

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

1. **LPA No.895 of 2020 (O&M)**
Reserved on 18.05.2022
Date of Decision: 13.07.2022

RAMAN KUMAR KOCHHAR*Petitioner*

V/s.

STATE OF PUNJAB AND OTHERS*Respondents*

2. **LPA No.900 of 2020 (O&M)**

RAMAN KUMAR KOCHHAR*Petitioner*

V/s.

STATE OF PUNJAB*Respondent*

CORAM: **HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO**
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAAN

Present: Mr. D.S. Patwalia, Senior Advocate, assisted by
Mr. Kannan Malik, Advocate
for the appellant(s).

Ms. Anu Chatrath, Additional Advocate General, Punjab.

Mr. Sanjay Majithia, Senior Advocate, assisted by
Mr. Vinay Gaur, Advocate,
for respondent No.5.

M.S. RAMACHANDRA RAO, J.

These two Letter Patent Appeals arise between the same parties
and so have been disposed of by this common order.

Both these Appeals are preferred by Sh. Raman Kumar Kochhar
challenging the common order dt.11.12.2020 passed in a bunch of three Writ
Petitions in which leading case was CWP No.24036 of 2016 in which he was

the respondent No.5, and CWP No.17013 of 2020 in which he was the petitioner.

The contesting private respondent in both these LPAs is Smt. Promila Sharma, who was the petitioner in CWP No. 24036 of 2016.

In the common order passed on 11.12.2020, the case of Sh. Krishan Gopal, who was petitioner in CWP No.573 of 2019 was also covered, but we are not concerned with that case or the said party.

The subject matter relates to appointment to the post of Additional Assistant Commissioner (Under Trainee) in the Punjab Civil Services (Executive Branch).

The background facts

The appellant had been appointed to the post of Additional Assistant Commissioner (Under Trainee) on the recommendation of his name by the Punjab Public Service Commission, Patiala (hereinafter referred to as “the Commission”) from the post of Register A-II.

The private respondent had submitted a complaint stating that the appellant did not fulfill the basic eligibility criteria as given under Rule 10 (4) (c) of the Punjab Civil Services (Executive Branch) First Amendment Rules, 2011 (hereinafter referred to as “the Rules of 2011”), that she is eligible for the post given to appellant. This Complaint was rejected by respondent No.1 by an order passed on 12.10.2016 in the Appeals.

The private respondent then filed CWP No.24036 of 2016 in this Court to set aside the order dt.12.10.2016 of respondent No.1, and sought a direction that she be appointed to the said post on the ground that she comes within the selection zone.

While the said Writ Petition was pending, the State issued a Show Cause Notice dt.28.11.2018 to the appellant and thereafter, passed an order on 05.10.2020 cancelling his appointment, and directed him to join his parent cadre on the ground that he was not qualified to be appointed as he did not have the basic educational qualification of Graduation. However, his service benefits were protected as if he had served in his parent cadre for the purpose of continuity, and it was not to be treated as break-in-service.

It held that the Degree of M.A. (History) secured by the appellant from the Annamalai University did not make him eligible to hold the post without the basic first Degree of Graduation, and therefore, he cannot be considered as qualified under the Rules of 2011.

The appellant questioned the said order dt. 05.10.2020 passed by the State in CWP No. 17013 of 2020.

Both the Writ Petitions were heard together by the learned single Judge.

As stated above, the learned single Judge allowed CWP No.24036 of 2016 filed by private respondent and dismissed CWP No. 17013 of 2020 filed by the petitioner, by a common order with costs.

The order of the Learned Single Judge

Learned single Judge held that the advertisement issued by the Commission dt.21.04.2014 inviting applications from the eligible employees from Groups A and B of the Ministerial Cadre of the Punjab Government in Punjab Civil Service (Executive Branch) to be filled through Register A-II and Register (C) for the process year from the periods 2008-2012-2013 provided for filling up of 25 posts from Register A-II posts with which the

instant cases are concerned, that it had fixed certain criteria for eligibility; one such criteria was possession by a candidate of a Graduate Degree from the recognized University; that the appellant filled online application form on 05.05.2014 mentioning in the Column intended to indicate Graduation by incorporating that his qualification was MA (History) from Annamalai University; in the service record of the appellant, his educational qualification was shown as Graduation wrongly; that the Superintendent of the Establishment Branch therefore could not have forwarded the appellant's application at the first instance itself as he was not eligible as per the Rules of 2011.

