

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1457-2018(O&M)

Reserved on: 13.04.2023

Date of Decision: 25.04.2023

NARENDER KUMAR

.... *Appellant*

Vs.

DR. KULDEEP SINGH AND OTHERS

.... *Respondents*

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present Mr. Puneet Bali, Senior Advocate, assisted by
Mr. Samir Malik and Mrs. Niharika Mittal, Advocates,
for the appellant.

Mr. C.R. Dahiya, Advocate,
for respondent No.1.

Mr. A.S. Virk, Advocate,
for respondent Nos. 2 to 4-KUK.

M.S. RAMACHANDRA RAO, J.

1. This LPA is preferred against the judgment dt.23.05.2017 passed by the learned Single Judge in Writ Petition bearing no.CWP-19103-2012.

2. The said Writ Petition was filed by respondent No.1 (herein) against the appellant and other respondents to quash the selection and appointment of the appellant vide Annexure P-7 dt.30.03.2012 as Assistant Professor (History) in the Directorate of Distance Education, and to appoint respondent No.1 in the said position.

Background facts

3. Respondent No.2-University had issued an advertisement (P-1) on 15.09.2011 to fill up the post of Assistant Professor (History). The last date of submission of applications which was 03.10.2011.

4. The appellant as well as respondent No.1 applied for the said position before the last date of submission of applications.

5. Respondent No.2-University had issued an advertisement (P-1) on 15.09.2011 to fill up the post of Assistant Professor (History). The last date of submission of applications was 03.10.2011.

6. The appellant as well as respondent No.1 applied for the said position before the last date of submission of applications.

7. A Screening Committee was constituted by respondent No.2-University to scrutinise the applications and the research publications which were also required to be submitted as per the advertisement. It gave weightage to each candidate's research publications attached by them with their application, as well as list of publications appended by each candidate including the appellant.

8. Both the appellant and the respondent no.1 were awarded 25 marks each by the screening committee.

9. Later each candidate appeared before a Selection Committee and was awarded marks on the basis of academic/research performance as assessed by the Screening Committee. The Screening Committee also awarded marks for 'domain knowledge', teaching experience/skills and interview performance and it awarded to the appellant 68 marks while the respondent no.1 was awarded 66 marks by it.

10. On the basis of higher marks obtained by the appellant, he was recommended by the Selection Committee in order of merit for appointment to the post of Assistant Professor in History in the Directorate of Distance education.

11. The appellant was appointed to the said position vide Annexure P-7 dt.30.03.2012.

CWP-19103-2012

12. His appointment was challenged by respondent No.1 in this Court by way of filing of Writ Petition bearing No.CWP-19103-2012.

13. In the said Writ Petition, respondent No.1 contended that as per criteria, 25 marks were to be awarded for research performance/publications of the candidates by the Screening Committee; vide Annexure P-3, respondent No.2-University had laid down how these 25 marks were to be awarded to the candidates; that 5 marks were to be awarded for each of the research publications published by the candidate in a research journal having ISSN number; as per information obtained under the Right to Information Act, 2005, the applicant in his application form for the said post had mentioned that only 2 research papers of his were published; one such publication mentioned was without an ISSN number; the Screening Committee had wrongly awarded 25 marks for 5 research papers to the appellant which was not proper, since in his application form, he had stated that only 2 of his research papers were published and for one of such research papers, there was no ISSN number, and at best, marks could have been awarded only for the one research paper which was published.

14. Respondent No.1 also contended that the appellant had made a representation on 12.01.2012 (P-6) to the Vice Chancellor of respondent No.2-University requesting him to grant him benefit of 3 research papers which were published after the last date of submission of application i.e. 03.10.2011 for the said post; this representation was made by the appellant

after the process of screening the applications of candidates for the post in question was completed; the Screening Committee however took into account 5 research papers of the appellant and awarded him 25 marks which was illegal and mala fide.

15. He thus contended that the appellant at best was entitled to only 5 marks and not 25 marks which was awarded to him by the Screening Committee, and he could not have been selected and appointed to the post of Assistant Professor (History).

16. Respondent No.1 also contended that he was placed at serial No.2 in the order of merit by the Selection Committee; since he has scored 66 marks as compared to 68 marks given to the appellant, if the 20 marks illegally given to the appellant were to be deducted, then he (respondent No.1) would come as the first rank holder in the order of merit, and he is entitled to be appointed as Assistant Professor (History).

