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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6700-2022
Date of decision: 16.04.2024

SAWAN KUMAR

...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. P. K. Ganga, Advocate
for the petitioner.

Mr. Jagbir Malik, Advocate
for respondent No.1-HSIIDC.

Mr. Ashish Yadav, Addl. A.G., Haryana
for respondent No.2-HSSC.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the act and conduct of respondent No.2-Haryana Staff Selection Commission, which has intentionally rejected the candidature of the petitioner and held him not eligible on the ground that the degree of M.Com is issued after the cut off date i.e. 17.02.2020, but the petitioner has received the degree of M.Com on 19.11.2019 and the same has been mentioned in the application form and was further clarified by the petitioner at the time of verification of the documents held on 28.01.2022 and further to issue a writ in the nature of *mandamus* directing the respondents to select the petitioner for appointment to

the post of Senior Account Clerk, Advt. No.14/2019, category No.12 under SC Category as he was fully eligible and was having the requisite qualification before the cut off date.

2. The brief facts of the present case are that the petitioner applied for the post of Senior Account Clerk in pursuance of the advertisement issued by the Haryana Staff Selection Commission vide Annexure P-1, which was published on 26.08.2019 and the closing date for submission of online application form was 22.09.2019. However, vide Annexure P-2, the last date was extended to 17.02.2020. The petitioner applied under the SC Category for the aforesaid post. As per the advertisement, the essential qualification prescribed for the post of Senior Account Clerk in category No.12 is reproduced as under:-

Essential Qualification:-

1. *B.Com at least 2nd Division with minimum 2 yrs. relevant experience in handling of Accounts in a Public Limited Company or Industrial Undertaking/Bank in the Accounts Stream.*

OR

M.Com with at least 2nd Division.

2. *Hindi/Sanskrit as one of the subject in Matriculation or Higher.*

3. The petitioner while filling up the application form vide Annexure P-3 has specifically stated that he is M.Com and the date of mark-sheet and declaration of result has been mentioned as 20.11.2019 and the percentage marks obtained has been stated to be 57.27 percentage, which is undoubtedly 2nd Division. Thereafter, written examination was conducted and the petitioner cleared the same and he was called for scrutiny of documents on 28.01.2022.

However, during the scrutiny of documents, the petitioner could not produce the degree of aforesaid M.Com qualification and because of this reason, his candidature was rejected by the Haryana Staff Selection Commission. The petitioner is aggrieved by the action of the respondent-Haryana Staff Selection Commission on the ground that he cleared his M.Com in the year 2019 but due to non-declaration of the result and non-availability of the degree, he could not produce the degree of M.Com at the time of scrutiny of documents and non-declaration of result and non-production of degree was beyond the control of the petitioner.

4. This Court while issuing notice of motion on 31.03.2022 had also directed that one post of Senior Account Clerk in the SC Category would be kept vacant. Today, Mr. Jagbir Malik, learned counsel for respondent No.1-HSIIDC submitted that in pursuance of the aforesaid interim order passed by this Court, one post of Senior Account Clerk in the SC Category has been kept vacant and the same remains unfilled as of today.

5. Learned counsel for the petitioner submitted that it is a case where at the time when the petitioner filled up the application form well in time, he already had cleared M.Com with 2nd Division regarding which even the result was uploaded on the website of Guru Jambheshwar University of Science and Technology, Hisar vide Annexure P-12, whereby it shows RL (Result Later). He further submitted that the petitioner cleared the M.Com examination in November, 2019, which was much before the cut off date for filling up the application form i.e. 17.02.2020 and that is the reason as to why he had rather filled up the details in the application form but he could not get the degree of M.Com because his result was not declared and it was rather described as RL

(Result Later) by the Guru Jambheshwar University of Science and Technology, Hisar, which is a statutory University incorporated under State Legislature Act 17 of 1995. He further submitted that thereafter, a certificate has been issued by the aforesaid University vide Annexure P-11, in which it has been so specifically stated that the petitioner had appeared in Master of Commerce 2nd Year through Distance Education examination held in June, 2019 and his result was declared as RL-Fee on 19.11.2019 due to non-receiving of post matric scholarship. Thereafter, after receiving the letter of post matric scholarship from DDE on 18.01.2022, the remarks of RL-Fee was removed and result was declared on 20.01.2022. The aforesaid Annexure P-11 is reproduced as under:-

