

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

LPA-1963-2017 (O&M)

Reserved on: 25.07.2022

Rina and another

. . . . Appellants

Vs.

Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak and
others

. . . . Respondents

LPA-2237-2017 (O&M)

Reserved on: 25.07.2022

Rina and another

. . . . Appellants

Vs.

Pt. B.D. Sharma University of Health Sciences, Rohtak and others

. . . . Respondents

LPA-2034-2017 (O&M)

Reserved on: 25.07.2022

Gayatri

. . . . Appellant

Vs.

Pt. B.D. Sharma University of Health Sciences, Rohtak and others

. . . . Respondents

Date of Decision: 25.08.2022

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE H.S. MADAN**

Present: - Mr.R.S. Panghal, Advocate,
for the appellants (in LPA-1963 & 2237-2017)
for respondents No.5 & 6 (in LPA-2034-2017).

Mr.Karamveer Singh Banyana, Advocate,
for the appellant (in LPA-2034-2017)
for respondent No.4 (in LPA-2237-2017)

M.Kuldeep Sheoran, Advocate,
for respondents No.4 & 5 (in LPA-1963-2017)
for respondent No.5 (in LPA-2237-2017)
for respondent No.6 (in LPA-2034-2017)

Mr.Nilesh Bhardwaj, Advocate, for the respondent/University.

M.S. RAMACHANDRA RAO, J.

The issues in all the three LPAs are inter-connected and so they are being disposed of by this common order.

In LPA Nos.1963 & 2237 of 2017 appellants are Rina Rani and Pooja Kumari.

LPA-1963-2017 is preferred against the order dt.27.09.2017 passed by learned Single Judge in CWP-9503-2017 and LPA-2237-2017 is preferred against the order dt.27.09.2017 passed by the learned Single Judge in CWP-20717-2017. In fact both these Writ Petitions had been decided by a common order.

In LPA-2034-2017, the appellant is Gayatri. It is preferred against the order dt.27.09.2017 passed by the learned Single Judge in CWP-20717-2017. She is also respondent no.4 in LPA-2237-2017.

The background facts

Vide an advertisement No.6/2016 issued on 30.09.2016 various posts including posts of Staff Nurses were advertised by the Pt. B.D. Sharma University of Health Sciences, Rohtak (for short' the University') which is respondent No.2 in LPA-1963-2017 and respondent No.1 in LPA-2237-2017. The last date for making application was 07.11.2016. Vide corrigendum dt.20.11.2016, the cut-off date was extended to 30.11.2016.

Against 535 posts of Staff Nurses, 5 were reserved for General Category (OSP) qua which the dispute in this case is relates to. OSP stands for 'Outstanding Sports Person'.

A written test was held on 12.02.2017 in which the appellants as well as the private respondents were successful vide provisional result dt. 30.02.2017.

The appellants in these two appeals (i.e. LPAs-1963 & 2237-2017) figured at Sr. Nos.2 & 3 of the said result whereas Mukesh Rani and Neeraj, who are respondents No.5 & 4 in LPA-1963-2017 figured at Sr. Nos.4 & 8 respectively. Gayatri figured at Sr. No.10.

The successful candidates were called for verification of documents on 28.03.2017 and the interview was fixed for the next date i.e. 29.03.2017 pertaining to the General Category (OSP) category.

As per verification done and interview, the result was declared on 12.4.2017 in which Neeraj and Mukesh Rani were shown as having been selected at Sr. Nos.4 & 5 out of the 5 posts so advertised under the General Category (OSP) quota.

