

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

2023:PHHC:165719

CWP-23042-2018 (O&M)

DECIDED ON: 30th OCTOBER, 2023

NEHA KHURANA

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present Mr. Shekhar Verma, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Hitesh Pandit, Advocate and
Ms. Suman Rani, Advocate
for respondent No.3.

Mr. A.S. Virk, Advocate
for respondent No.4.

SANDEEP MOUDGIL, J.

1. The jurisdiction of this Court under Articles 226/227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Mandamus* directing the respondents to consider the candidature of the petitioner for the post of Accountant against advertisement No.7/2015 with further prayer for issuance of a writ in the nature of *Certiorari* to quash the action taken by respondent No.2 in holding that the petitioner does not possess six months certificate course in computer from a recognized institution.

2. The respondents issued an advertisement No.7 of 2015, inviting applications for filling up '47' posts of Accountants in various offices of

CWP-23042-2018 (O&M)

Market Committees, Haryana. The essential qualification for the said post as per aforesaid advertisement reads as under:-

“(i) Bachelor of Commerce with 55% marks from a recognized university.

(ii) Six months certificate course in computer from a recognized institution and

(iii) Hindi/Sanskrit upto matric standard or higher education.”

3. Pursuant to the afore-said advertisement, the petitioner submitted the application form and thereafter on 15.03.2018, respondent No.2 issued an admit card to the petitioner considering her eligible for the post of Accountant. Accordingly, she appeared in the written examination (computer based test) held on 06.04.2008. The petitioner cleared the aforesaid written examination and consequently, she was called for scrutiny of documents on 01.09.2018. During the course of scrutiny of documents, the petitioner was held to be ineligible on the ground that she does not possess six months computer course certificate. Aggrieved against the same, the petitioner submitted a detailed representation on 04.09.2018 and also appeared on 05.09.2018, to substantiate her claim that she is suitable candidate for the aforesaid post. Thereafter, the respondents issued the schedule for interview for the post of Accountant but the petitioner was not called for the same, hence the present petition.

4. While issuing notice of motion on 10.09.2018, the following order was passed by this Court:-

“Learned counsel for the petitioner submits that petitioner has participated in the written examination for the post of Accountants vide advertisement (Annexure P-1). The essential qualifications for the post are as under:

“a. 55% marks in Bachelor of Commerce.

b. Hindi/Sanskrit up to Matriculation or Higher Standard.

CWP-23042-2018 (O&M)

c. 06 months certificate course in computer from a recognized institution. There is no specification of computer course.

The petitioner being fully eligible has qualified the written examination but at the time of scrutiny of documents, she was made ineligible for want of certificate of 06 months computer course. Learned counsel for the petitioner further submits that petitioner has done M-Com from Kurukshetra University and as per result-cum-detailed marks sheet, petitioner has done advance computer programming in Accounts and she has not required for 6 months computer certificate.

Notice of motion for 28.01.2019.

In the meantime, petitioner shall be allowed for interview provisionally and her result be kept in the sealed cover.

A copy of this order be supplied to learned counsel for the petitioner after signatures of the Bench Secretary of this Court.”

5. Pursuant to the interim relief granted by this Court, the petitioner appeared in the interview provisionally and thereafter the result was produced before the Court in sealed cover on 17.12.2019, whereupon the petitioner was found to have secured ‘142’ marks against ‘200’ marks in the written examination and ‘14’ marks against ‘25’ marks in the *viva-voce*, totaling ‘156’ marks out of ‘225’ marks. The Court was also apprised to the fact that the last selected candidate in general category secured ‘144’ marks and thus, it was found that the petitioner was within the zone of consideration.

6. Learned counsel for the petitioner submits that the syllabus undertaken by the petitioner in graduation/post graduation is much more vast and comprehensive and the same suits her to be eligible for the post of Accountant. Moreover, the advertisement nowhere prescribed any specific computer course or language for the post of Accountant. Therefore, the petitioner who has been found in the zone of consideration is liable to be given appointment as such.

CWP-23042-2018 (O&M)

7. Learned counsel for the respondents have contended that after scrutiny of documents on 01.09.2018 the petitioner was not held eligible as she possessed the computer certificate after the cut off date and she herself annexed her computer certificate dated 10.07.2018 whereas the last date was 10.07.2015 and hence, she is not entitled to be appointed on the post of Accountant irrespective of the fact that she was found in the zone of consideration.

8. This Court is oblivious of the fact that the petitioner has secured more marks than the last selected candidate in the general category. The only issue which arises for consideration before this Court is whether the petitioner who has passed out graduation/post graduation with commerce stream is eligible for the post of Accountant. The factum of petitioner having qualified the graduation/post graduation with commerce stream has not been disputed by the respondents. It has also not been disputed by the respondents that the subjects which were offered to the petitioner when she was pursuing her graduation/post graduation, the scope and intent of the same is vast and comprehensive to those of the subjects which are offered to a student while pursuing six months certificate course in computer. Thus, there remains no doubt that the qualification acquired by the petitioner is more comprehensive than the six months certificate course in computer.