**GURU JAMBHESHWAR UNIVERSITY OF SCIENCE AND TECHNOLOGY
HISAR – 125001 (HARYANA)
(Established by state Legislature Act 17 of 1995)
A Grade NAAC Accredited**

Ref No.4362

Dated 24.07.2022

TO WHOM IT MAY CONCERN

*It is certified that **Mr.SAWAN KUMAR S/o Sh.DHARSHAN LAL** enrolment No.17074101034 had appeared in **MASTER OF COMMERCE 2nd YEAR** through **Distance Education**, examination held in **JUNE, 2019** and his result was declared as **859/1500/RL-Fee** on 19.11.2019 due to not receiving the Post Matric Scholarship. Later on after receiving the letter of post matric scholarship from DDE on 18.01.2022 the remarks of RL-Fee was removed and result declared as **859/1500** on dated 20.01.2022.*

*Deputy Registrar (Results)
Asstt./Dy.Registrar (Result-II)
Guru Jambheshwar University of
Science and Technology, Hisar*

*Place: GJU&T, Hisar
Dated: 24.03.2022*

6. While referring to aforesaid Annexure P-11, learned counsel for the petitioner submitted that it is not in dispute that the petitioner was not having M.Com degree before the cut off date for filling up the application form i.e. 17.02.2020 but it is a case where the petitioner could not provide the certificate at the time of scrutiny of documents on 28.01.2022. While referring to the aforesaid certificate issued by the Guru Jambheshwar University of Science and Technology, Hisar, he further submitted that the aforesaid reason for non-declaration of result was that the University did not receive the Post Matric Scholarship from the Government and due to this reason, the petitioner could not get the final degree and ultimately his result was declared on 20.01.2022 even as per the aforesaid certificate and in this way, prior to the scrutiny of documents, his result already stood declared on 20.01.2022 but because of short span of time, he could not produce the same before the Scrutiny Committee and in this way, he was declared as ineligible. He also submitted that it is not a case that the petitioner did not have the qualification prior to the cut off date but it was because of the action of the aforesaid University, which was an unfair action on the part of the University itself, which has not declared the result of the petitioner only because of non-receiving of Post Matric Scholarship from the Government, which has jeopardized his rights and therefore, the petitioner cannot be non-suited only on this ground. He further referred to the M.Com degree (Annexure P-13), which is dated 20.01.2022, which is prior to the scrutiny of documents and submitted that in this way, prior to the scrutiny of documents, the aforesaid degree was issued to the petitioner but he was not possessing the same and therefore, he could not produce the same before the Scrutiny Committee. He further submitted that now once a seat in the SC

Category for the post of Senior Account Clerk has been kept vacant in pursuance of the directions issued by this Court, the case of the petitioner may be further processed in accordance with law by the Haryana Staff Selection Commission for making recommendations.

7. On the other hand, learned State counsel appearing on behalf of respondent No.2-Haryana Staff Selection Board submitted that in the aforesaid advertisement itself, there was a specific provision in Clause 2.4 that qualifications and other terms and conditions of eligibility will be determined with regard to the last date fixed for receipt of online applications also termed as closing date and vide Clause 2.5(3.1), it has also been provided that scanned copy of Essential Academic Qualifications and Matriculation Certificate showing Date of Birth and other relevant details are the documents which are mandatory documents to be uploaded with the application form and vide 3.2 it has also been provided that for the scrutiny of documents, only those documents which are uploaded by the candidates shall be considered and if there is any variation in the document uploaded and produced at the time of scrutiny, the candidature shall be liable to be cancelled. He further submitted that in view of the aforesaid specific provisions in the advertisement, the Scrutiny Committee has rightly rejected the candidature of the petitioner since he did not produce the degree of M.Com at the time of scrutiny of documents, he could not be held eligible and that was the reason as to why he was declared as ineligible candidate and therefore, the present writ petition is liable to be dismissed. He referred to two judgments of the Hon'ble Supreme Court in **The State of Bihar and others versus Madhu Kant Ranjan and another, 2022 AIR (Supreme**

Court) 1310 and another judgment of this Court in Amit Kumar versus State of Haryana and others, CWP-2683-2019 in this regard.