He further held that the declaration submitted by the appellant was itself incorrect since he has not done Graduation from any recognized University; and the Commission abdicated its responsibility in not rejecting his case, and permitting him to sit in the screening test; that it wrongly admitted him provisionally in the selection process; later referred his name to the Government for taking appropriate action; and the State Government then declared the appellant as eligible and suitable on the basis of the legal opinion given by the then Advocate General, Punjab.

Learned single Judge held that the eligibility is to be seen on the cut-off date which has to be as per the terms of the Rules of 2011 and in absence of the basic eligibility of being a Graduate, the appellant's appointment is itself *void-ab-initio*.

Reliance was also placed on the Punjab Service (General and Common Conditions) Rules, 1994 which apply to the posts of Groups A, B & C, which is the feeder cadre which provides that the minimum educational

qualification, as per Rule 15, is of Graduation and the said Rule prohibits a person from being eligible to be given direct appointment even to the post of Clerk under the Punjab Government unless he possesses a Bachelor's Degree from the recognized University or Institution. He also placed reliance on Rule 19 of the same Rules which though permit relaxation of some criteria for reasons to be recorded in writing, prohibit educational qualifications to be relaxed.

He also rejected the plea of the appellant that by the date of consideration of the appellant's application, he not only possessed the MA (History) Degree from the Annamalai University obtained under the open University system, but had also obtained an MBA Degree from the Punjab Technical University and an MA (Punjabi) Degree from the Panjab University, and therefore, the appellant is deemed to be in possession of the basic Degree of Graduation.

Learned single judge held that on 03.11.2016, the opinion had been received from the University Grants Commission (for short "UGC") that possession of a Masters Degree by the appellant from Annamalai University without having a basic Graduation Degree cannot be considered to make the appellant eligible nor would it be equivalent to the Graduation Degree.

Learned single Judge held that on a conjoint reading of First Degree and Masters Degree of UGC Regulations 2003, a Bachelor's Degree is liable to be granted only to a student who had completed the program of three years' duration, and so the appellant cannot claim that he is a Graduate on the basis of the MA (History) Degree obtained from the Annamalai University; that admission in Masters Degree can also only be given after completion of three

years' undergraduate Degree; and any provisional admission which had been granted by the Annamalai University is in violation of the UGC Regulations.

Learned single Judge went further and held that the subsequent Degrees in MBA and MA (Punjabi) obtained by the appellant, having been obtained on the basis of the Degree from the Annamalai University (which was obtained without having the basic qualification of three years Graduation), are also not liable to be recognized as valid Degrees.

At more than one place in the order of the learned single Judge, he implied that some favoritism is shown to the appellant by the State even though he was not eligible to be considered for the post in question.

Thus CWP No.17013 of 2020 filed by the petitioner was dismissed and CWP No. 24036 of 2016 filed by the private respondent, was allowed, and a direction was given for appointment of the private respondent in the vacancy which would be caused against the post vacated by the appellant since she is eligible to hold the same, and was at Sr. No. 26 in the merit-list against the names of 25 candidates who had been forwarded for appointment. Direction was also given to give the private respondent all necessary benefits of seniority from the date similarly situated candidates are appointed to the said post, and cost of ₹1 Lakh was also awarded to her.

Challenging the same, these two appeals are filed.

Contentions of the parties and consideration by the Court

Learned Senior Counsel for the appellant contended that the observations of the learned single Judge that authorities of the State showed

favoritism to the appellant cannot be accepted for the reasons that prior to giving such appointment to the post to the appellant, there was a reference of the case of the appellant by the Commission to the Punjab Government on 10.06.2016 vide Annexure P-11, that legal opinion from the Office of Advocate General, Punjab was taken on 16.09.2016, and the Chief Minister of Punjab took a final decision as per the advice of the Advocate General, Punjab on 23.09.2016. Learned counsel for the appellant contended that it would be thus unfair to impugn any bias to all the higher dignitaries involved, and the findings of the learned single Judge that the appellant was the “blue eyed” boy of somebody in Punjab Government is erroneous.

