitioner dated 14.08.2019, in which it was prayed that the result may be prepared after taking into consideration the revised marks of the Secondary/Senior Secondary Examination. Result was declared on 16.08.2019 and the petitioner was unsuccessful. The last selected candidate secured 78.46 marks and he has been impleaded as respondent No. 3 in the present writ petition.

The petitioner sought information vide request dated 29.08.2019, under the Right to Information Act, 2005 (hereinafter referred to as the 2005 Act) and he was informed that the criteria for the interviews had been fixed just before the date of interviews. He also sought for details of the marks obtained by him in the interview and the same were provided to him. He scored a total of 77.75 marks. From the detailed breakdown provided by the Commission, it becomes evident that out of the total marks stipulated for the interview, maximum 7 marks each were provided for the percentage of marks obtained in the Secondary Examination and Senior Secondary Examination and for consistency i.e. obtaining 50% and above marks in any two out of three examinations (Matric, 10+2 and Graduation), a maximum of 6 marks were provided. A candidate scoring above 60% marks in Matric and 10+2, was entitled to be granted 7 marks whereas for consistency the maximum of 6 marks was awardable to a candidate scoring 60% and above in two out of three examinations. The petitioner was awarded 6 marks

each for having scored between 50 to 59.99% marks in Matric and 10+2 and for consistency he was awarded 5 marks.

Learned Senior counsel for the petitioner has argued that as is evident from reply to the application filed under the 2005 Act, the criteria for the interview was finalised just before the interview was held and thus the improved marks of the petitioner should have been taken into consideration while evaluating his merit. In addition, it has been submitted that by improving his marks in the Secondary and Senior Secondary Examination, the overall result of the petitioner for the said examination improved and the improvement relates back to the date of passing of the aforesaid examination as the petitioner had acquired the qualification of Matric and 10+2 much earlier. That being so, the revised result should have been taken into consideration and had that been done, the petitioner would have scored 7 marks each for qualification of Matric and 10+2 and 6 marks for consistency, thus improving his overall score to 80.75 which is more than that secured by the last selected candidate. The petitioner was, thus, entitled to be appointed. In this context it has also been argued that in the general category (to which the petitioner belongs), 2 vacancies exist on account of non-joining of selected candidates and thus, the petitioner can be appointed against one of the said vacancies. Respondent No. 3 need not be dislodged. Reliance has been placed upon a Division Bench judgement of this Court dated 10.01.2013 passed in CWP 23896 of 2012 Preeti Gulia vs. State of Haryana and another and other connected matters.

Learned counsel for the Commission, however, submits that in accordance with the command of the Haryana Civil Services (Executive Branch) and Allied Services and other Services Common/Combined Examination Act, 2002 (hereinafter referred to as the '2002 Act'), the Commission can only

recommend candidates equal to the number of advertised posts. It does not entitle the Commission to appoint candidates beyond the number of advertised posts and accordingly no candidate has the right to seek appointment beyond the number of advertised posts. Thus, even if the petitioner score more marks than the last selected candidate, he cannot be appointed. It is further submitted that only candidates who possess the requisite eligibility on the last date of submission of application, are entitled to be considered for appointment. The petitioner improved his marks after the cut-off date and, thus, the same cannot be taken into consideration for evaluating his merit. Reliance has been placed upon a Division Bench judgement of this Court dated 08.10.1996 passed in CWP 3687 of 1996 **Kabal Singh and others** versus **State of Punjab and another** and connected matters as well as a Division Bench judgement of the Allahabad High Court dated 21.02. 2018 passed in Special Appeal No. 733 of 2010 **Km. Anjuman Upadhyay** versus **State of U.P. and others**.

The learned State counsel as well as counsel for respondent No. 3 have supported the case of the Commission. He has argued that advertisement published on 23.07.2015 has specifically stated that 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. This date was extended to 15.05.2018 vide the corrigendum and, thus improvement of marks of the petitioner in August 2019 cannot be taken into consideration. He relies upon a judgement of the Supreme Court in **Ashok Kumar Sonkar** versus **Union of India and others** 2007 (4)SCC 54.

