

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

**(221) CWP No. 26995 of 2017
Date of Decision : November 07, 2022**

Poonam Choudhary ..Petitioner

Versus

State of Haryana and another ..Respondents

(229) CWP-27189-2017

Dr. Subhader Pal ..Petitioner

Versus

State of Haryana and others ..Respondents

(229-A) CWP-281-2020

Pooja Kumari ..Petitioner

Versus

State of Haryana and another ..Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present:- Mr. Ashok Kumar Sharma(Bhana), Advocate
for the petitioner in CWP No.26995 of 2017.**

**Mr. R.K. Malik, Senior Advocate, with
Mr. Sachmeet Singh Randhawa, Advocate, and
Mr. Jasbir Mor, Advocate, for the petitioner
in CWP No.27189 of 2017.**

**Mr. Sunil Kumar Nehra, Advocate, for the petitioner
in CWP No.281 of 2020.**

**Mr. Sandeep Singh Mann, Additional Advocate General,
Haryana.**

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. Kanwal Goyal, Advocate for respondent No.2
in CWP No.26995 of 2017 and CWP No.27189 of 2017.

Mr. Balwinder Sangwan, Advocate, for respondent-HPSC
in CWP No.281 of 2020.

HARSIMRAN SINGH SETHI, J.

By this common order, all the writ petitions, the details of which have been given in the heading, are being decided as they all relate to the same advertisement and raise the same question of law on similar facts.

In the present petitions, the grievance of the petitioners is that though they were fully eligible and qualified for appointment to the post of Assistant Professor as advertised vide advertisement No.10 of 2016 by the respondents and have secured more marks than the last selected candidate in the category in which they were competing but they have not been considered for selection and appointment on the ground that the hard copy of the application form was submitted by them after the last date as communicated to the petitioners by the Selecting Agency, while declaring the result of the written examination debarring them from participating in the selection process any further. The question before this Court is whether in the facts and circumstances of these cases, the petitioners are entitled for the grant of appointment as Assistant Professor against the advertised post. For the sake of convenience, the facts are being taken from CWP No.26995 of 2017.

The facts leading to the filing of the present petition are that respondent No.2 issued an advertisement No.10/2016 on 16.02.2016, copy of which has been appended as Annexure P-1, which advertised recruitment

to the post of Assistant Professor in various subjects in the College Cadre. Keeping in view the online application submitted by the petitioners, all the petitioners were issued admit card and they appeared in the written examination, result of which was declared on 23.10.2017, copy of which has been appended as Annexure P-4 with CWP No.26995 of 2017 wherein the roll number of petitioners, who were found meritorious enough in the recruitment test, to be called for interview were mentioned.

In Annexure P-4 (Result), it was mentioned that the candidates, who have been declared successful in the written examination should submit a hard copy of their online application form alongwith self attested copies of their certificate/supporting documents to the Commission through registered post or by personal delivery within a period of 15 days i.e. upto 08.11.2017 by 05.00 pm.

It is a conceded fact that petitioners did not comply with the said clause and did not submit the said hard copy upto 08.11.2017.

On 10.11.2017 (Annexure P-5), respondent No.2 issued an announcement wherein, they displayed three lists of the candidates, candidature of whom was found liable for rejection. In the first list, roll number of the candidates, who did not submit the hard copy of the application forms at all were mentioned. In the second list, roll numbers of the candidates, who had submitted the hard copy of their applications but after the last date of submission, were mentioned and the third list contained the details of the candidates, who were found not eligible on various other counts. By the said announcement, the candidates were given 10 days time to file their objections to the ground taken for rejection of their candidature

as per notice/announcement dated 10.11.2017 (Annexure P-5) so that in case any valid reason comes forward from the respective candidates, appropriate action could be taken by respondent-Commission.