The stand of respondents No.2 to 4 in the CWP

17. Reply was filed to the Writ Petition by the respondents No.2 to 4 (herein).

18. The allegations of favouritism or mala fide or ulterior motive attributed to respondents No.2 to 4 by respondent No.1 were denied.

19. They contended that the selection was fair and was not faulty, and that the Selection Committee took into consideration the publications/research papers of each candidate, performance at the time of interview of each candidate, and then recommended the name of the appellant for the said post.

20. Respondents No.2 to 4 contended that respondent No.1 along with the application form had submitted 5 research papers which were considered by

the Selection Committee; though respondent No.1 was found eligible by the Screening Committee and was called for interview, the Selection Committee did not recommend his name for appointment to the post of Assistant Professor (History), but he was at waiting list Sr. No.1; that recommendation was made by the Selection Committee to appoint the appellant and he joined on 02.04.2012.

21. It was contended that the Screening Committee found eligible 74 candidates for the post of Assistant Professor in History, and they were called for interview; that *a number of applicants had not annexed their publications along with the application forms and it was under these circumstances that it was considered necessary that publications produced by the candidates at the time of interview can also be considered, and were so considered by the Selection Committee.*

22. Respondents No.2 to 4 contended that appellant was more meritorious as per the recommendation of the Selection Committee, and the appointment of the appellant was also placed before the Executive Council of respondent No.2-University on 28.03.2012, and the said Council had even approved it.

23. It was pointed out that the appellant had submitted 2 research publications *and* a list of publications *along with* his application which was marked as Annexure R-1; the Screening Committee after considering the research publications awarded 25 marks to appellant after considering the attached publications *and* list of publications given by him; and the appellant was given 68 marks by the Selection Committee while respondent No.1 was given only 66 marks in all, after considering other criteria as well.

24. It was further stated that *in all, 7 candidates including the appellant produced research publications before the Selection Committee at the time of interview and they were taken into consideration by the Selection Committee.*

25. It was denied that the appellant was not entitled to be awarded 25 marks for academic and research publications by the Screening Committee.

26. It was admitted that the appellant made a representation on 12.01.2012 (P-6) to the Vice Chancellor of respondent No.2-University requesting him to grant benefit of 3 published research papers which were received after 03.10.2011, which was the last date for submission of the application form; that the Screening Committee awarded marks to the appellant on the basis of the list as annexed along with his application form (R-1); the Selection Committee, at the time of interview, also took into consideration the publications produced by the appellant and 6 other candidates, and thus *the benefit which was given to the appellant was also given to other candidates as well.*

The stand of the appellant in the CWP

27. The appellant also filed a written statement supporting the stand taken by respondents No.2 to 4.

28. He stated inter alia that along with his application, he had attached 2 published papers, one having ISBN number and other was a National Conference proceeding, and had given details of 6 other publications of which first 3 publications have ISSN number published in international journals entitled *in press/accepted* along with the application form; that 3 papers of these had already been published before the last date of submission of the application form; that one paper was published in an International

journal with ISSN number for which he is entitled to 10 marks as per the norms fixed; that he was entitled to be given 35 marks in all for publications; hard copy of all publications were submitted at the time of the interview; other candidates were also extended the same benefit; he was given 25 marks for these publications; no favouritism in the selection was shown to him in any manner; that marks awarded to him were in accordance with the applicable Rules and they were awarded to him for publications which had already been published at the time of submission of the application form itself, and respondent No.1 was not correct in stating that the appellant had not given details of all publications in his application form.

Judgment of the learned Single Judge:

29. The learned Single Judge vide judgment dt.23.05.2017 allowed the Writ Petition.

30. He held that the important question to be considered is “whether the selecting authority can entertain educational qualification record subsequent to the last date of submission of the application or not?”, and answered the same in the negative against the appellant.

31. He held that as per the advertisement, the last date of submission of the application was 03.10.2011; respondent No.2-University was required to examine the candidates’ papers and qualification with reference to the said date; whatever the qualification or papers are required to be examined, it/they should be prior to that date and not after the said date; the appellant had admittedly submitted along with his application form only 2 published papers of which one was defective as it had no ISSN number and so he could have been granted only 5 marks for that other paper which was published.