The counsel for the private respondent refuted the said contention and tried to point out certain aspects to take a different view.

When a particular course of action is adopted by the State on the basis of the legal opinion of the Advocate General, Punjab, *assuming that the said decision/course of action suggested by the Office of the Advocate General, Punjab is found incorrect later*, motives cannot be attributed to decision makers holding such a high office as the then Chief Minister or the Chief Secretary. Therefore, the observations in that regard made by the learned single Judge are set aside.

We have already noticed that for the post in question, the prescribed qualification required to be possessed is one of the Graduation. Admittedly, the appellant does possess the Degree in Graduation but had directly obtained MA Degree from Annamalai University, and thereafter on the basis of the said Degree also obtained a Degree of MBA in 2008 from the

Punjab Technical University and later in 2011, obtained a Degree of MA (Punjabi) from the Panjab University.

The question which arises for this Court's consideration is :
“whether possession of MA (History) Degree from Annamalai University can be treated as appellant possessing the qualification of Graduation?”.

In other words “can the Court deem the appellant as having possessed the prescribed qualification of graduation on ground that he possesses a higher post graduate degree of MA (History) from the Annamalai University?

Counsel for the appellant drew the attention of this Court to 1999 decision of the Panjab University, Chandigarh filed as Annexure P-5 which mentioned the List of Examinations of other Indian Universities/Boards/Bodies which are recognized by the Panjab University, Chandigarh. This document indicated that MA Degree, *passed directly after matriculation*, is also recognized by the Panjab University.

He also relied on a public notice issued by the Secretary of the UGC vide Annexure P-6 dt.19.07.2016 wherein it is stated that *equivalence of Degrees, diplomas, certificates etc. are not determined by the UGC; in case of higher education, equivalence is decided by the University concerned, and in cases of employment, promotion etc. equivalence is decided by the employing organization.*

He sought to contend that the learned single Judge erroneously relied on a letter given by the Education Officer of the UGC on 03.10.2016 addressed to the Government of Punjab expressing an opinion that the appellant's Master Degree *without basic Graduation Degree* cannot be

considered valid, and he cannot be said to possess equivalent to a Graduation Degree.

Counsel contended that when the Secretary of the UGC has stated that the equivalence of the Degrees are not to be determined by the UGC, the Education Officer of the UGC on 03.10.2016 vide Annexure P-32 could not have given the opinion about appellant not possessing Graduation qualification though he possesses the Degree in MA (History) from Annamalai University.

In this regard, we are of the opinion that the Education Officer of the UGC, being subordinate in rank to the Secretary, UGC, cannot give an opinion contrary to the Public Notice dt.19.07.2016 (Annexure P-6) issued by the Secretary of the UGC. So no value can be attached to the said opinion at all, that it is liable to be ignored, and the learned single Judge erred in placing reliance on the same.

However, this does not help the appellant much because admittedly the advertisement issued by the State for the post in question requires the appellant to possess the qualification of the Graduation from the recognized University.

The UGC (Minimum Standards of Instruction for the Grant of the **First Degree** through Formal Education) Regulations, 2003 indicates that *no student shall be eligible for the award of the first Degree unless he/she has successfully completed a programme, of not less than three years duration and secured the minimum number of credits prescribed by the university for the award of the Degree* and the UGC (Minimum Standards of Instruction for the Grant of the **Master's Degree** through Formal Education) Regulations, 2003 indicate that *'no student shall be eligible for admission to a Master's Degree programme in any of the faculties unless he/she has successfully completed*

three years of an undergraduate Degree or earned prescribed number of credits for an undergraduate Degree, through the examinations conducted by a university/autonomous institution or possesses such qualifications as recognized by the concerned university as equivalent to an undergraduate Degree’.

As rightly held by learned single Judge since the appellant did not undergo an undergraduate course of three years duration, he cannot claim to be a Graduate, and therefore, cannot be said to have fulfilled the requirement of the possessing of Graduate Degree for consideration for appointment to the subject post under Rule 10(4) of the Rules of 2011.

