

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

CWP No.17499 of 2017 (O&M)

Reserved on:27.10.2022

Date of Decision.14.11.2022.

Naresh Kumar

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rajat Mor, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J.

1. The petitioner herein approached this Court under Articles 226/227 of the Constitution of India praying for issuance of a direction to the respondents to award marks to the petitioner for his higher qualification and offer him appointment to the post of Male Constable (General Duty) under BCB Category.

2. In brief, facts as culled out from the petition are that the petitioner had applied to the post of Male Constable (General Duty) under BCB Category in pursuance to advertisement No.8/2015 issued by respondent No.3 vide application submitted on the online portal of the respondent-Commission on 03.10.2015. The petitioner appeared for the written test on 28.08.2016 and obtained 33.30 marks out of 60 marks. The written examination consisted of 100 questions and each correct answer carried

0.60 marks whereas for every wrong answer 0.15 marks were to be deducted. After publication of answer key, the petitioner matched his answers with the same and found that answer key in respect of questions No.40 and 73 was incorrect. The petitioner raised objections along with supporting material in respect of aforesaid questions but the respondent-Commission did not consider the same. Thereafter, the petitioner was called for the Physical Measurement Test and for scrutiny of documents. After scrutiny of documents, the petitioner was called for interview on 13.06.2017 for which he duly appeared. However, the petitioner was shocked to find out that no marks were awarded to him for higher educational qualification i.e. his post graduation degree. He submitted representation dated 13.06.2017 itself to respondent No.3 for awarding one mark to him for his aforesaid higher qualification but no action was taken thereon. The final result was declared by the respondent-Commission on 16.07.2017, according to which petitioner had secured 60.30 marks, however, in the recommendation list published by the respondent No.3, name of the petitioner did not find mention. Thereafter, notice dated 17.07.2017 was issued by respondent No.3 wherein final cut off for the last selected candidate in BCB category was shown as 61.90 marks. Therefore, if one mark is awarded to the petitioner for his higher qualification and 1.20 marks are awarded for two wrong answers and the marks deducted for giving wrong answers are also added i.e. 0.30 marks, the total of the petitioner would come to Rs.62.80 marks, which is much higher than the last selected candidate in the BCB category. In this regard, petitioner visited respondent No.3-Commission a number of times

and also submitted another representation dated 21.07.2017 but no action has been taken by the respondent No.3 thereon. Aggrieved against the said action of the respondents, the petitioner has approached this Hon'ble Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would submit that admittedly the petitioner had obtained the higher qualification of post graduation i.e. Master of Business Administration from the Global Open University on 10.04.2015 whereas he had applied for the post in question on 03.10.2015 as is evident from application form submitted on the online portal of the respondent No.3-Commission. There was no option on the online portal for submitting the mark sheet of higher qualification, so the petitioner uploaded only the certificate upto graduation level. However, at the time of scrutiny of documents, petitioner had duly furnished his post graduation degree, which was not taken into consideration. Even on the date of interview i.e. 13.06.2017, petitioner duly represented to respondent No.3 that at the time of documents verification, he had attached photocopy of post graduation mark sheets but marks for the same has not been granted to him and therefore, requested that requisite marks be awarded to him for the same. It is further submitted that according to petitioner, answer key qua two questions i.e. questions No.40 and 73 was wrong and if marks for said questions are awarded to the petitioner as well as marks for the higher qualification, he would fall within the zone of consideration for appointment to the post of Male Constable (General Duty). It is argued that during the pendency of the instant writ petition, almost 180 candidates appointed to the post of Male Constable (General

Duty) have either resigned or not joined. Accordingly, the Director General of Police, Haryana vide letter dated 14.09.2020 issued to respondent No.3-Commission, asked the respondent-Commission to fill up the said vacant posts from the waiting list. As per the waiting list, two candidates namely Akashdeep and Gautam, who has secured 61.25 marks have been recommended for appointment to the post of Male Constable and if only one mark for higher educational qualification is awarded to the petitioner herein, he would be entitled for appointment to the post in question.