The said notice/announcement dated 10.11.2017 (Annexure P-5) was sent to the petitioners as well. Some of the petitioners submitted hard copy of their application form along with other required documents after receiving the notice/announcement and some of the petitioners gave justification for non-submission of the hard copy of the online application upto the last date. Petitioners and other similarly situated candidates who submitted the hard copy of the online application after the last date of submission were not called for interview. Petitioners filed the present writ petitions claiming that they were given 10 days time to submit the hard copy of the application as per Notice/announcement dated 10.11.2017 Annexure P-5 attached with CWP No.26995 of 2017, which direction was duly complied with and therefore, the petitioners be treated as eligible and be allowed to appear in interview.

While issuing notice of motion, this Court allowed the petitioners to appear in the interview provisionally.

After notice of motion was issued, the respondents have appeared and submitted that while declaring the result, it was mentioned that the candidates are required to submit the hard copy of the application form along with required documents upto 08.11.2017 and as the petitioners failed to deposit the same within the time limit prescribed, the claim of the petitioners for selection and appointment in pursuance to the advertisement cannot be considered any further as the submission of hard copy by the last

date mentioned was mandatory.

The respondents further submitted that in similar facts and circumstances, in an another selection process, one Rekha Jangra and Suman Lata, who were similarly situated as the petitioners herein, who had also not submitted the hard copy of the application form before the last date prescribed, learned Single Judge while passing order dated 30.01.2017 in the case of **Rekha Jangra Vs. State of Haryana and others**, CWP No.1379 of 2017, a copy of which is appended as Annexure R2/2, observed that the said requirement of submission of hard copy of the application form upto the last date prescribed was mandatory hence, the claim of the said candidate, namely, Rekha Jangra was rightly not considered any further by the respondent-Commission for selection to the post of Assistant Professor in the College Cadre. Thereafter, in the case of **Suman Lata Vs. Haryana Public Service Commission and others**, CWP No. 2530 of 2017 decided on 09.02.2017, keeping in view the aforementioned order dated 30.01.2017 in **Rekha Jangra's case (supra)**, the said writ petition, being similar in facts and circumstances as of **Rekha Jangra's case (supra)**, was also dismissed. By placing reliance upon these two orders, the respondent prays that the claim of the petitioner be also rejected.

Learned counsels for the petitioners submitted that keeping in view the facts and circumstances of this case, the submission of hard copy cannot be treated as mandatory for the reason that in the advertisement itself, the respondents in the note mentioned stated that the hard copy of the application was not required to be sent alongwith the application form and in case anyone sent the same, the same will not be entertained. Hence, once

there was a clear cut condition in the advertisement not to send the hard copy, requirement of sending the hard copy upto a particular date, as stated while announcing the result of the written examination, cannot be treated as mandatory.

Learned counsel for the petitioner further submitted that the reliance being placed by respondent No.2 on the order passed by Id. Single Judge in the case of ***Rekha Jangra's case (supra)*** cannot be accepted as in the LPA filed by said Rekha Jangra being LPA No.209 of 2017, respondents therein were directed to consider her against the reserved vacant posts for appointment as the said candidate had secured more marks than the last selected candidate in the category in which she was competing keeping in view the fact that a post was kept reserved, hence, keeping in view the order passed by the Division Bench in LPA No.209 of 2017, petitioners are also entitled for the same relief.

I have heard the learned counsel for the parties and have gone through the record of the case with their able assistance.

The question which needs to be decided in the present petitions is that whether once a direction is issued by Selecting Agency for compliance while considering the claim of eligible candidates in a selection process, the non-compliance of the said condition will oust the candidate from the zone of consideration even if the candidate has secured more marks than the last selected candidate in the category in which he/she is competing even though the said direction was given subsequently during the selection process and was not part of the main advertisement.

The conceded facts in the present petitions are that the

petitioners applied for selection/appointment to the post of Assistant Professor in various disciplines in pursuance to the advertisement No.10 of 2016 dated 16.12.2016. It is also a conceded position that the petitioners being eligible to compete, were allowed to appear in the written examination, which examination, they cleared to be called for interview.

It is also a conceded position that while declaring the result, the candidates, who had cleared the written examination, were directed to send the hard copy of their online application forms along with the relevant documents for the scrutiny of the Selecting Agency by the last date i.e. 08.11.2017 as mentioned in result announced dated 23.10.2017 (Annexure P-4) failing which their candidature will be rejected.

The last date for submission of the hard copy of the online application form along with the relevant documents as prescribed vide Annexure P-4 was 08.11.2017 by 05:00 P.M.

It is a conceded case in the present petition that on one account or another, the petitioners failed to submit the hard copy of their application form along with the required documents upto the last date of submission prescribed by the respondent-Commission. Whether, the said non-compliance of the direction of the Selecting Agency, is to be treated mandatory so as to oust the petitioners from the consideration for selection against the post for which the petitioners were competing.

The similar controversy had come for consideration before this Court when a candidate namely Rekha Jangra, who was also competing for appointment to the post of Assistant Professor in a selection process undertaken by the respondent-Commission similar to selection process in

which the petitioners were competing, had failed to submit the hard copy of the online application form upto the last date prescribed. In the said case also, submission of hard copy was prescribed while declaring the result in the written examination. Due to a failure on the part of the Rekha Jangra to comply with the said requirement, her candidature was cancelled, which action was challenged by Rekha Jangra by filing CWP No.1379 of 2017.

A Coordinate Bench of this Court, keeping in view the settled principle of law, held that the submission of hard copy of the application form upto the last date as prescribed by the Recruiting Agency was mandatory and non-compliance of the same will result in the disqualification of the candidature of the candidates. The Coordinate Bench further held that the prescribing the said condition of submission of the hard copy of the online application while declaring the result was sufficient for information to the selected candidates, who had cleared the written examination, hence, no grievance can be raised by the candidates who failed to comply with the direction of the Selecting Agency of submitting of hard copy of the application form along with the required documents upto the last date. The said decision of the Coordinate Bench was assailed in LPA No.209 of 2017. The Letter Patent Bench though allowed Rekha Jangra to compete against the advertised post as a one time concession but with the clear direction that the said order is not to be treated as a precedent. The said order was passed by the Division Bench on 16.01.2017.

In the facts and circumstances of this case, this Court is required to consider whether the petitioners are covered by the judgment of the Coordinate Bench in ***Rekha Jangra's case (supra)*** or petitioners need to

be extended the benefits as extended to Rekha Jangra by the Division Bench or not.

While giving the benefit to Rekha Jangra, the Division Bench has clearly stated that the said benefit has been extended to Rekha Jangra as a one time measure and not to be treated as a precedent. That being so, the order passed by the Division Bench cannot be brought into operation by the petitioners to claim the benefit. The judgment of the learned Single Judge passed in CWP No.1379 of 2017 was never set aside. Hence, once the law settled by the Coordinate Bench was never set aside by the Division Bench, law as settled by the Coordinate Bench in CWP No.1379 of 2017 dated 30.01.2017 is to be made applicable upon the petitioners.

The question of law being raised by the petitioners is being covered against them as per the judgment of the learned Single Judge dated 30.01.2017 that once a candidate failed to comply with the direction of the Commission, the cancellation of the candidature of the said candidate cannot be termed as illegal or arbitrary. Therefore, keeping in view the aspect that the question of law being raised by the petitioners in the present petitions is covered against them keeping in view the order passed by the Coordinate Bench of this Court in ***CWP No.1379 of 2017 titled as Rekha Jangra vs. State of Haryana and others, decided on 30.01.2017***, no benefit of the order passed by the Division Bench in LPA No.209 of 2017 can be extended to the petitioners keeping in view the stipulation in the said order to not be treated as a precedent.