The Full Bench decision of Manjit Singh

Reliance placed by the appellant on the Full Bench decision of this Court in the case of **Manjit Singh and Others Vs. State of Punjab and Others¹**.

In that case, for the post of Physical Training Instructor (PTI), the basic qualification prescribed was possessing of Senior Secondary School Certificate or Intermediate or its equivalent, and a Certificate in Physical Education (C.P. Ed.) of duration of not less than two years or its equivalent.

The petitioners in that case were in possession of qualifications like B.PED, M.PED and C.PED and had applied for the posts in question under various categories, but their candidature were not considered by the State of Punjab.

¹ 2011 (1) SLR 583; Reported in Manu/PH/3777/2010

In the said case, the question which arose for consideration was ‘whether a candidate possessing higher qualification than the one prescribed/advertised for appointment to the post is eligible for selection/appointment or not?’

The Bench held that the rejection of the candidature of the petitioners therein who admittedly possess the higher qualification, is arbitrary, and is in violation of Article 14 and 16 of the Constitution of India.

The Full Bench in the said case held that the decision of the Commission not to entertain the candidature of the petitioners therein despite the fact that they possess higher qualifications in the same line is arbitrary and legally not sustainable, and had resulted in violation of Fundamental Rights of equality guaranteed to the petitioners under Article 14 and 16 of the Constitution of India.

The Full Bench in the said case was however not considering a situation whether the applicants, without possessing the basic Degree of Graduation like in the instant case, had secured Post Graduate Degrees. The candidates before the Full Bench, who possessed the higher qualifications, also possessed the basic qualification of the Secondary School Certificate. Therefore, the said decision has no application.

The decision of the Supreme Court in Zahoor Ahmad Rather (2019)

We shall now refer to the decision of Supreme Court in **Zahoor Ahmad Rather and Others Vs. Sheikh Imitiyaz Ahmad and Others²** .

In that case, for the post of Technician-III in Power Development Department, Jammu and Kashmir, the qualification prescribed was Matric with

² 2019 (2) SCC 404

ITI in relevant trade, but the appellants therein possessed Diplomas in Electric Engineering, and not ITIs. They contended that since they possess a higher qualification of Diploma compared to the prescribed qualification of Matric, they should have been allowed to be considered, and appointed for the said post, but the Supreme Court rejected the said contention, and held that *unless the Rules say that possession of the higher qualification would pre-suppose the acquisition of a lower qualification prescribed for the post, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower qualification.*

The Court declared that description of the qualifications for a post is a matter of recruitment policy; the State as the employer is entitled to prescribe the qualification as a condition of eligibility; it is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications; similarly, *equivalence of qualification is not a matter which can be determined in exercise of power of the judicial review*; whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as a recruitment authority, to determine.

It also held that while prescribing the qualification to the post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification; the State is entrusted with the authority to assess the needs of its public services; exigencies of administration fall within the domain of administrative decision making; the State as a public employer may well take into account social perspectives that require the

creation of job opportunities across the societal structure; these are all essentially *matters of policy* and judicial review must tread warily.

Having regard to the above decision, we are of the opinion that to the extent the learned single Judge held that the appellant did not possess the qualification of Graduation for being considered for appointment to the post in the PCS (Executive Branch), he did not commit any error warranting the interference of this Court in exercise of its power under Clause 10 and 12 of the Letters Patent.

However, to the extent that the learned single judge went on to hold that even the Degree in MBA obtained by the appellant from the Punjab Technical University and Degree of MA (Punjabi) obtained from the Panjab University, Chandigarh are not valid Degrees, his order is set aside since it was not necessary for the learned single Judge to go into the said aspect.

The LPAs are allowed to the limited extent as aforesaid only.

No costs.

July 13, 2022
Ess Kay

[M.S. RAMACHANDRA RAO]
JUDGE

[HARMINDER SINGH MADAAN]
JUDGE

<i>Whether Reportable</i>	:	<i>Yes/No</i>
<i>Whether speaking / reasoned</i>	:	<i>Yes/No</i>