

232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11056 of 2018 (O&M)
Date of decision : 10.01.2023

Harnarain Singh & anr.

..... Petitioners

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. R.K.Arora, Advocate
for the petitioners.

Mr. Sehajbir S.Aulakh, Asstt. A.G., Punjab.

Mr. Tarun Vir Singh Lehal, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

CM No.3754-CWP-2022

For the reasons recorded, the application is allowed. Document
Annexure P-11 is taken on record.

Main case

Petitioners have invoked writ jurisdiction under Articles 226/227 of the Constitution of India seeking quashing of action of the respondents in not considering the candidature of the petitioners on the un-filled posts, applications for which were invited vide Annexure P-7. Vide communication dated 09.05.2016, respondent No.2 requested respondent No.3 to initiate recruitment process for filling up 247 posts in the department of Health and Family Welfare, Punjab. The category-wise split thereof prescribed reads as under :-

<i>Sr. No.</i>	<i>Name of the post</i>	<i>Total Vacant Posts</i>	<i>Due reservation for different categories</i>	
1	Ophthalmic Officer	29	Category	Total Posts
			General	8
			SC (M&B)	2
			SC (R&O)	3+5 (Backlog)-8
			BC	2+3 (Backlog)-5
			Handicapped	1
			General (ESM)	2
			SC (ESM) (R&O)	1
			BC (ESM)	1
			SC (Sportsman) (R&O)	1
			Total	29

As per the communication dated 09.05.2016 (Annexure P-1), it was also decided that the criteria to be adopted will be that the recruitments shall be made by conducting written tests without any interview from amongst the candidates possessing above qualifications and after preparing the category wise merit list. Petitioners participated in the selection process. The bench mark was prescribed at 33% marks. Admittedly, the petitioners could not make upto that and thus could not be appointed. As per the assertions made in the writ petition only 8 posts could be filled and rest remained vacant. The remaining posts were again directed to be filled vide Annexure P-6 dated 12.10.2016 and the criteria to be adopted was stated to be the same as was followed in the earlier recruitment process initiated vide Annexure P-1. The petitioners again participated. Though the petitioners secured more than 33% marks yet they were not appointed. The petitioners filed the present writ petition. As per the stand of respondent No.3, it has been claimed that for the subsequent selection process which is under consideration in the present writ petition, the cut off was pegged up from 33% to 40% marks for reserved category and for general category the same was enhanced from 33% to 50% marks. As per the reply no cogent

explanation has been given for such enhancement. Moreover the stand taken by the respondents that there is no record with respect to the decision of such enhancement and the same was effectuated only as a result of telephonic conversation itself seems to be wholly unjust.

Learned counsel for the petitioners asserts that once the authorities themselves decided that the criteria as resolved vide Annexure P-1 shall remain unaltered, they ought not have enhanced the cut off marks from 33% to 40%. He submits that such enhancement only is directed with an intent to keep the petitioners out of the consideration zone. He further relies upon judgment passed by Coordinate Bench in CWP No.312 of 2017 titled as ***Malkeet Singh & others Vs. State of Punjab & others***, decided on 23.05.2018, placed on record as Annexure P-11.

Per contra learned counsel for the respondents submit that it is well within the domain of the employer to increase the cut off with an intent to appoint meritorious candidates. However, learned counsel for the respondents have not been able to point out any consideration at the end of the authorities which could form basis to justify such enhancement.

I have heard learned counsel for the parties and have gone through the records of the case.

Ordinarily so far as right to fix cut off marks is concerned, it primarily rests within the domain of the employer and he has a right to affix the same. However, this Court while exercising jurisdiction under Article 226 of the Constitution of India is interfering in the present matter, keeping in view the unsustainable stand of the authorities who admit that there was no deliberation while fixing such cut off marks and the same was decided merely on the basis of oral instructions received from respondent No.1-

Department of Health & Family Welfare, Punjab. Moreover, there is a merit in the submission made by learned counsel for the petitioner that the two selection processes having been undertaken by respondents within a short duration, there has to be some cogent reason for the authorities to change the cut off by enhancing the same especially in view of the fact that the authorities were not able to find suitable candidates at a lower cut off marks in the earlier selection. He thus submits that enhancement of the cut off marks is not only without any reasonable nexus with the objective sought to be achieved but was also arbitrary as the same was admittedly altered and enhanced merely on the instructions received from respondent No.1 that too on telephone. In the present case leave apart any reason, issue was not even deliberated upon to give some semblance of application of mind before arriving at the decision to change the cut-off. This Court needs to remind the respondents that they are governed by Rule of Law. 'Just decision making' based on the 'application of mind' is the 'life blood' of Rule of Law.

Learned counsels representing the respondents do not dispute order dated 23.05.2018 (Annexure P-11) and have no instructions as to whether any challenge has been laid thereto or not.

In view of the aforesaid situation and the observation made by Single Bench in ***Malkeet Singh's case (Supra)*** the present writ petition is allowed. Respondents are directed to consider the candidature of the petitioners by dealing the cut off to be 33% instead of 40% marks within a period of two months from the date of receipt of certified copy of this order.

Since the main case has been decided, the pending Misc.
Application, if any, also stands disposed off.

10.01.2023
Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No