9. The Division Bench of this Court in the case of **Sandeep Dhull vs. Central Administrative Tribunal, Chandigarh and others 2019 (4) SCT 519 (DB)**, has held that once the petitioner is post-graduate in Physical Education (M.P.Ed.) and such qualification can certainly be stated to presuppose the acquisition of lower qualification (D.P.Ed/B.P.Ed./) prescribed for the post of TGT (Physical Education). Reference can be made

CWP-23042-2018 (O&M)

to paras No.11 and 12 of the aforesaid judgment which are reproduced hereinbelow:-

“11. Regarding aspect of controversy as to whether Master of Physical Education (M.P.Ed.) is higher degree than Bachelor of Physical Education (B.P.Ed.)/Diploma in Physical Education (D.P.Ed.) in the same line and discipline as per the National Council of Teacher Education (NCTE), it is observed that Chairperson, Department of Physical Education, Chaudhary Ranbir Singh University, Jind, vide his certificate dated 13.04.2017 (Annexure P-6), has certified that M.P.Ed. is higher degree than D.P.Ed./B.P.Ed. in the same line and discipline as per NCTE. Chairperson, Department of Physical Education, Chaudhary Devi Lal University, Sirsa, and Head of Department (Physical Education), Maharshi Dayanand University, Rohtak, vide their respective certificates dated 12.04.2017 and 15.04.2017 (Annexures P-7 and P-8) have also graded degree of M.P.Ed. as higher degree than D.P.Ed./B.P.Ed. in the same line and discipline as per NCTE. If a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to pre-suppose the acquisition of the lower qualification prescribed for the post. Once petitioner having post-graduated in the subject of Physical Education (M.P.Ed.) has got higher qualification in the same faculty, such qualification (M.P.Ed.) can certainly be stated to pre-suppose the acquisition of lower qualifications (D.P.Ed./B.P.Ed.) prescribed for the post of TGT (Physical Education). Petitioner having acquired higher qualification (M.P.Ed.) is eligible for the post of TGT (Physical Education), wherein lower qualifications (D.P.Ed./B.P.Ed.) have been prescribed. Petitioner who has scored 140 marks was declared successful in the written examination for the post in question and stood at serial No.14 in the merit list of general category candidates. Since there were 21 posts of TGT (Physical Education), petitioner being eligible is entitled to be appointed for the said post.

CWP-23042-2018 (O&M)

12. As a sequel to above said findings, it is held that since respondents did not consider the claim of petitioner in right perspective, thus, impugned recommendations dated 09.10.2015 (Annexure A-6) made by Committee constituted by respondents No.2 to 4 as well as impugned order dated 28.03.2017 (Annexure P-4) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, rejecting the claim of petitioner are set aside. Resultantly, instant writ petition is allowed in the manner that petitioner-Sandeep Dhull is entitled to be appointed as TGT (Physical Education) in the Education Department of Chandigarh Administration, UT Chandigarh, as name of petitioner-Sandeep Dhull falls in the selection zone in the General Category, with effect from the date his junior in merit was appointed with all consequential benefits of arrears of salary, seniority etc. The respondents are further directed to implement the aforesaid order/directions within two (2) months of the receipt of the certified copy of the order, failing which the petitioner shall be entitled to interest @ 9% per annum on the arrears of salary from the date of accrual till date of realization, apart from liability to be hauled up in contempt proceedings. The Department/U.T.Chandigarh shall be free to recover the component/element of interest, if payable, from the sanctioning/competent authority.”

10. Similarly, in the case of “**Sarla Bala vs. State of Punjab and others**”, **2014 (3) SCT 345**, this Court has held that denying consideration to a candidate having better and higher qualification in the same line and discipline would result in breach of Articles 14 and 16 of the Constitution of India and directed the respondents to consider the candidature of the petitioner therein for appointment.

11. The Full Bench of this Court in the case of **Manjit Singh v. State of Punjab and others, 2010(3) S.C.T. 703**, has categorically held that although a candidate having higher qualification may not be entitled to any

CWP-23042-2018 (O&M)

additional weightage but his right of consideration for selection cannot be excluded if otherwise he is found in the zone of selection. The relevant observations made by the Bench are reproduced hereinbelow:-

“From the facts on record and dictum of above noticed judgments, it emerges that the candidate possessing higher qualification in the same line cannot be excluded from consideration for selection. It is a different matter that he/she may not be entitled to any additional weightage for higher qualification, but cannot be denied consideration at par with a candidate possessing minimum prescribed qualification. Denying consideration to a candidate having better and higher qualification in the same line and discipline would definitely result in breach of Articles 14 and 16 of the Constitution of India.”

12. In **Multan Singh and others vs. State of Haryana and another, 2004 (3) RSJ 611**, the Division Bench this High Court has held that the approach of the recruitment agency in ignoring the candidates for appointment holding the qualifications of B.P.Ed. and D.P.Ed. being higher qualifications, is arbitrary and violative of Articles 14 and 16 and cannot be sustained. The relevant extract of the aforesaid decision reads as under:-

“23. In the result, the writ petitions are allowed. The decision of the Commission not to entertain the candidature of the petitioners for the posts of P.T.I. is declared illegal and quashed. It shall declare the result of selection within next 15 days and the selected candidates be appointed strictly in the order of merit. If some eligible candidates were left out from being considered, then the Commission shall interview them and declare a composite result of the entire selection. Thereafter, the competent authority shall make appointment strictly in the order of merit.”

13. In view of the discussions made hereinabove and the judicial pronouncements, this Court is of the view that the claim of the petitioner is

CWP-23042-2018 (O&M)

squarely covered by the judgments referred supra as the petitioner possessed higher qualification than the requirement of possessing six months certificate course in computer.

14. Accordingly, the instant petition is allowed and the respondents are directed to offer appointment to the petitioner for the post of Accountant (MC) under general category. The petitioner would be entitled for all notional benefits from the date other selected candidates of the list have joined. She would also be entitled for the benefit of seniority, as per the merit list supplied by the selecting agency. However, it is clarified that petitioner would not be entitled for any monetary benefits from the date she is assigned seniority and for the same she is entitled from the date of joining.

15. All miscellaneous applications also stand disposed of accordingly.

16. The petition stands allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

OCTOBER 30, 2023
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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |