



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

Sr. No.1034

CWP-13822-2004(O&M)

Date of Decision: 12.12.2024

KAUSHLYA

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Anil Rathee, Advocate for the petitioner.

Mr. Krishan K. Chahal, Additional A. G., Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed seeking a writ of *certiorari* quashing the letter dated 23.08.2004, whereby the petitioner's candidature for the post of Junior Librarian in response to advertisement 04/2003, dated 24.08.2003, has been cancelled due to her marks in Diploma in Library Science being less than sixty per cent. Further, a writ of *mandamus* has been sought directing the respondents to recommend the petitioner for appointment against the post.

2. Facts of the case in brief are, the third respondent/Commission issued the aforesaid advertisement inviting applications for three posts of Junior Librarian (General-2, BCA-1) in Technical Education Department. Essential qualifications were '(i) Graduate with Diploma or Degree in Library Science with at least 60% marks, (ii) Knowledge of Hindi up to Matric standard'. Being Graduate and possessing Diploma in Library Science, the petitioner applied for the post as a General category candidate and was duly selected, as her roll no.1 figured in the final selection result dated 25.07.2004, Annexure P-5. Instead of offering her appointment in terms thereof, the selection was cancelled by the Commission vide impugned letter dated 23.08.2004, on the ground that she did not have the requisite sixty per



cent marks in Diploma in Library Science. After cancelling the petitioner's selection, the post was offered to the fourth respondent being next in merit and she joined service on 31.08.2004. The petitioner approached this Court by filing the instant petition.

3. In this factual background, learned counsel for the petitioner has contended that the cancellation of selection is illegal and unsustainable being in violation of the Principles of Natural Justice. Despite having been duly selected, the petitioner was not heard before cancellation of her candidature which was mandatory. In this regard he has relied upon a judgment of the Supreme Court in *S. Govindaraju v. Karnataka S.R.T.C. and another*, 1986 (3) SCC 273. It has further been contended by the learned counsel that the ground of cancellation is itself unsustainable since the petitioner fulfills the requisite qualification. She possesses Diploma in Library Science awarded by the Punjab State Board of Technical Education and Industrial Training, dated 01.10.1996, Annexure P-1, on securing 758 out of 1275 marks, i.e., 59.46 per cent. The requisite qualification requires only the degree holders to have at least sixty per cent marks; this condition has not been made applicable to the Diploma holders.

4. *Per contra*, learned State counsel has contended that the petitioner's candidature has rightly been cancelled by the Commission. She did not fulfill the requisite qualification as she cleared the Diploma in Library Science with less than sixty per cent marks. On receiving recommendations for the post and before taking further action, the Department sought advice from the Commission, vide letter dated 10.08.2004, which notified that her candidature had been cancelled vide impugned letter dated 23.08.2004. Accordingly, the candidate next in the order of merit from the waiting



list/fourth respondent was appointed. He, however, does not dispute the petitioner was not heard before cancelling her candidature.

5. Submissions made by learned counsel for the parties have been considered.

6. It remains undisputed on record that the petitioner applied for the post of Junior Librarian in response to advertisement 04/2003, and as per the final result of selection, dated 25.07.2004, she was selected at no.1 in the order of merit. The selection was later cancelled vide impugned letter dated 23.08.2004, without any show cause notice or affording any opportunity of hearing. The ground of cancellation as mentioned in the order is the petitioner's failure to secure minimum required sixty per cent marks in Diploma in Library Science. In this factual background, two issues arise for consideration, (i) whether the petitioner's selection could have been cancelled without affording her an opportunity of hearing; and (ii) whether she has the requisite qualifications for the post of Junior Librarian.

7. To consider the first issue arising for consideration; the petitioner applied for the post on the basis of qualifications possessed by her, i.e., Graduation with Diploma in Library Science. She duly participated in the selection process and was selected on merit as per the final result dated 25.07.2004. Cancellation of the petitioner's selection thereafter has materially prejudiced her rights, as it declared her ineligible for the post on the basis of qualifications possessed which has adverse effect on her career. Accordingly, she was mandatorily required to be afforded due opportunity of hearing prior to taking any action regarding cancellation of selection. And the same could only have been done after considering her response to the notice and passing a reasoned order in terms therewith. The respondents' failure to do so has



rendered the impugned letter of cancellation, dated 23.08.2004, illegal and unsustainable being in violation of the Principles of Natural Justice.

7.1. The view taken by this Court is in line with the law laid down in *S. Govindaraju* case (*supra*), holding as under:

7. ...There is no dispute that the appellant's services were terminated on the ground of his being found unsuitable for the appointment and as a result of which his name was deleted from the select list, and he forfeited his chance for appointment. Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice. We accordingly allow the appeal and set aside the order of the High Court and also the order of termination and direct that the appellant shall be treated in service and be paid his back wages and other benefits. The appeal is allowed with costs.

8. The second issue arising for consideration is whether the petitioner has the requisite qualification for the post. Her qualifications are

Graduation and Diploma in Library Science. The required qualification is,



‘Graduate with Diploma or Degree in Library Science with at least sixty per cent marks’; meaning thereby, one needs to have either *Graduation with Diploma*, or, *degree in Library Science with at least sixty per cent marks*. The ground of rejection is, the petitioner is not possessing the Diploma with sixty per cent marks which amounts to reading the requirement of possessing ‘at least sixty per cent marks’ with ‘Diploma’. This is erroneous reading the qualification required, since apparently the requirement to have at least sixty per cent marks is for the degree in Library Science and not the Diploma, which is to be possessed along with a Graduation degree without any prescription of minimum marks. The conjunction ‘or’ denotes two alternate qualifications needed for the post; accordingly, the requirement for the candidates is to possess either of the two. The requirement to have minimum required marks for the second qualification cannot thus be imported into the first one, nor can a candidate be declared unqualified for the post on that basis as has been done in the petitioner’s case. The cancellation of candidature vide the impugned letter is therefore fallacious, being based on flawed reading of the requisite qualification and not sustainable.

9. Although the cancellation of petitioner’s selection is bad in the eyes of law, as discussed hereinabove, this Court is not inclined to set aside the appointment of the fourth respondent at this stage for two reasons; firstly, she has been offered appointment by the respondents on their own by erroneously cancelling the petitioner’s appointment and, secondly, she has been in service for about twenty years by now.

10. In view of the reasons recorded, the petition is allowed with costs by setting aside the impugned letter, dated 23.08.2004, and directing respondents No.1 to 3 to offer appointment to the petitioner on any vacant



post of Junior Librarian, within four weeks of receiving a certified copy of the order. The appointment will be with notional benefits from the date other selected candidates pursuant to the selection in question have been appointed, and actual benefits from the date of joining service. It is also clarified that in case a post is not vacant in the Department as on date, the next post falling vacant henceforth shall be offered to the petitioner. Costs of litigation are quantified as ₹75,000 (Rupees seventy five thousand), which shall be paid to her by respondents No.1 to 3 within the time stipulated above and the proof of payment will be placed on the case file within four weeks therefrom.

11. Pending miscellaneous application(s), if any, shall also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

12.12.2024
Ad/Maninder

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>