

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

Neutral Citation No. 2023:PHHC:136852 -DB

(1)

LPA-205-2023 (O&M)

Nirdosh Kumar

....Appellant(s)

Versus

Punjab & Haryana High Court, Chandigarh & others

.... Respondents

(2)

LPA-310-2023 (O&M)

Aman Dua & another

....Appellant(s)

Versus

Punjab & Haryana High Court, Chandigarh & others

.... Respondents

(3)

LPA-476-2023 (O&M)

Jaspreet Kaur

....Appellant(s)

Versus

Punjab & Haryana High Court, Chandigarh & another

.... Respondents

Reserved on: 10.10.2023

Decided on : 19.10.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Sushant Kareer, Advocate
for the appellant in LPA-205-2023.

Mr.Akashydeep Singh Balyan, Advocate
for the appellants in LPA-310-2023.

Mr.Sehajbir Singh, Advocate
for the appellant in LPA-476-2023.

Mr.Vikas Chatrath, Advocate, for the respondents.

G.S. Sandhawalia, J.

The consideration in the present set of appeals is to the
judgment of the Learned Single Judge dated 07.02.2023 wherein while

deciding CWP-1378, 1999, 2669 & 2387-2020, the view taken was that the advertisement had the force of law and could not be relaxed and the photocopy of the birth certificate having not been appended alongwith the application as a proof was a mandatory condition. Therefore, the claim for consideration for appointment to the post of Senior Scale Stenographer on the establishment of this Court was declined.

2. The Learned Single Judge was of the consideration while accepting the argument of counsel for the High Court that the candidate had to comply with all the eligibility criteria as per the advertisement before the cut off date and the relevant birth certificate given after the cut-off date was not be considered and the petitioners were not entitled for any indulgence. The cut-off date being of paramount consideration, same was not liable to be relaxed which was the reason which prevailed with the Learned Single Judge.

3. A perusal of the paperbook would go on to show that the challenge by the writ petitioners was to the list dated 30.07.2018 wherein the list of rejected applications of the candidates who had applied for the 33 vacant posts of Senior Scale Stenographers on the establishment of this Court had been put in public domain. The cut-off date in pursuance of the advertisement in question dated 19.05.2017 (Annexure P-1) was 27.06.2017 and the age of the persons eligible for recruitment was between 21-30 years as on 27.06.2017, with age relaxation to be provided to Physically Handicapped, Ex-servicemen. Clauses 4 & 5 read as under:

“4. Candidates must possess requisite qualification(s) as on cut off date i.e. 27.06.2017.

Age:-

5. No person shall be eligible for recruitment to the service if he/she is less than 21 years or more than 30 years of age as on

27.06.2017. However, the age relaxation for Physically Handicapped, Ex-Servicemen and Government Employee Categories is as under:-

- 1) Physically Handicapped 10 years and above the prescribed upper age limit.
- 2) Ex-Servicemen By number of years equal to his defence service plus 3 years.
- 3) Upper age limit will be relaxed upto 10 years for the candidates who are already working in Government departments/ Semi Government departments/ Corporations/ Boards.

The benefit is not available to those who are employed on Contract or Adhoc basis.”

4. The qualification for the said posts was Degree of Bachelor of Arts or Science or equivalent thereto from a recognized University and having a proficiency in operation of computers (Word Processing and Spread Sheets). Clause 16 provided for the last date for determination of the permissible age and other eligibility in respect of the cut-off date which was 27.06.2017 as per Clause 4 also. Clause 17 provided that applications had to be submitted in prescribed proforma duly filled in with annexures and the requisite fee. Clause 18 provide that applications submitted in contravention of the detailed employment notice or incomplete in any manner would not be entertained. Clause 18 reads as under:

“18. No applications submitted in contravention of terms of Detailed Employment Notice and/or incomplete in any manner shall be entertained. No correspondence in this regard will be entertained.”

5. Similarly, Clause 22 provided that the issue of prescribed eligibility conditions was subject to the satisfaction of the authorities and further that the documents could not be subsequently submitted. Clause 22

“22. The admission of the candidates at all stages of the recruitment processes will be purely provisional and subject to satisfying all the prescribed eligibility conditions by way of furnishing documentary evidence in support thereof. If on verification at any time during, before or after the recruitment process it is found that any candidate does not fulfill any of the eligibility conditions his/her candidature shall stand cancelled without any notice. The candidates shall produce all the documents in support of the particulars mentioned/information given in the application form and not the vice-versa. Information given in the application form is treated as final and binding so far as candidates are concerned. No document subsequently submitted will be considered.”

6. Apparently, as noticed by the Learned Single Judge and it is the admitted case that the appellants herein failed to attach the complete proof of the date of birth and on account of rejection of their case, they had approached the Learned Single Judge. In one case i.e. CWP-1378-2020 while noticing that the petitioners were in-service candidates and the proof of age would be in their service register which had been maintained since the time of the initial appointment and being a curable defect, on the directions of this Court in the case of Nirdosh Kumar and Rajesh Kumar, interim direction was given to appear in the examination which was to be held. The order dated 22.01.2020 reads as under:

“Notice of motion, returnable on 12.2.2020.