But the said result was revised on 2.5.2017 *before* issuance of appointment letters to Neeraj and Mukesh Rani, who are respondents No.4 & 5 in LPA-1963-2017 and appellants Rina Rani and Pooja Kumari were declared as selected at Sr. No.1 & 2. The names of Neeraj and Mukesh Rani were dropped in the revised result, and the following note was appended to it: -

“Note: The candidates mentioned at Sr.No.1 & 2 above applied under the GC sports category but they produced gradation certificates issued by the District Sports and Youth Affairs Officer. Hence, they were directed to produce the gradation certificates duly issued by the competent authority within four working days. Meanwhile, they were interviewed on 30.3.2017 in GC Category. Further, they submitted the required gradation certificates duly issued by the Deputy Director, Department of Sports & Youth Affairs, Haryana within the stipulated period. Therefore, they were required to be

considered under GC sports category but inadvertently they were not included in the merit list prepared for GC sports category. Hence, the merit list/selection list has been revised accordingly.”

Challenging the same, Neeraj and Mukesh Rani filed CWP-9503-2017 impleading Pooja Kumari and Rina Rani as respondents No.4 & 5.

Gayatri, the respondent No.4 in LPA-2237-2017 filed CWP-20717-2017 impleading Pooja Kumari, Rina Rani and Neeraj as respondents No.4 to 6.

All the private respondents sought for quashing of the revised selection list dt.02.05.2017 by which Pooja Kumari and Rina Rani /appellants were selected to the posts of Staff Nurse under General Category (OSP).

It was the contention of the private respondents Neeraj and Mukesh Rani that the official respondents had issued a schedule for the verification of the original documents and for the interview, that they had been called for verification of the original documents on 28.03.2017, that after verification, they were called for interview on 29.03.2017 and then results were declared on 12.04.2017 showing them as having been selected under the General Category (OSP), but *without issuing appointment letter to them*, the result was revised and appellants were selected.

They contended that when the results for the post of Staff Nurse under this category were uploaded on 12.04.2017 on the website of the University, they (i.e., Neeraj and Mukesh Rani) were stated to have been selected, but appointment letters were not issued to them by the official

respondents, and in the revised result declared on 02.05.2017, the appellants were selected and they were dropped, and there has been *a violation of principles of natural justice*.

It was also alleged that the appellants did not have all the documents at the time of verification of the original documents because in the revised result it was mentioned that the appellants had not produced Sports Gradation Certificates and as per terms and conditions at Sr. Nos.11 & 14 of the Advertisement, and so they were not eligible. They therefore, sought issuance of appointment letters to themselves for the purpose of Staff Nurse as per the selection list dt. 12.04.2017.

Events after filing of the Writ Petitions

After the Writ Petitions were filed on 03.05.2017, interim directions were issued by this Court not to issue appointment letters to the appellants.

The stand of the University

Written statement was filed by the University taking a plea that the appellants had produced the relevant certificate *issued by the District Sports Authority* at the time of verification of documents, but as per advertisement, the Sports Gradation Certificate issued from the *Director Sports, Haryana* had to be produced for which the appellants had already applied to the said authority.

The University contended that the appellants had assured the Establishment Committee to produce the required certificate from the Director, Sports Haryana within four working days and accordingly they were interviewed on 30.03.2017 and they also submitted their Sports

Gradation Certificates within four days after they were issued by the Director, Sports Haryana and the same were considered. It contended that the names of the appellants were inadvertently omitted in the merit list put up on 12.04.2017 when the selection list for General (OSP) category was uploaded in the University website.

Resultantly, on their approaching the University for not including their names in the merit list since their merit was higher, the merit list was revised and again uploaded and so the names of the private respondents were not included. It was also stated that the appointment letters issued on 02.05.2017 to the appellants were withdrawn on 03.5.2017 in view of the interim order passed.

The case of the appellants

The appellants also took the same plea like the University and contended that four working days time was given to them to produce the Sports Gradation Certificate from the Director, Sports Haryana and since they produced the said certificate, they were rightly selected since they were higher in merit list and there is no illegality in their selection.

The case of Gayatri

Gayatri, who is the 4th respondent in the LPA-2237-2017 and appellant in LPA-2034-2017, challenged the eligibility of Neeraj on the ground that Sports Gradation Certificate in favour of the latter was dt. 27.03.2017, which is after the cut-off date of 30.12.2016 and the same therefore could not have been taken into consideration at the time of interview. She contended that Neeraj is thus not eligible and Gayatri, who is

at Sr. No.8 would become eligible and would be entitled for appointment as Staff Nurse.

