

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

CWP No. 12722 of 2022
Date of decision: 02.06.2022

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Employees' State Insurance Corporation and anotherPetitioner(s)

Versus

Amandeep Singh and othersRespondent(s)

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

Present: Mr. K.K. Thakur, Advocate,
for the petitioners.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 22.11.2021 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench (in short 'the Tribunal') wherein, the original application of the private respondents was allowed. Directions were accordingly issued to consider the case of the applicants on the basis of marks obtained by them in the combined merit list of all candidates for the post of Laundry Operator, Nursing Orderly and Cook Mate. Resultantly, directions were issued that the documents be verified and if the applicants are found eligible, to issue appointment letters to them on their respective posts as per their merit without taking into consideration the criteria of category wise minimum qualifying marks/bench mark. Challenge has also been raised to the order passed in review application which was dismissed as withdrawn on 10.02.2022 (Annexure P-6) which only persuades us to the extent that the limitation has only been extended by virtue of the same and otherwise the litigation had become final *inter se* the parties.

The Tribunal as such while issuing necessary directions came to the conclusion that the selection process having been deemed to have been initiated on the issuance of the advertisement which indicated the mode of selection for the posts on the basis of written examination had never given any condition regarding the discretion of the authorities to fix any minimum qualifying marks to be obtained in such examination. The same had been mentioned in the notice dated 20.08.2015 (Annexure R-1) that there was a discretion as such with the authorities to fix such marks, however, in the subsequent notice dated 08.03.2016 (Annexure A-2), there was no such stipulation. The minimum qualifying marks had been only notified on 02.01.2017 after the declaration of the result on 21.06.2016 (Annexure A-4). Resultantly, it was held that the written examination was held in March, 2016 and the result was declared in June, 2016, well before the date of notifying the criteria of minimum qualifying standards in January, 2017. The right of the respondents to fix the minimum qualifying criteria was doubted at that stage and it was held that the candidates should have been made known the said fact before the initiation of the selection process. Reasoning was also given that the fixing of minimum qualifying marks in the competitive examination is not only required to be known in advance to the candidates but it is important for the paper setters and the examiners also to know about the minimum qualifying standards fixed to decide the level of difficulty and syllabus for the examination. Resultantly, keeping in view the fact that the criteria of minimum qualifying standards had been fixed 7 months after the declaration of the results, the original applications were allowed.

In view of the above, we are of the considered opinion that the

judgment of the Tribunal cannot be faulted with in any manner. It is apparent that the criteria has been changed to the detriment of the applicants. A perusal of the merit list which has now been placed on record for the said categories dated 08.02.2017 (Annexure A-5), would go on to show that in the said categories of Laundry Operator, Nursing Orderly and Cook Mate, no one was found qualified. It is pertinent to notice that when the result was declared, the names of the applicants Amandeep and Sunita find mention at Sr. Nos.1 and 2 for the post of Laundry Operator. Similarly, Manoj Singh's name finds mention for the post of Nursing Orderly at Sr. No.3. Veena Kumari's and Vipin Kumar's names find mention at Sr. Nos.16 and 17 for the post of Cook Mate. Thus, at an earlier point of time, they figured in the merit. On account of fixing of the minimum criteria by subsequent decision post the examination on 19.03.2016 which was done on 02.01.2017 whereby the bench mark was fixed at 45% and 35% for general and reserved categories, the cut off has been prescribed. It is apparent that the same has been done once the selection process had started and the rules of game have been changed, which is not permissible.

The argument raised as such that on 20.08.2015 the same had been notified as such which was prior to the examination is without any basis. A perusal of the said advertisement which was issued would go on to show that it only gave a discretion to fix the minimum qualifying marks out of the total 125 marks but never prescribed the cut off as such. The same was in the form of a corrigendum in pursuance of the original advertisement dated 07.12.2012.

Thus, even before the examination, the criteria as such prescribing the percentage of cut off was never fixed and, therefore, the

applicants figured in merit, as noticed earlier and have been prejudiced. A perusal of the advertisement would go on to show that the written examination was the criteria to select and on 20.08.2015, the public notice which has now been relied upon, the number of marks was quantified at 125 which was to be considered for the final selection on the basis of the performance in the written examination. Vide notice dated 08.03.2016 (Annexure A-2), the examination was notified for 19.03.2016 and in the same notice the mention was made of 125 marks and that there would be negative marking also. The relevant portion reads thus:-

The SCHEME OF EXAMINATION advertised earlier has been modified as under:-

<i>Type of Examination</i>	<i>Duration of Examination</i>	<i>Syllabus</i>	<i>Remarks</i>
<i>Written Examination (125 Marks – Multiple choice objective type paper)</i>	<i>02 Hours</i>	<i>I. 100 Questions (100 marks) will be based on Technical professional/ Subject/Post & II. 25 (25 Marks) Questions on Aptitude / General Awareness/ General Intelligence/ Arithmetic Ability.</i>	<i>The questions will be set Bilingual (i.e. English and Hindi language)</i> <i>The maximum marks will be 125.</i> <i>The level of difficulty will be as the educational qualification of the post. The questions on Arithmetic Ability will be of 10th Standard Level.</i> <i>There will be negative marking at the rate of 0.25 marks to be deducted for every wrong answer to eliminate the element of chance.</i> <i>ESIC reserve the right to introduce additional stage of examination which would be notified at suitable time, if considered necessary.</i>

Note- The Examination will be conducted in Single Stage consisting of Online Examination.

The mode of selection was also prescribed that it was on account of qualifying in the online examination against the vacancies advertised which was to be considered for final selection on the basis of the performance in the online examination. The same reads thus:-

“The candidates qualifying in Online Examination against the vacancies advertised by the respective Nodal Offices of the region shall be considered for final selection on the basis of their performance in the Online Examination”

Thus, apparently till that point of time, there was no criteria which was prescribed which fixed the percentage of the cut off. On the basis of the said, the candidates had figured in the merit list, as noticed above when the result was declared on 21.06.2016 (Annexure A-4). A subsequent decision was taken on 02.01.2017 (Annexure A-6) to their detriment, which also in our opinion, does not specify that it was qua the examination which had already taken place. The Tribunal was thus well justified in issuing the necessary directions by coming to the conclusion that the order dated 02.01.2017 could not operate with retrospective effect.

We have also examined the said order and the same does not as such find any mention that the same is to be applied retrospectively and, therefore, we are of the considered opinion that by prescribing the minimum qualifying bench marks, which was between 30% to 45% for different categories, the private respondents have been prejudiced.

Reliance can be placed upon the judgment of the Apex Court in ***K. Manjusree vs. State of A.P. and another, 2008 (2) SCT 6*** wherein, the power of the Selection Committee to prescribe the minimum marks for interview was upheld but it was held that it could not be done after the commencement of the selection process on the principle that the rules of

game cannot be changed once the game has started. The candidate was an applicant for the post of Additional District Judge and whose name was in the first list. On account of the change in the criteria, the petitioner therein had been left out. The facts would apply on all four corners and, therefore, keeping in view the above principles, we do not find that the Tribunal has erred in any manner in issuing the necessary directions.

Accordingly, the writ petition stands dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

02.06.2022
shivani

(VIKAS SURI)
JUDGE

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