4. Learned counsel for the petitioner would further argue that the respondent-Commission vide its resolution dated 20.06.2017 has unanimously resolved to consider the claims of all such candidates, who have not claimed/produced the evidence of educational qualification at the time of filing the applications but claimed/produced documents relating to educational qualifications/NCC certificates at the time of scrutiny of documents with immediate effect. He relies upon the judgment passed by this Court in CWP No.17449 of 2017 titled as *Jaideep Vs. State of Haryana and others* decided on 16.01.2019 wherein the petitioner, who had applied for the post of Male Constable under same advertisement as in the instant petition and produced his NCC B certificate at the time of interview, was awarded two marks for the same and therefore, the petitioner herein in the similar circumstances, is also entitled for one mark for his higher educational qualification.

5. Per Contra, learned counsel appearing for the respondent-State would submit that the petitioner did not mention about his post graduation

degree at the time of filling up the application. He had not even claimed marks for his post graduation qualification at the time of interview and mentioned 'N' in the column of post graduation marks and therefore, he is not entitled for one mark for the said higher qualification. In support of his argument, he relied upon the judgment rendered by the Hon'ble Supreme Court in *The State of Bihar and others Vs. Madhu Kant Ranjan and another 2022 (1) SCT 223* wherein it was held that only those documents, which are submitted along with application form and which are required to be submitted as per advertisement have to be considered. Further reliance has been placed upon the judgment rendered by this Court in *Neeraj Rani Vs. State of Haryana and another 2014 (3) SCT 347* where the claim of the petitioner for JBT post was rejected by holding that the petitioner therein did not apply for the post before the closing date and result of JBT course declared after closing date for making application and therefore, the petitioner was not held entitled to get any benefit from a corrigendum notice issued in terms of directions of High Court providing that the candidates who acquired STET certificate after the cut-off date shall be treated eligible. It is further argued that as regards the wrong answer key, objections were invited from the aggrieved candidates on e-mail of the respondent Commission from 09.06.2017 to 11.06.2017 and since the petitioner submitted his objections vide e-mail dated 27.07.2017 i.e. much beyond the stipulated period, his objections were not required to be considered. The attempt of the petitioner in submitting the objections was nothing but an attempt to stall the selection process.

6. To rebut the argument of the counsel appearing for the respondent-State, learned counsel appearing for the petitioner would submit that at the time of interview, the petitioner was provided a *pro forma* which was already filled by the officials on duty and therefore, he had no option but to sign the same. On the same very day i.e. the date of interview, the petitioner represented to the respondent-Commission for awarding marks for higher qualification of post graduation as he had submitted the marks-sheet in respect of the same at the time of scrutiny of documents and therefore, his claim ought to have been considered by the respondent-Commission, which it failed to do. He relied upon the judgment passed by this Court in CWP No.14940 of 2020 titled as ***Sushil Vs. State of Haryana and another*** decided on 21.09.2020 in which case petitioner had obtained a detailed mark-sheet of his post graduation done in Computer Science on 25.07.2018, which was before the cut off date i.e. 28.05.2018 and therefore, the Commission was directed to take into consideration detailed mark-sheet of the petitioner. Similarly, reliance was placed upon judgment passed by this Court in CWP No.23175 of 2017 titled as ***Vikash Vs. State of Haryana and others*** decided on 08.10.2018 wherein the petitioner, who had obtained higher qualification before the cut-off date was held entitled for 1 mark for the same.

7. I have heard learned counsel for the parties and have perused the pleadings of the case as well as the case laws cited.

8. As regards the argument of the counsel appearing for the petitioner regarding awarding for marks for questions No.40 and 73 is liable to be rejected on the ground that the petitioner failed to raise objections to the

same within the stipulated period i.e. between 09.06.2017 to 11.06.2017.