It is a conceded case that upto the date of the passing of the order by the Division Bench in LPA No.209 of 2017, none of the petitioner

had raised the grievance, hence by not treating the order passed by the Division Bench as precedent, no benefit of the said order can be extended to the petitioners.

Further, a Division Bench of this Court also considered the same question of law while passing order in ***LPA No.1516 of 2017 titled as Saket Sheoran vs. Haryana Public Service Commission and another, decided on 03.03.2022.*** The Division Bench in ***Saket Sheoran's case (supra)***, considered whether, any benefit to the candidates can be extended, who did not comply with the submission of the hard copy upto the last date fixed keeping in view the order passed by the Division Bench in ***Rekha Jangra's case (supra)***. Division Bench in ***Saket Sheoran's case (supra)*** declined to extend the benefit as extended in LPA No.209 of 2017 holding that once the said Division Bench while passing order in ***Rekha Jangra's case (supra)*** held that the same cannot be taken as a precedent in future, no benefit of the order passed in ***Rekha Jangra's case (supra)*** can be given to the other candidates claiming the same relief. The relevant paragraph of the ***Saket Sheoran's case (supra)*** is as under:-

“Counsel for the appellant firstly relied upon the decision dt. 06.04.2017 in LPA No.209 of 2017 (Rekha Jangra vs. State of Haryana & Ors.) rendered by the Division Bench of this Court where a similar issue arose for consideration. In that case, the appellant was a candidate for the post of Assistant Professor (College cadre) in the subject of Botany and was required to submit hard copy of her application also along with the online copy of her application. It was the contention of the appellant that the appellant could not submit the hard copy for reasons beyond her control. But her candidature was cancelled for the said post. This Court held

that though the requirement that a candidate should submit hard copy of the application form as prescribed in the instructions mentioned in the advertisement should be followed, however, in the peculiar facts and circumstances of the said case, it directed the respondents to consider and grant one time concession to the appellant “which shall not be taken as a precedent in future”. The HPSC was directed to consider the case of the appellant therein, interview her and to determine her merit along with other candidates.

As can be seen from this decision, the Bench in that case did not wish to make the said decision a precedent. Also no decision of any High Court or Supreme Court was cited in support of the relief granted. No reliance can thus be placed on the said decision by the counsel for the appellant.

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Conclusion In view of the decisions cited above, we are of the opinion that the appellant cannot be granted any relief in this LPA since the appellant had not submitted hard copy of his application to the respondents before the cut-off date as prescribed in the advertisement, and since such cut-off date has to be scrupulously adhered to. Also no power of relaxation is shown to be vested with the respondents to relax the same and such power of relaxation has not even been indicated in the advertisement concerned.

We accordingly find no merit in the Appeal and the same is accordingly dismissed. No costs.”

On the basis of the settled principle of law noticed in the said judgment, the Division Bench held that once a candidate failed to comply with the directions of the Recruiting Agency, the cancellation of the candidature cannot be termed as arbitrary and illegal and the letter patent appeal filed by a similarly situated candidate as the petitioners, claiming the same relief as claimed in the present petitions, was dismissed. Though,

before the Division Bench, there was a slight difference in the factual position compared to in the present case to the extent that the condition of submission of the hard copy of the online application therein formed part of the advertisement itself whereas, in the present case, the hard copy was required to be submitted keeping in view the conditions imposed by the Commission while declaring the result of the written examination but the same will not make a difference as conditions imposed by the Commission during the conduct of the examination are also required to be followed by the candidates being mandatory and any default on the part of the candidates will render them disqualified for further process.

The same question of law again came up for consideration before another Division Bench in ***CWP No.8038 of 2022 titled as Ramandeep vs. Haryana Public Service Commission*** wherein also, the candidate, who cleared the preliminary examination of HCS Judicial Branch did not submit the application form for the main examination within time prescribed by the Commission and had sought the relaxation. The Division Bench, declined the said request keeping in view the judgment in ***Saket Sheoran's case (supra)***, where the plea of grant of benefit as per the order passed by the Division Bench in LPA No.209 of 2017, ***Rekha Jangra's case (supra)*** was considered and rejected on the ground that the said concession was extended as a one time measure not to be treated as prejudicial.

