

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

LPA No. 688 of 2020 (O & M)

Reserved on: 24.05.2022

Date of decision: 06.07.2022

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Haryana Staff Selection Commission

....Appellant(s)

Versus

Yogender Kumar and another

....Respondent(s)

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

Present: Mr. Hitesh Pandit, Addl. A.G., Haryana,
for the appellant.

Mr. R.K. Doon, Advocate,
for respondent No.1.

G.S.SANDHAWALIA, J.

The present letters patent appeal filed by the State is directed against the judgment of the learned Single Judge passed in CWP No. 3176 of 2019, Yogender Kumar vs. State of Haryana and another decided on 15.01.2020.

Vide the impugned judgment, directions were issued to recommend the case of the writ petitioner (respondent herein) for appointment within 15 days from the date of receipt of certified copy of the order and thereafter, the Education Department was to issue appointment letters within next 15 days. The benefit of notional promotion from the date persons junior to him had been appointed alongwith all consequential benefits was also granted.

The learned Single Judge had granted the said benefit on the ground that the writ petitioner was an applicant for the post of PGT

Mathematics under the BCA category and had secured 115 marks whereas the last candidate selected had secured 100 marks. Keeping in view the fact that one post had already been reserved vide order dated 04.02.2019 and the petitioner had secured higher marks in the said category, the objection as such of the respondent-Commission that he had not attached the certificate of M.Sc. and HTET alongwith his application form was over ruled. It was noticed that he was an eligible candidate at the time of interview and as per the attendance sheet (Annexure R-2/1), he appeared for interview on 09.11.2016 and the certificates had also been sent through e-mail on 25.12.2016 (Annexure P-5) and he had qualified earlier to the cut off date and not that he had qualified subsequently and, therefore, his candidature was not liable to be rejected.

Counsel for the appellant-Commission has vehemently submitted that the learned Single Judge was not justified in granting the said relief. The writ petitioner was bound by the terms of the advertisement which had provided that the necessary documents had to be uploaded and the said certificates were part of the essential qualifications and, therefore, the Commission was well justified in not showing him as eligible candidate in the final result which was declared on 12.01.2019 (Annexure P-6). It has further been submitted that he had not appeared to produce the said certificate and remained absent on 04.10.2017 (Annexure R-2/2).

Counsel for the writ petitioner-respondent, on the other hand, has submitted that the petitioner had duly appeared in the interview on 09.11.2016 and had been shown eligible as such as per Annexure R-2/1 and the certificate submitted by him was of October, 2010 i.e. well before the

cut off date of 21.09.2015 and which had further been extended till 12.10.2015. It is submitted that there was mention made in the form which was uploaded of M.Sc. Mathematics and all the details of the marks obtained which would be clear from Annexure P-3 and considering that he has been declared eligible, he had been duly interviewed. In response to make good the deficiency as such, if any, he had sent his certificate on 25.12.2016 (Annexure P-5) to the Secretary of the Education Department by e-mail as such and since it was the obligation of the respondent also to have kept a copy of the certificate on the date of interview, the benefit granted by the learned Single Judge was justified. It is further pointed out that even a seat was kept reserved on 04.02.2019 and the petitioner has secured much more marks than the candidates who had qualified and had secured only 100 marks as per the last selected candidate in his category.

A perusal of the paper book would go on to show that the advertisement in question dated 28.06.2015 (Annexure P-1) invited applications for PGT Mathematics for 125 posts of BCA category. The requisite qualifications was M.A. Mathematics/M.Sc. Mathematics/Applied Mathematics with Mathematics as one of the subjects at graduation level with at least 50% marks and B.Ed. from a recognized category. The requirement of the HTET in the respective subject for the post applied was relaxable to the extent that they could have passed the said test till the date of the interview after the advertisement. The writ petitioner had accordingly applied for the said post as per his application form and has specifically mentioned that he was not qualified for HTET. He gave the details of the marks obtained in the other qualifications including his result of B.Sc. with

Mathematics and B.Ed. For the M.Sc. Mathematics, it was specifically mentioned that he had obtained 535 marks out of 1000 marks. The said certificate alongwith other certificates have also been appended alongwith the writ petition, which would go on to show that it was issued on 14.10.2010 by the Maharshi Dayanand University, Rohtak. Thus, it was well before the cut off date of 12.10.2015. He obtained his certificate in HTET examination which was held on 18.06.2016, which was valid till 31.07.2021 and issued on 25.07.2016, which is subsequent to the cut off date. But in view of the fact that there was a condition that the same could be obtained till the date of interview, he was apparently held eligible. It is not disputed that he was called for scrutiny of documents-cum-interview for the post of PGT Mathematics vide admit card (Annexure P-4) on 09.11.2016. The attendance sheet also would go on to show that his presence was recorded wherein, he was held eligible and secondly the details of his marks in M.Sc. i.e. 535 out of 1000 marks were also mentioned in the requisite column. Marks obtained in the HTET exam which were 96 out of 150 were also specifically mentioned apart from the details of the other marks obtained from matric, 10+2, graduation and B.Ed. etc. Thus, he was interviewed only on the strength of the said documents and it is not disputed that he secured 115 marks. It is his specific case that he was asked telephonically that the M.Sc. Degree was needed and accordingly, he had sent both his M.Sc. Degree as well as HTET certificate on the e-mail of the Secretary of the Commission on 25.12.2016.

The said facts have not been denied in the written statement by the Commission which has filed a short reply. In paragraph 6, details have

been mentioned regarding the absence of the writ petitioner for further scrutiny of documents on account of the notice issued on 22.09.2017 and 20.09.2018. Apparently, when the result was declared on 12.01.2019 (Annexure P-6), the writ petitioner found that for the said category, the cut off was 100 and his name did not find mention. Resultantly, he approached this Court by filing the writ petition and one post was reserved for him on 04.02.2019 by noting the said fact that he had secured 100 marks in the written examination, which was the same as the cut off. The result was ordered to be produced on the next date and was done so on 09.05.2019 and scrutinized by the learned Single Judge and it was noticed that he secured 15 marks in interview and, therefore, had a grand total of 115. It is, thus, apparent that the writ petitioner had secured more marks than the last selected candidate. Once he had appeared in the interview, it was the bounden duty as such of the State to have kept all the documents at that point of time and it was also a bounden duty to interview him only after scrutinizing his documents. Having not kept copies of the relevant documents at that point of time, the State now cannot fall back on the ground that the certificate as such was not uploaded at that point of time. It has been held time and again that a candidate has to be held eligible before the cut off date and the learned Single Judge has rightly as such come to the conclusion. On account of having secured higher marks and his seat having been reserved, he was entitled for consideration for appointment. Reliance can be placed upon the judgment of the Apex Court in ***Dolly Chhanda vs. Chairman, JEE (2005) 9 SCC 779*** wherein, the certificate was not issued in a proper form by the Sainik Zila Board and the Apex Court held that it

was a case of domain of procedure as such and having secured higher marks, the candidate was liable to be selected. The relevant portion reads thus:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

The said observations would also be directly applicable as would be in the observations made in ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & another (2016) 4 SCC 754*** wherein also, a similar view was taken.

Accordingly, we are of the considered opinion that the learned Single Judge has not erred in any manner by granting the necessary relief since the details of the marks obtained had already been mentioned and the

necessary certificate of M.Sc. was also issued which was well before the cut off date.

Accordingly, finding no merit in the present appeal, the same stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

6.7.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No