32. He held that the appellant's representation dt.12.01.2012 (P-6) for accepting 3 more publications of paper in order to get more marks had wrongly been entertained by respondent No.2-University; that the appellant while filling up the application form did not possess 5 papers but had only 2 papers as on the last date of submission of the application i.e. 03.10.2011; and entertaining any document by respondent No.2-University subsequent to 03.10.2011 was contrary to the advertisement.

33. He also referred to para 10 of the 'General Instructions' which stated that *'application not supported with required application fee, attested copies of certificates/testimonials/reprints of research publications, title pages and contents pages of each journal in which the publication under reference were published, and the applications received after the expiry of the last date, will be liable to be rejected.'*

34. He therefore held that entertaining papers published by the appellant subsequent to 03.10.2011 was not proper. He did not accept the contention of the appellant that once paper is accepted, it is deemed to be published.

35. He thus set aside the appointment of the appellant to the post of Assistant Professor (History) in the Directorate of Distance Education, and directed respondent No.2-University to consider claim of respondent No.1 for the said position within 2 months.

36. Thus, the appellant who had worked from 02.04.2012 was removed from the post of Assistant Professor (History) after the judgment in the Writ Petition dt.23.05.2017, after 5 years, and respondent No.1 was appointed in his place.

LPA.No.1060-2017

37. The appellant initially filed LPA-1060-2017 before the Division Bench of this Court but withdrew it with liberty to approach the learned Single Judge by making an appropriate application.

RA-CW-204-2018

38. The appellant then filed Review Application bearing No.RA-CW-204-2018 seeking review of the order dt.23.05.2017 passed by the learned Single Judge.

39. But the Review Application was also dismissed on 06.08.2018 relying on the decision of Supreme Court in the case of *Om Sai Punya Educational and Social Welfare Society and another vs. All India Council for Technical Education and another*¹ wherein the Supreme Court had held that adherence to time schedule is mandatory and not directory, and dates and timelines provided in regulations are inviolable.

40. The learned Single Judge also held that fresh material placed on record by the appellant that he had published papers on 15.09.2011 and 30.09.2011, even though they were not produced along with the application prior to 03.10.2011, cannot be taken into account, and could not have been entertained by the Selection Committee, since they were not furnished as on 03.10.2011.

¹ 2017(16)SCC 363

The LPA:

41. Challenging the order in the Writ Petition as well as the order in the Review Petition, the appellant has filed the present Appeal bearing No. LPA-1457-2018.

42. Notice was issued in this Appeal on 26.09.2018.

43. The matter was heard on 12.04.2023 and 13.04.2023.

44. Heard Mr. Puneet Bali, Sr. Advocate, appearing for the appellant, Mr. C.R. Dahiya, Advocate for respondent No.1, and Mr. A.S. Virk, Advocate for respondent Nos. 2 to 4.

45. No doubt in the advertisement (P-1) dt.15.09.2011, it was specified that application forms complete in all respects for the post of Assistant Professor (History) should reach respondent No.2-University by 03.10.2011.

46. In the General Instructions put up on the website of the said University, instruction No.5 stated that *eligibility of every candidate will be determined on the basis of qualifications acquired and communicated to the office by him/her upto the last date fixed for receipt of applications.*

47. Instruction No.10 of the General Instructions stated as under:

“Application not supported with required application fee, attested copies of certificates/testimonials/reprints of Research Publications, title page(s) and contents page(s) of each Journal in which the publication under reference were published and the applications received after the expiry of last date will be liable to be rejected.”

48. It is not in dispute that the appellant had enclosed along with his application physical copies of two publications and list of six publications (R-1) and stated that it was “*list of papers in press/accepted*”.

49. The appellant had addressed a letter (P-6) dt.12.01.2012 to Vice Chancellor of respondent No.2-University stating that he had filed application *for the publication of 6 papers out of which 3 papers were in press and 3 papers were accepted; out of these, he had received 3 papers, the details of which were given by him in Annexure R-1 list at serial numbers 1, 2 and 3; and that he be given the benefit of these published papers*. These 6 publications were different from those whose physical copies were annexed to his application.

50. He received a notice (A-4) dt.11.02.2012 from respondent No.2-University to appear for interview on 22.02.2012. The said notice (A-4) asked him to bring with him (a) original certificates/testimonials in support his educational qualifications/experience, *if not supplied earlier* and (b) copies/reprints of publications, if any.