Not only this, in somewhat similar circumstances, the requirement of complying with the directions of the Commission has been held to be mandatory by a Full Bench of Allahabad High Court in ***Civil Writ Petition No.7401 of 2015 titled as Rajendra Patel vs. State of U.P. and***

another, decided on 14.08.2015, held that submission of hard copy by the last date has to be held mandatory. The relevant paragraphs 17 and 20 of the said judgment are as under:-

“17. Having regard to the clear stipulations which are contained in the advertisement which was issued by the Commission and the instructions to candidates in the brochure, all candidates were placed on an unambiguous notice in regard to the process of compliance and the consequences of a breach. Compliance was not made optional but was mandatory for all the candidates. When the Commission holds public examinations on such a large scale, candidates must be clearly aware of the fact that it is not open to a candidate to decide as to when an application should be submitted and compliance with the time schedule which has been indicated is mandatory. If this is not read to be mandatory, the entire process of holding an examination would stand dislocated. If no last date for the receipt of the hard copy of the application with the documents were to be provided for, the issue which would arise would be until when would the Commission be required to consider the application submitted. Should this be until the examination is held or should this continue until the date fixed for the holding of the interview? These aspects cannot be left in uncertainty more so at the individual discretion of candidates. The submission of the hard copy of the application together with the documents is not a mere ministerial act nor does it constitute a mere confirmation of the application which has been submitted online. Candidates who submit applications online are still required to submit full documentary evidence which evinces eligibility and satisfaction of the required conditions. For instance, a candidate who applies for a particular post may be required to hold a qualification with a specialisation in a particular subject. It is only on scrutinising the application and

the documents that the Commission can determine whether the candidate does fulfil the required conditions. This process cannot be left in a perpetual state of indecision or uncertainty. Hence, we are of the view that as a matter of first principle, the time schedule which was prescribed by the Commission for submission of the print out copy of the application submitted online with the documents was of a mandatory nature. Non-compliance with the schedule would invite the consequence which was clearly specified, namely the rejection of the candidature of the applicant.

20. Even on merits, we are not inclined to accept the correctness of the principle which has been laid down in Nirbhay Kumar (supra) that the submission of a hard copy of the application together with the accompanying documents is merely an act of confirmation of the application. The view which has found acceptance in Nirbhay Kumar (supra) would, in our view, dislocate the examination process and would render the process which is conducted by the Commission in a perpetual state of uncertainty. We are, with respect, in agreement with the view which was expressed by the Division Bench in Raj Narayan Singh (supra) decided on 18 February 2015.”

Keeping in view the settled principle of law noticed hereinbefore, once a similar claim raised before the Single Bench in ***Rekha Jangra’s case (supra)*** was declined by the Coordinate Bench, which judgment has never been set aside by the Division Bench and thereafter grant of benefits in terms of the Division Bench order in LPA No.209 of 2017 in ***Rekha Jangra's case (supra)*** was considered and declined by another Division Bench in ***Saket Sheoran's case (supra)*** as well as in ***CWP No.8038 of 2022 titled as Ramandeep vs. Haryana Public Service Commission***, and ***Rajendera Patel's case (supra)***, the claim of the

petitioners as raised in the present petitions cannot be accepted for the reason that it is a conceded position that the petitioners failed to submit their hard copy of the online application form with the respondent-Commission before the last date fixed i.e 08.11.2017, which was mandatory hence, cancellation of the candidature of the petitioners by the respondent-Commission cannot be faulted with keeping in view the settled principle of law noted hereinbefore.