The Order in the Writ Petition

By a common order dt. 27.09.2017, the learned Single Judge allowed both the Writ Petitions to the extent of setting aside the revised merit list issued of 02.05.2017 and also the appointment letters issued to the appellants. He however dismissed CWP-20717-2017 wherein Gayarti had questioned the eligibility of Neeraj and directed the University to issue appointment letters to the private respondents No.4 & 5 i.e. Neeraj and Mukesh Rani in LPA-1963-2017.

In the impugned order, the learned Single Judge held that the result was revised behind the back of Neeraj and Mukesh Rani, who had been declared selected in the list put up on the website of the University on 12.04.2017, that the said list could not have been modified on 01.05.2017 by the University without issuing any notice to respondents No.4 & 5 i.e. Neeraj and Mukesh Rani in LPA-1963-2017, and there was a violation of principles of natural justice as a *vested right had accrued* in their favour once they were declared successful at one stage and the revision was not justified.

The learned Single Judge further held that the date fixed for verification of the original documents was 28.03.2017, that the appellants did not have the Sports Gradation Certificates on the said date, that as per terms of tentative schedule, interview was to be held on 29.03.2017 and only candidates having the requisite certificates were to be called for the interview.

He noted that the certificates issued by the Deputy Director, Department of Sports and Youth Affairs in favour of the appellants are dt.30.03.2017 and would have been submitted by them only on the said date.

He also held that on 30.03.2017, the University had not fixed any interviews for candidates in the General Category (OSP) but still the appellants were interviewed on that day and as per the terms of the advertisement this was impermissible.

He relied upon on Clause 4(viii), 11, 14 & 21 of the advertisement and came to the conclusion that at the time of scrutiny, certificates had to be available and had to be produced, and if they were not available with the appellants, they could not have been given any further extension time to produce the same, by getting them issued from the competent authority, as per the terms and conditions of the advertisement and the scheduled fixed.

He held that selection process is a time bound process and a candidate should be well aware and bound by the terms and conditions of the same and the selecting authorities cannot wait for production of documents at the convenience of the candidate, which would never make the process complete.

He held that extra leverage could not have been given to the appellants by the University and it cannot apply different rules to the appellants and to the other candidates, and its action in revising the result was not justified.

He also rejected the plea of Gayatri (petitioner in CWP-20717-2017) that Neeraj was ineligible on the ground that she had been issued a

certificate by the Haryana Kabaddi Association mentioning that she was an outstanding sports person on the basis of her achievements in December 2013, and since the certificate issued to Neeraj by the competent authority was dt.27.03.2017, prior to the scrutiny, she was rightly interviewed and duly selected. He held that the plea of Gayatri that there was a cut-off date of 30.12.2016 cannot be accepted since it was not the case of essential qualifications not being in place before the cut-off date, and the certificate from the competent authority was produced at the time of interview.

The learned Single Judge observed that the appellants were well aware of the terms of the advertisement, but chose not to get the Sports Gradation certificates from the competent authority and so they cannot turn around and submit that they were given time to submit the requisite certificate.

The learned Single Judge also discussed the judgments cited on both sides.

Filing of LPAs

Challenging the same, these LPAs are filed.

Heard counsel for the respective parties.

Consideration by the Court

It is the admitted case of respondents No.4 & 5 i.e. Neeraj and Mukesh Rani that they were shown to have been selected in the General Category (OSP) in the selection list uploaded on the website of the University on 12.04.2017 at Sr. Nos.4 & 5, but the University had issued appointment letters to all selected candidates of all the categories *except the*

General Category (OSP). They admitted that no appointment letters were issued to them by the official respondents.

In these circumstances, the question arises whether these persons can be said to have a vested right merely on the basis that they had been declared successful in the list put up on the website of the University on 12.04.2017 even though they had not been issued appointment letter and whether they can maintain CWP-9503-2017.