51. The stand of the respondent No.2-University is that the Screening Committee awarded marks to him on the basis of list as annexed along with his application form; that the Selection Committee at the time of interview also took into consideration the publications produced by him *and 6 other candidates*, and that thus the benefit was given to not only the appellant but these other 6 persons as well. It is stated that the appellant got 25 marks for published research papers and so did the respondent No.1, but the overall marks awarded to the appellant were 68 and to respondent No.1 were 66, and so the appellant was recommended for appointment and appointed.

52. Annexure P-4 shows that the appellant was given 5 marks each for 5 publications and the respondent No.1 was also given similar marks for his 5 publications.

53. As stated above, the learned Single Judge was of the opinion that in view of instruction No.10 of the 'General Instructions', the respondent Nos. 2 to 4 could not have entertained the publications physically produced by the appellant at the time of his interview and awarded him 25 marks because they were not submitted by him before the cut off date of 03.10.2011.

54. The question to be considered is:

“Whether it was open to the Selection Committee to consider the physical copy of publications produced by the appellant at the time of interview which he had not submitted along with his application?”

55. This issue is no longer *res integra*.

56. In ***Dolly Chhanda Vs. Chairman, JEE²***, 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

² 2005(9)SCC 779

domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.
(emphasis supplied)”

57. The Supreme Court in the above decision relied on its earlier decision in *Charles K. Skaria and others Vs. Dr. C. Mathew and others*³, where it had held that the candidates who got admission even though they had not attached the certificate of having passed the diploma along with their applications, could not have their admission to a Post Graduate course 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 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 sub-serves 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*.

³ 1980(2) SCC 752

58. We may also point out that the decision in *Dolly Chhanda* (2 Supra) was applied by the Supreme Court in *Archana Chouhan Pundhir (Dr.) Vs. State of Madhya Pradesh and others*⁴.

59. In *Archana Chouhan Pundhir (Dr.)* (4 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 entrance exam of 2007, but she was denied admission because of non award of marks 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 on 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

⁴ 2011 (11) SCC 486

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.

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

61. In *Ram Kumar Gijroya vs Delhi Subordinate Services Selection Board and another*⁵ case, the appellant had sought appointment to the post of Staff Nurse under the OBC category, but the said certificate was not submitted with the application and submitted after the last date mentioned in the advertisement. The appellant was therefore not selected on that ground, but the Supreme Court held that the candidature of those candidates, who belonged to reserved categories, could not be rejected simply on account of late submission of caste certificate. The Supreme Court held that the purpose of certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to a particular category and act thereon by giving the benefit to such candidate for his belonging to the said category. It was not as if the petitioners therein did not belong to the reserved category prior to the cut off date or that they acquired the status of belonging to the said category only on the date of issuance of the certificate. It held that necessitating upon a certificate to be issued prior to the cut off date would be clearly arbitrary and it has no rational objective sought to be achieved.

⁵ 2016 (4) SCC 754

62. In *Dheerender Singh Paliwal vs. Union Public Service Commission*⁶, an advertisement issued for filling up the posts of Senior Scientific Officers (Biology) in the Forensic Science Laboratory, Home Department of Government of Delhi specified the essential educational qualifications and experience and stated that candidates should attach attested/self-certified copies of the certificates in support thereof.

Note III to the instructions to candidates stated that *if no copies of certificates are sent with the application, it is liable to be rejected and no appeal against its rejection would be entertained.*

In the application, the appellant stated that he possessed the essential qualification but on the ground that proof of possession of his graduation in the concerned subject was not furnished, his candidature was rejected.

He approached the Central Administrative Tribunal which held that since he possessed all the essential qualifications required including the subject Zoology as one of the subjects in the B.Sc degree level, the respondent-Commission should accept his application as complete and since he had already been found meritorious to be selected as Senior Scientific Officer, order of appointment must be issued to him.

The respondent questioned it before the High Court which set aside the order of the Tribunal.

The Supreme Court held that the High Court had taken a hypertechnical view as to the production of the required certificate relating to essential qualifications as subject Zoology in degree level qualification,

⁶ 2017 (11) SCC 276

namely B.Sc was not enclosed with his application. It relied on its judgment in ***Charles K. Skaria*** (3 supra).