Learned senior counsel appearing on behalf of the petitioner in CWP No.27189 of 2017 argues that after the declaration of the result of the written examination by the respondent-Commission, the petitioner had applied for certain handicapped certificates, which were required to be submitted along with the hard copy, which petitioners only received on 08.11.2017 and on the very same date, hard copy of the application form along with the requisite document was sent via courier by the petitioner to the Commission, hence, in the facts and circumstances of this case, the petitioner cannot be declared ineligible.

Learned senior counsel has not been able to show that hard copy of the online application form was got received by the Commission prior to 08.11.2017, which is the last date. Even if it is assumed that the petitioner sent the hard copy of the online application form on 08.11.2017 which was the last date, by way of courier, nothing has come on record to prove that the same was received upto 5:00 PM on 08.11.2017 by the Commission, even if, the said copy was sent by the petitioner on the last date but the same was received by the Commission after the last date, hence, the petitioner's case will be covered against him keeping in view the

judgment of the Full Bench of this Court in ***Rahul Prabhakar vs. Punjab Technical University, Jalandhar 1998 AIR (Punjab) 18***, according to which, the application form though sent before the last date but when received by the Recruiting Agency after the cut of date, cannot be treated as a valid application form for consideration.

Learned senior counsel has not been able to controvert the settled principle of law settled in ***Rahul Prabhakar's case (supra)***, which goes against the petitioner, hence, the said claim cannot be accepted.

Learned counsels for the petitioners have cited the order passed by the Hon'ble Supreme Court of India in ***Civil Appeal No.19766 of 2017 titled as Shaik Shahanaj vs. The State of Andhra Pradesh and others, decided on 24.11.2017, SLP 14838 of 2015 titled as Poonnaiyah Ramajayam Institute of Science and Technology Trust vs. Medical Council of India and another, decided on 15.07.2015*** and decision in ***Civil Appeal No.10178 of 2011 titled as Union Public Service Commission vs. Gyan Prakash Srivastava, decided on 30.11.2011***, to contend that delay in submission of the documents after the last date should be condoned.

There is no denial with regard to the proposition as decided by the Hon'ble Supreme Court of India but whether the same is applicable in the facts and circumstances of the present case, is to be seen.

In the present case, it is not only the petitioners but there are other candidates also, who failed to submit the application form and were declined further consideration for appointment in pursuance to the same advertisement. That being so, the petitioners cannot be given the benefit when same yardstick has been applied for by the Recruiting Agency against

all candidates and there could be candidates who were more meritorious than the petitioners who accepted the cancellation of their candidature, hence, the petitioners cannot be given the benefit of relaxation in the mandatory requirement of submission of hard copy of the application by 08.11.2017 so as to consider them eligible for being appointed as Assistant Professor in terms of the above cited judgments.

Learned counsel appearing on behalf of the petitioner in CWP No.26995 of 2017 submits that the petitioner never knew about the condition of submission of the hard copy by the last date upto 08.11.2017 and the petitioner only came to know about the said default keeping in view the notice which was issued by the respondent-Commission, copy of which has been appended as Annexure P-5 with the petition and immediately the petitioner submitted the required hard copy and therefore, the petitioner cannot be faulted for any inaction. The said reason being given has already been appreciated by the Coordinate Bench of this Court while passing order in ***Rekha Jangra's case (supra)*** and wherein it was held that every candidate cannot be informed individually about the result or any further requirement and imposing requirement of informing every candidate about the result and about the further requirement will be putting unbearable burden on the examining body. Hence, reason being given to claim the relief has already been declined by the Coordinate Bench while passing order in ***Rekha Jangra's case (supra)*** and therefore, the said prayer cannot be accepted.

In view of the above, no ground is made out for interference by this Court keeping in view the facts and circumstances of the present case so

as to allow the petitioners to compete for selection and appointment to the post of Assistant Professor in pursuance to the advertisement No. 10 of 2016 and the cancellation of the candidature by the respondent concerned is held to be valid and the petitions are accordingly dismissed.

A photocopy of this order be placed on the file of other connected cases.

November 07, 2022
jt/harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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