This issue fell for consideration before the Hon'ble Supreme Court in **Punjab State Electricity Board Vs. Malkiat Singh¹**. The Supreme Court held that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment.

This was reiterated recently in **Commissioner of Police and another Vs. Umesh Kumar²**. In the said case also the Supreme Court held that the mere inclusion of a name of the candidate in the select list does not confer on such candidate any vested right to get an order of appointment and they are not entitled to Writ of Mandamus.

That apart, appellants Rina Rani and Pooja Kumari have placed before us material to show that they had in fact applied for issuance of the Sports Gradation Certificate from the competent authority on 07.11.2016 and 27.02.2017 respectively, but the same were not issued by the competent authority i.e. the Director, Department of Sports and Youth Affairs, Haryana and it was issued to them only on 30.03.2017.

¹ 2005 (9) SCC 22

² 2020 (10) SCC 418

In our opinion, though they did not have the certificate issued by the Director, Sports, Haryana on 28.3.2017, the certificate of the District Sports Authority submitted by appellants showed that they were having the requisite sports achievement grade and were eligible. So it was not a case of appellants not possessing the achievement in the concerned sport as on the 28.3.2017. Due to circumstances beyond the control of the appellants they could not produce the certificate inspite of having the requisite eligibility on the date of verification of the original documents i.e. 28.03.2017. So they cannot be disqualified.

Clause 11 of the Advertisement stated that *eligibility* shall be verified just *before* the interview as per the qualifications, experience and other terms and conditions given in the advertisement.

Clause 14 of the advertisement mandates that the competent authority *at the time of interview* must be supplied sports certificate and the applicant must produce the Sports Gradation Certificate issued by Director, Sports Haryana.

If on 28.03.2017, the appellants were eligible (they possessed the requisite sports achievement grade) and on account of the fact that the interviews were on going, they were given time to produce the certificate from the competent authority of 4 days and within that time on 30.03.2017, they produced it and were interviewed, it cannot be said that there is any illegality committed by the University.

Merely on the ground that there was a *delay in production* of the Sports Gradation Certificate from the competent authority for which the appellants were not to blame, they cannot be denied employment when they

did have eligibility even as on 28.03.2017 and also because of their higher merit.

In **Dolly Chhanda Vs. Chairman, JEE³**, the Supreme Court held as under:-

“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.

(emphasis supplied)”

The Supreme Court in the above decision relied on its earlier decision in **Charles K. Skaria and others Vs. Dr. C. Mathew and others⁴**, where the Supreme Court held that the candidates who got admission even though they had not attached the certificate of having passed the diploma alongwith their applications, could not have their admission to a Post Graduate cancelled provided they had in fact passed the diploma before the date fixed, but had submitted the diploma with delay. It observed that the important question is *whether or not the candidate secured a diploma before the final date of application for admission to the degree course and if he did*

³ 2005(9)SCC 779

⁴ 1980(2) SCC 752

have the diploma some relaxation in producing evidence of the diploma can be granted. It held that the emphasis should be on the diploma and the proof thereof is subserves the factum of possession of diploma and is not an independent factor. It held that what is essential is the possession of the diploma before the given date and what is ancillary is the safe mode of proof of the qualification. To make mandatory, the date of acquiring the qualification before the last date for application make sense. But if it is shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof was adduced a few days later, would not be proper.

The learned Single Judge had distinguished this judgment in **Dolly Chhanda** (3 Supra) on the ground that the appellants were well aware of the terms of the advertisement and had chosen not to get the certificate from the competent authority and so they cannot turn around and contend that they were given time to submit the requisite certificate.

We do not agree with this reason because even if the appellants were aware of the terms of the advertisement, since they had applied for such certificate on 07.11.2016 and 27.02.2017 to the competent authority and the competent authority delayed in issuing those certificates, the appellants cannot be blamed for it and denied appointment on the said ground.

We may also point out that the decision in **Dolly Chhanda** (3 Supra) was applied by the Supreme Court in **Archana Chouhan Pundhir (Dr.) Vs. State of Madhya Pradesh and others**⁵.