From the pleadings and arguments of learned counsel for the parties, it is evident that the facts are not in dispute. It is not in dispute that the petitioner possessed the eligibility condition of Matric and Graduation as on the cut-off date.

It is also not disputed that the petitioner submitted his application before the said date. It is further not disputed that the petitioner improved his score of 10th and 12th Examination before the date of interview and that the result was supplied at the time of interview. Keeping these facts in the background, the issue to be decided is whether the improved score of Class 10th and 12th should be taken into consideration while evaluating the merit of the petitioner? In **Preeti Gulia (supra)** the facts were that Preeti Gulia applied for the post of Graduate Teacher and one of the essential qualifications for the post was at least 50% marks in M. Com. She submitted her application on 18.06.2012, much prior to the cut-off date, and appeared for improvement chance in the M.Com. Degree scoring 57.6% as per result dated 28.09.2012. Earlier, she had secured 55.52% marks. Since the number of candidates who applied for the post of Graduate Teacher was large, the bar for selection was raised to 57% from 50% and the petitioner was declared unsuccessful. The Division Bench held that improvement of the score relates back to the date on which the qualification was acquired and the argument of the State that eligibility has to be seen as on the last date for submission of application was rejected because the eligibility of the candidate was not in dispute. The same is the situation in the present case.

The provision of the 2002 Act pressed into service by learned counsel for the Commission applies only if a candidate seeks appointment beyond the number of advertised posts. That is not the case instantly. The petitioner seeks to dislodge the last selected candidate (respondent No. 3) on the ground of higher merit which is totally distinct from a case where a candidate seeks appointment in addition to the last candidate or in excess of the number of advertised posts. Thus, the argument is misconceived.

The judgement in **Kabal Singh (supra)** does not apply for the same

reason. The issue being examined in the case was whether a candidate who did not possess a diploma in MPHWP (Multi Purpose Health Worker) on the last date of submission of application was entitled to seek appointment as such when the advertisement prescribed the possession of the diploma as essential eligibility condition. The candidates therein cleared the diploma examination after passing the supplementary examination held after the last date for submission of applications and consequently it was held that they acquired the eligibility after the cut off date.

The judgment in **Km. Anjuman Upadhyay (supra)** supports the case of the State. The appellant therein had improved her score in Graduation prior to the cut off date and the said fact should have been taken into consideration while calculating the marks. The Division Bench, however, rejected this argument by holding another Division Bench judgment dated 11.9.2007 passed in Special Appeal No. 86 of 2004 **Director Rajya Shaikshik Anusandhan Evam Prashikshan Parishad, Uttar Pradesh, Lucknow and others vs. Kamlesh Kumar Yadav** as per incuriam. For coming to this conclusion, reliance was placed upon the judgment of the Supreme Court which laid down that eligibility acquired after the cut-off date cannot be taken into consideration. In my respectful view, the learned Division Bench misconstrued the judgment of the Supreme Court and wrongly held the Division Bench judgment in **Kamlesh Kumar Yadav (supra)** to be *per incuriam*. The issue was not regarding 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 the examination in which the score was improved.

Be that as it may, the Division Bench judgment of this Court in **Preeti Gulia (supra)** binds me and not the Division Bench judgment of the Allahabad High Court. Consequently, I choose not to follow the same.

On account of the foregoing reasons, the writ petition succeeds. The Commission is directed to reconsider the case of the petitioner after taking into consideration the improved marks in Class 10 and Class 12. If the petitioner scores higher marks than the last selected candidate, he would be entitled to grant of appointment. In case, two vacancies exist as submitted by learned Senior counsel for the petitioner, respondent No. 3 need not be dislodged. The entire exercise be carried out within four weeks from the date of receipt of a certified copy of this judgment and order.

April 23, 2021
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No