Upon asking of the Court, Mr. Vikas Chatrath, learned counsel, takes notice for the respondents and waives further notice.

Perusal of the record reflects that both the petitioners are in-service candidates and the only ground on which their applications have been rejected is that the proof of their date of birth was not produced. As the petitioners are in-service candidates, such proofs should be available with the respondents as their service registers would have been opened and maintained since the time of their initial appointment. In any event, the failure to produce such proof, which is a curable defect, cannot be held against the petitioners to

the extent of denying them an opportunity to participate in the examination. There shall accordingly be an interim direction to the respondents to provisionally permit the petitioners to appear for the examination scheduled to be held on 1.2.2020 and 2.2.2020 for selection to the posts of senior scale stenographer.

A copy of the complete paperbook shall be handed over to the learned counsel for the respondents.”

7. The other appellants also got similar orders. It is admitted case that the present appellants herein qualified against the 27 vacancies available for the General Category with which we are concerned having taken the benefit of the interim order. It was further noticed vide interim order by us on 04.07.2023 that only 21 vacancies had been filled and 6 vacancies were still available and that the appellants had also stated that they would not claim seniority over the ones who had already been appointed through the selection process and would be satisfied if they are placed at the bottom of the seniority list. Resultantly, we had directed that necessary affidavit be filed clarifying the said facts. The affidavit of Shri Varun Nagpal, Officer on Special Duty (Litigation) has been filed whereby this factum has not been denied that the posts are available.

8. The appellants had also placed reliance upon the judgment passed by the Apex Court in **Dolly Chhanda Vs. Chairman, JEE, 2004 (4) SCT 546** which was noticed by the Learned Single Judge but not adverted to at all while coming to the conclusion as noticed above while relying upon the clauses of the advertisement. The Apex Court in Dolly Chhanda (supra) held that if candidates lower in merit have been given admission only on the ground that candidate higher in merit had not been able to provide the requisite certificate it would lead to injustice and sacrifice the merit. It has further been held that technicality should not

weigh with the authorities while deciding the issue of eligibility by the date fixed.

9. In the present case, as noticed, it is not the issue of ineligibility of the candidates regarding their qualifications which they necessarily had. It was only the fact that they had not appended the necessary certificate regarding the proof of date of birth and neither it is the case of the respondents that they were ineligible on account of being overage or underage. The Apex Court has, thus, held that relaxation can be there in the matter of submission of proof and it would not be proper to apply any rigid principle as it pertains in the domain of procedure. Relevant observation in Dolly Chhanda (supra) reads as under:

“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.”

10. Similar view has been followed in the case of **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board, 2016 (4) SCC 754** wherein it was held that the Reserved Category candidate who

submitted the OBC certificate after the cut-off date should not be denied consideration in a pedantic manner.

11. Similar view has also been taken in **Dheerender Singh Paliwal Vs. UPSC, 2017 (11) SCC 276** whereby while allowing the appeal, the order of the Tribunal was restored by holding that just because the certificate in proof of Zoology had not been attached though the application had been marked positively regarding the qualifications, the appellant could have been called to produce the required certificate in proof of such essential qualifications. It was accordingly held that appellant could have been called upon and it was a trivial issue namely non-production of added qualification.

12. In **Food Corporation of India Vs. Rimjhim, 2019 (5) SCC 793**, the appeal of the employer was dismissed while noting that it was not fatal if the certificate of experience had not been produced along with the application and the petitioner could not have been denied appointment if found meritorious while placing reliance upon the judgment in Dolly Chhanda (supra).

13. Similar view was also taken by the Co-ordinate Bench in LPA-1199-2019 titled *Haryana Staff Selection Commission Vs. Subhash Chand* decided on 24.03.2023, wherein it was noticed that the eligibility and possessing the educational qualifications is an important criteria by the cut-off date and the EBPGC certificate issued which was subsequent to the last date would not as such debar the writ petitioner for consideration for appointment. Accordingly, the order of the Learned Single Judge was upheld. The same principle would also apply herein.

14. In such circumstances, we are of the considered opinion that once the writ petitioners had got the benefit of the interim order and had

due qualifications and are in the merit list and also had given undertaking that they would not claim seniority, merely on the ground of technicality that the date of birth certificate had not been appended with the application should not debar them from consideration. It is not the case of the respondents that the appellants were not between the age of 27-30 years as on 27.06.2017 and therefore to be denied appointment on the said post would be without justification. The judgments relied upon by counsel for the High Court pertains mainly to the question of admission in the University wherein it was held that there is no scope for enlarging the time as interest of other candidates would come in and also on the question of non-possessing the eligibility qualifications before the cut-off date which is not the case herein.

15. In such circumstances, we are of the considered opinion that the present appeals are liable to be allowed and the benefit of appointment to the post of Senior Scale Stenographers is liable to be granted to the appellants. However, they shall be placed at the bottom of the selected candidates as undertaken on the earlier date.

16. The present appeals stand allowed in the above-said terms. The needful be done within four weeks from today. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

19.10.2023
sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No