

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CWP No. 2230 of 2019

Date of Decision: March 04, 2022

Union Public Service Commission (UPSC)

....Petitioner

VERSUS

Shivinder Kang and another

....Respondents

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

Present: Mr. Anil Rathee, Advocate for the petitioner.

G.S. SANDHAWALIA, J(Oral).

Challenge is to the order dated 23.03.2018 (Annexure P-4) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh in favour of respondent No.1-Shivinder Kang. Vide the impugned order, the Tribunal on the basis of surmises and conjectures, has violated the settled principles by directing that the petitioner shall make the appointment of the said candidate-respondent No.1 as Assistant Professor of English in the Regional Institute of English, Chandigarh. While noting the fact that the cut off date of advertisement No.8/2015 was 14.05.2015, the benefit was granted on account of the fact that the candidate could have produced the confidential result before the prescribed cut off date on receipt of the application, as the same was available by then. Apparently, the learned Tribunal got swayed by the fact that on account of the interim order,

respondent No.1-candidate had been permitted to appear in the interview on

29.01.2016 and on account of the said direction, the petitioner-Commission had assessed his merit and recommended his case. The reasoning cannot be held to be justified in any manner. The essential qualification of PG Diploma of English, which was requirement for applying for the post, was not in the hands of respondent No.1-candidate before the cut off date.

There is no factual dispute qua this and even as per the certificate dated 09.05.2015 (Annexure A-11), it would be clear from the said certificate issued by the English and Foreign Languages University, Hyderabad that respondent No.1 had appeared for the second semester final examination held in the month of April, 2015 and the result was under process. The result was to be published in the month of June, 2015. Eventually, vide a notice dated 27.05.2015 (Annexure A-12 Colly), respondent No.1-candidate was declared successful and thus, possessed the requisite essential qualification, which was after the cut off date of 14.05.2015. At no point of time, the candidate had put forth the fact that he had the confidential result as such in his hands and possession on the basis of which, his claim can be considered. For all practical purposes, for applying for the said post and therefore, by virtue of the interim order, which was given in his favour, he appeared for the interview and had managed the grade on merit.

The law is settled qua the sacrosanctity of the cut off date and once the essential qualification was not possessed by the candidate in question on the basis of supposition and interim order of interview, he has been wrongly allowed the said claim.

It is pertinent to notice that the said respondent-candidate has been served for 13.05.2019 but he chose not to appear. Thereafter also, no power of attorney or memo of appearance has been filed by any counsel on behalf of the said respondent. It is apparent that the said candidate-respondent No.1 is also aware that the impugned order cannot be sustained in the eyes of law and therefore, has ostensibly chosen not to contest the case. Accordingly, the writ petition is allowed and the impugned order dated 23.03.2018 (Annexure P-4) is set aside.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 04, 2022
Sachin M.

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