⁵ 2011 (11) SCC 486

In **Archana Chouhan Pundhir (Dr.)** (5 Supra) as on 30.04.2007, the appellant had completed more than 7 years service as Medical Officer in Public Health and Family Welfare Department of Government of Madhya Pradesh. Her services were regularized w.e.f. 31.12.2005 vide order dt. 10.04.2007. Her application for admission to the post of graduate course as an in-service candidate was accepted by the authorities and she was allowed to appear in the entrances exam of 2007, but she was denied admission because of non award of remarks in lieu of her 7 years service. The High Court dismissed her Writ Petition for admission into the Post Graduate course as an in-service candidate on the ground that the result of the entrance examination was declared on 09.04.2007 and the order of regularization of her service was issued on 10.04.2007. The Supreme Court reversed the order of the High Court and held that the date in which the order of regularization was issued was purely fortuitous and the same cannot be made basis for depriving the appellant of her legitimate right as an in-service candidate. It noted that the appellant had worked as Assistant Surgeon in District Hospital, Raisen on contract basis vide order dt.26.10.1999 and her Writ Petition had been allowed by the learned Single Judge on 21.04.2004 directing consideration of regularization of her services in three months, but the respondents took three years and only on 10.04.2007 regularized her service w.e.f. 31.12.2005. It observed that if the State Government had issued the order of regularization before 05.03.2007 i.e. the last date fixed for receipt of the application, the appellant would have been saved of the harassment, mental agony and financial loss suffered by her on account of unwarranted and post litigation.

Thus importance was given to the possession of the eligible qualification by the candidate as on the cut of date and not on the possession of the proof of such eligibility on that date.

We may also point out that Clause 18 of the advertisement permitted the University to modify any communication made to the applicants in the event of any discrepancy being detected in the process of selection at any stage even after the issuance of appointment order.

When the University explained in the note furnished by it to the revised selection list dt. 02.05.2017 that by mistake it had not considered the appellants under the General Category (OSP) and had inadvertently not included them in the merit list prepared for the said category earlier, and that it has now corrected the said mistake by issuing the revised list, the same cannot be held to be illegal or arbitrary.

We also do not agree with the view of the learned Single Judge that if at the time of scrutiny, the certificates were not produced, further extension of time to produce it cannot be granted because a schedule has been fixed. Firstly the schedule itself mentioned that it was a *tentative* schedule. When interviews were continuing beyond 29.03.2017 and meritorious candidates would otherwise be denied selection for a mere technicality, such power to grant extension for production of certificates has to be implied and a formalistic, ritualistic approach cannot be adopted as held in **Charles K. Skaria and others** (4 Supra).

Conclusion by the Court

Therefore, LPA Nos.1963 & 2237 of 2017 are allowed; the common order dt.27.09.2017 passed by the learned Single Judge in

CWP Nos.9503 & 20717 of 2017 is set aside; the said Writs are dismissed; consequently, the revised merit list issued on 02.05.2017 is held to be valid; and appointment letters w.e.f 02.05.2017 are directed to be issued to the appellants in LPA Nos.1963 & 2237 of 2017 by the official respondents within 4 weeks. They shall be given benefit of notional service from the said date which shall be counted towards their retiral benefits, but they shall not be entitled to any monetary benefit from 2.5.2017 till they join duty.

As regards LPA-2034-2017 is concerned, since in the said LPA, the appellant therein Gayatri is challenging the relief granted by the learned Single Judge to Neeraj (6th respondent therein), and since the relief granted to Neeraj has now been set aside by virtue of this order in the other two LPA Nos.1963 & 2237 of 2017, no orders are necessary to be passed in this LPA and the same is accordingly dismissed.

Pending application(s), if any, shall stands disposed of.

A photocopy of this order be placed on the connected files.

(M.S. RAMACHANDRA RAO)
JUDGE

25.08.2022

Vivek

(H.S. MADAAN)
JUDGE

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No