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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3709-2011

Date of Decision: 05.07.2023

Amandeep Kaur

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Mohit Garg, Advocate
 for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner by way of this Writ Petition seeks for quashing of final merit list whereby the petitioner’s placement has been downgraded by reducing the overall marks granted to her earlier in the provisional merit list.
2. It is her case that the petitioner had passed M.Phil examination and submitted her dissertation in January, 2009. The result of the examination was declared in April, 2010. The respondents while preparing provisional merit list had granted six additional marks to the petitioner for having passed in M.Phil examination. However, while preparing the final merit list, the petitioner was ousted as the overall marks were reduced denying her six weightage marks for M.Phil granted earlier.

3. Learned counsel for the petitioner submits that the result declared in April, 2010 should be treated to relate back from the date when the petitioner submitted her dissertation i.e. in January, 2009, and if such course is adopted, she would be treated as eligible for counting her M.Phil marks.
4. Learned counsel has relied on judgments passed by this Court in '*Sarbjit Singh vs. State of Punjab*' reported in *1994(3) SCT 450* wherein the petitioner was allowed to be treated as having passed the final professional examination and his result was deemed to be declared from the day professional examinations were held instead of actual date on which the result was declared.
5. He also relies on judgment passed by Karnataka High Court in the case of '*State of Karnataka vs. T. Chandrashekhar*' reported in *2004(6) SLR 803* wherein a similar view has been taken.
6. He therefore contends that the date of declaration of result should be read and treated from the day the examinations were concluded.
7. *Per contra*, learned counsel appearing for the respondents-State submits that the petitioner was not awarded marks for having passed the M.Phil as her degree of M.Phil can only be treated from the day the result was declared which is April, 2010. It is stated that the last date for considering the eligibility and qualifications was the last date of application under the advertisement i.e. 09.10.2009, and as the result was declared after the last date of submission of application, it could not be counted for the purpose of giving additional six marks.
8. Learned State counsel supports the action taken by the respondents in reducing the overall marks of the petitioner while preparing the final merit list. It is stated that a similarly situated another candidate, whose

result was declared in March, 2009 from the same University, was considered and granted appointment as her result was declared prior to the cut off date.

9. Learned State counsel submits that M.Phil degree can only be treated as having been acquired after the person submits his thesis which is accepted by the authorities.
10. I have considered the submissions.
11. For appearing in any examination, a person has to pass the previous examination. In the present case, the petitioner passed Part-I examination in March, 2009 as is apparent from Annexure P-1. After she had passed Part-I, her thesis which she may have submitted in January, 2009 was considered and the marks were granted to her declaring her result in April, 2010. The result of Part-II examinations mentions the month and year of commencement of Part-II from January, 2009.
12. The Karnataka High Court (supra) was examining an issue relating to the question as to when a candidate has cleared the first year of the examination and observed as under:

“8. Point No. 1.--The dictum that a Government servant passes the departmental examination on the date when he takes up the exam and not on the date when the result of the exam is announced stems from the fact that the person's knowledge over a particular subject is tested on the date of the examination and not on the date of the announcement of the result. It would be a travesty to state otherwise and even where the results are announced after a long period of time, for one reason or the other, the date of passing of the examination is always construed and mentioned in the result sheet as the date of examination. We answer the issue accordingly.”

13. In the opinion of this Court, the issue before the concerned Court was different from what is involved in the present case, and the view taken is clearly distinguishable.
14. In the case of ***Sarbjit Singh vs. State of Punjab*** (supra), this Court was considering the question regarding the situation as to when a candidate would be clearing the second professional examination and observed as under:

“10. What is the position in the present case?

The petitioner had admittedly appeared in the second professional examination held in December, 1992. According to the provision contained in Clause (ii), there has to be a gap of one year before a candidate can become eligible to appear in the final professional examination. This condition was completely fulfilled as a period of 12 months had elapsed by December, 1993 when the final professional examination was held. Mr. Sethi, however, contends that the result of the examination held in December, 1992, was declared in February, 1993. He submits that the period of one year has to be counted from the date of the declaration of the result. This does not appear to be correct. The petitioner cannot be made to suffer for the time taken by the University in declaring the result. Once a student has appeared in an examination and passed it, the declaration of result would relate back to the date of the examination. This is all the more so in view of the fact that after completion of the examination, the candidates are allowed to attend the next higher class. In this situation, it cannot be held that the candidate has to wait the next higher class. In this situation, it cannot be held that the candidate has to wait for one year after the declaration of the result. Such a course of action can cause extreme hardship and avoidable loss. The plea is, therefore, rejected. Accordingly, it is held that the petitioner fulfilled this requirement of Ordinance 20(ii).”

15. The view taken by this Court in the aforesaid case of holding that the result would relate back to the date of examination, is found to go contrary to the view taken by the Apex Court in the case of ***Council of Homoeopathic System of Medicine, Punjab vs. Suchintan*** reported in ***1993(3) SCT 276***, wherein the Apex Court held as under:

“33. Supposing he passes in that subject or subjects in the supplementary examination he is declared to have passed at the examination as a whole. This

should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have passed. Merely on this language, "declared to have passed at the examination as a whole," we are unable to understand as to how the "doctrine of relation back" could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the "doctrine of relation back" is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue.

34. With this, we pass on to clause (vi) which deals with the stage where the candidate had failed in the First Annual Examination in a subject or subjects and he had not passed in that subject or subjects in the supplementary examination also. The next annual examination arrives. The appearance in that examination is conditioned upon production of two certificates:

(i) A certificate required under the Regulations to the effect that he had attended to the satisfaction of the Principal;

(ii) A certificate to the effect that he had undergone a further course of study for a period of next academic year in subject or subjects in which he had failed."

38. On this score to say that passing the supplementary examination would relate back to the annual examination will be totally incorrect. What counts is when the whole is made up. From that time of making up one year or one and half years must elapse for Second or Third D.H.M.S. examinations as the case may be."

16. In the opinion of this Court, theory of relate back does not apply in cases where a person appears in an examination and his result is declared subsequently. It is on the date when the result is declared that a candidate can be said to have passed a particular examination. There can be cases where a person may appear in examination and may have failed in a particular subject; he may then appear in supplementary examination. It is on the day when he passes his supplementary examination that he would be considered to have been passed in a particular examination.

17. The relate back theory as proposed therefore, in my humble view, needs to be applied in a given facts and circumstances of a case. This Court finds that the petitioner had appeared in the M.Phil examination Part-I

and her result was declared in March, 2009. Although, she submitted her dissertation in January, 2009, she passed Part-II examination in April, 2010. Thus, her submission that the result should relate back from January, 2009 cannot be accepted as the result of Part-I examination was declared in March, 2009 whereafter she has to clear the Part-II examination, which she has cleared only in April, 2010. Last date for examining the qualifications being 09.10.2009, the respondents rightly did not grant 6 marks for completing M.Phil degree as she has passed M.Phil degree after 09.10.2009 i.e. in April, 2010. The cut off date is sacrosanct for all candidates, and no departure can be made in case of one individual as it would be *per se* discriminatory. The action of the respondents therefore does not warrant any interference of this Court.

- 18. The Writ Petition is devoid of merits and is accordingly dismissed.
- 19. Any interim order passed by this Court in the present case also stands vacated.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 05, 2023
mohit

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