The Supreme Court also considered the clause in the advertisement which directed submission of copies of certificates along with the application and the consequence of the failure to do so, and held that the particulars furnished by the appellant in response to the advertisement and the production of the degree certificate of having secured the B.Sc degree with Zoology as the subject at a later point of time is *substantial compliance* with the requirement to be fulfilled in the matter of possession of an essential qualification by the appellant, particularly, when this was mentioned in the form of resume' and other candidates were also given the said benefit. It declared that the approach of the respondent-Commission was unfair and *non-production of an added qualification as part of the essential qualification at the degree level which the appellant did possess is a trivial issue and for mere asking, the appellant could have readily produced the same.*

63. Similar view has also been taken by this Court in ***Rina and another Vs. Vice Chancellor, Pt. B.D. Sharma University of Health Sciences, Rohtak and others***⁷ (to which one of us M.S.R.J. was a party) and also in ***Haryana Staff Selection Commission vs. Subhash Chand and others***⁸ (by this very Bench).

64. We are therefore of the view that since the appellant mentioned in the list filed along with his application the 6 publications of his, and also

⁷ Order dt.25.08.2022 in LPA-1963-2017 and batch,

⁸ Order dt.24.03.2023 in LPA-1199-2019

produced the same in physical form at the time of his interview, and since the respondent No.2-University had shown similar indulgence to 6 other candidates by considering their publications produced during interview which had not been enclosed to their application, no fault can be found by the Selection Committee in awarding marks for these publications produced by the appellant along with those submitted along with his application, and recommending him for appointment to the post of Assistant Professor (History).

65. It has to be taken that there is substantial compliance by the appellant since even by the date of submission of application, these papers of his were sent for publication, and they had been published before the date of the interview. So they were rightly considered by the Selection Committee keeping in mind that he did possess the essential qualification by the date of the application and only proof of publication was produced later which is an added essential qualification.

66. No doubt, the respondent No.1 had relied on the decisions of the Supreme Court in *Bedanga Talukdar vs. Saifudaullah Khan and others*⁹ and *State of Bihar and others vs. Madhu Kant Ranjan and another*¹⁰ taking a view contrary to the one mentioned in the above decisions of the Supreme Court.

67. In *Bedanga Talukdar* (9 supra), the respondent No.1 had appeared as a general candidate for selection to the posts advertised by the Assam Public Service Commission but later made a claim under the Locomotor Disability Category by producing a certificate of disability at the time of the interview.

⁹ 2011 (12) SCC 85

¹⁰ 2021(15) Scale 470

This was found fault with by the Supreme Court. The said decision is thus distinguishable.

68. In *State of Bihar and others* (10 supra), for a post of Constable in the Bihar Police Force, a candidate had to possess NCC certificates for getting certain additional marks. Without submitting it, he claimed such marks. The learned Single Judge of the High Court did not grant him relief. 3 years later, he filed an LPA before Division Bench which granted him relief. This was questioned in the Supreme Court by the State of Bihar. The Supreme Court held that in a later Writ Petition, the said petitioner took a contrary plea that he produced all the documents along with his original application which cannot be accepted. In that context, the Court observed that the cut off date mentioned has to be complied unless extended by the recruiting authority but the Court was unhappy with the conduct of the respondent.

69. Therefore the said decisions are distinguishable.

70. In the instant case, since the notice issued to the appellant at the time of the interview (A-4) dt.11.12.2012 itself asked him to bring certificates/testimonials in support of educational qualifications/experience, *if not supplied earlier* and also copies/reprints of publications, if any; and not only the appellant, but other 6 candidates, who had not submitted publications along with their applications, were also considered at the time of interview when they produced them, it has to be taken that the respondents No.2 to 4 had relaxed instruction No.10 for everyone who had not submitted such publications along with their application.

71. For all the foregoing reasons, we are therefore of the opinion that the learned Single Judge erred in allowing Writ Petition bearing No.

CWP-19103-2012 and setting aside the appointment of the appellant as Assistant Professor (History) in the Directorate of Distance Education in the respondent No.2-University.

72. Accordingly, the LPA is allowed; order dt.23.05.2017 in CWP-19103-2012 is set aside; the respondents No.2 to 4 are directed to terminate the services of respondent No.1 and reinstate the appellant in the post of Assistant Professor (History) in the Directorate of Distance Education in the respondent No.2-University with all consequential benefits within 8 weeks without any monetary benefit for the period between 23.05.2017 till the date of reinstatement.

73. No costs.

74. Pending application(s), if any, shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 25, 2023

Mohit goyal

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