The other limb of argument of counsel for the petitioner is that petitioner is entitled for one mark for his higher qualification, owing to the fact that candidates, whose names are recommended for appointment from the waiting list under BCB Category, have secured 61.25 marks and if one mark is awarded to the petitioner, his total score would reach to 61.30 marks, he would be entitled for appointment to the post of Male Constable (General Duty). However, the aforesaid argument of the petitioner is subject to consideration whether the petitioner would be entitled for said one mark when he did not submit the mark-sheet of his MBA degree at the time of submitting application on the online portal of respondent No.3, though at the time of scrutiny of documents he furnished all mark-sheets and also represented on the day of interview that marks for higher qualification of post graduation be awarded to him. The argument of the petitioner that he could not mention that he had additional qualification, as there was no column in the online application form to do so, needs consideration. The online application form as appended for the recruitment year of 2015 asked the candidate to fill in the following qualification:

Qualification	Degree	University/ Board Name	Passing Year	Medium	Marks Obtained	Total marks	Percent- age	Class	Roll No.
Matric									
HSC									
Graduation									

In fact, a reading of the aforesaid table would show that there was no column for filling in details of post graduation qualification. If there

was no column for mentioning additional qualifications, the petitioner cannot be faulted as such.

9. The submission of the petitioner that on the date of the interview, he had supplied the post graduation marks sheet to the committee, is borne out from the record of the respondent Commission itself as the said document obtained from the respondent-Commission under RTI Act has been placed on the record of these proceedings by the petitioner. Even the attendance sheet as appended with the written statement as Annexure R3/3, reflects that the Commission had already prepared the attendance sheet and given appropriate marks and the marks are typed as well. 'N' is typed in the column meant for marks for post graduation. As such, the Commission did not give due consideration to the post graduation marks sheet of the petitioner made available to them at the time of the interview, depriving him of the additional mark for higher qualification.

10. In the opinion of this Court, the petitioner is entitled for one mark for his higher qualification as admittedly, the petitioner had cleared his fourth semester examination of MBA from the Global Open University on 10.04.2015 as is evident from the mark-sheet i.e. much before applying for the post in question i.e. on 03.10.2015. The petitioner had duly submitted the mark-sheets of all the four semesters of MBA at the time of scrutiny of documents, which ought to have been taken into consideration by respondent No.3-Commission. Reliance of the counsel appearing for the respondent-State on the judgment passed in *Neeraj Rani's case* (supra) is of no help, as in that case the petitioner had obtained the essential qualification of JBT course after the closing date, therefore, in

such an eventuality, this Court had rejected the claim of the petitioner in that case. But in the instant case, the petitioner had acquired the degree of post graduation before the closing date and therefore, he would be entitled for one mark of his higher qualification.

11. The argument of the counsel appearing for the respondent-State that only those certificates will be taken into consideration, which were submitted at the time of submission of the application form (reliance placed on judgment rendered in ***Madhu Kant Ranjan's case*** (supra)), also fails, as in respect of same very advertisement, CWP No.17749 of 2017 titled as *Jaideep Vs. State of Haryana and others* was preferred where in the reply filed by the respondent-Commission, reference was made to resolution dated 20.06.2017 whereby it was unanimously resolved that claims of all such candidates, who have not claimed/produced the evidence of educational qualifications, NCC certificates etc. but are claiming/producing documents relating to education qualifications, NCC certificates etc. at the time of scrutiny of documents/interview/viva voce will be considered with immediate effect. This Court while allowing the aforesaid writ petition awarded three marks and ordered the Commission to offer appointment to the petitioner therein, if otherwise found eligible. This very court itself dealt with issue in ***Sushil's case*** (supra) wherein the petitioner had obtained a detailed mark-sheet of his post graduation done in Computer Science on 25.07.2018, which was before the cut off date i.e. 28.05.2018, subsequently extended by a public notice to 25.10.2018 and therefore, a direction was issued to the respondent-Commission to

consider the detailed mark sheet of the petitioner and if found in order, allocate him necessary marks.

12. In view of the aforesaid findings rendered by this Court, the instant petition is allowed. It is an admitted fact that one post had been ordered to be kept vacant by the court vide order dated 6.11.2020. The respondent No.3-Commission is directed to consider the post-graduation mark sheets of the petitioner and award him 1 mark as per the criteria laid down in the advertisement dated 19.07.2015 and if otherwise found eligible, offer him appointment letter for the post of Male Constable (General Duty) under BCB category. He will also be allowed all consequential benefits like seniority etc, taking his date of appointment to be that when person of same merit were appointed.

13. However, in case the petitioner is found ineligible and his case is to be rejected, let a speaking order be passed in that regard. Let this exercise be completed within a period of four weeks from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

November 14, 2022

Pankaj*	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No