8. I have heard the learned counsel for the parties.

9. The present is a case where the petitioner had applied for the post of Senior Account Clerk and at the time of filling of the application form, although he had filled up the form vide Annexure P-3, wherein he has specifically stated that he has cleared M.Com in the month of November, 2019 but the degree of the same was not uploaded because the same was not in the possession of the petitioner. It is also the case of the petitioner that the same could not be done because the result was not declared by the University because of non-receipt of some Post Matric Scholarship from the Government and thereafter, on 20.01.2022 (Annexure P-13), M.Com degree has been issued to him which was prior to the scrutiny of documents. The issue involved in the present case would be thus that when a person who has applied for a particular post is otherwise qualified for being considered for the post but could not upload the document of educational qualification, which was beyond his control because of the fault of some other organization including some University, then as to whether he can be non-suited only because of this reason or not. Another important issue involved in the present case is as to whether the conditions contained in the aforesaid advertisement would become an absolute embargo on the petitioner in this regard or not.

10. So far as the second issue is concerned, this Court is of the view that the conditions contained in the advertisement are certainly required to be enforced because in case the conditions are not enforced then in that situation, a lot of confusion can be created and those persons who are not eligible would be

claiming their rights. However, the aforesaid conditions cannot be termed as absolute conditions and cannot be put in a straightjacket formula but subject to exceptions. This Court while exercising jurisdiction under Article 226 of the Constitution of India has to see the facts and circumstances of each and every case and also it is the duty of the Court to see as to whether in order to advance the cause of substantial justice the aforesaid conditions can be relaxed in a particular case or not considering the facts and circumstances of each and every case.

11. The facts and circumstances of the present case would make it clear that at the time when the petitioner had applied for the aforesaid post, he had already appeared for M.Com examination and his result was not declared at that point of time in the year 2019 only because the University i.e. Guru Jambheshwar University of Science and Technology, Hisar withheld the result of the petitioner on the ground that Post Matric Scholarship from the Government was not received. This Court is of the considered view that such an action of the University was absolutely unfair because it affected the rights of students and it directly interfered with the right of seeking livelihood and therefore, infringed Article 21 of the Constitution of India. It is a settled law that Right to Livelihood is a part of Right to Life under Article 21 of the Constitution of India. Reference in this regard may be made to a judgment of the Hon'ble Supreme Court in **Olga Tellis and others versus Bombay Municipal Corporation, 1985 (3) SCC 545.** Although the aforesaid University is not a party in the present case but the action of the University in not declaring the result of their own students only because of non-receipt of some money from the Government is an unfair practice.

12. When the scrutiny of documents had taken place on 28.01.2022, the aforesaid University had already declared the result and rather issued a degree of M.Com to the petitioner on 20.01.2022 vide Annexure P-13, which was prior to the scrutiny of documents but the petitioner could not present the same before the Scrutiny Committee and was declared ineligible. Therefore, it is very clear that it was beyond the control of the petitioner to have produced the certificate at the time of scrutiny of documents, although he already had a degree.

13. The law in this regard has been dealt with in number of judgments. In a judgment of Delhi High Court in **Ms. Pushpa versus Government, NCT of Delhi and others, C.M. No.17504/2008 in W.P.(C) No.9112/2008,** the petitioner in that case applied for the post of Staff Nurse under the OBC category and the last date for submission of application form in the advertisement was fixed for 21.01.2018 and the certificate was not accepted as no proof was furnished by the petitioner therein to satisfy the authorities that she belongs to the said category since she did not attach the certificate because although she had applied for the certificate to the SDM for grant of OBC certificate but it was issued after the cut-off date and therefore, the aforesaid petition of aforesaid Ms. Pushpa was allowed by the Delhi High Court on the ground that the petitioner therein was not at fault.

14. In **Dolly Chhanda versus Chairman JEE, 2005 (9) SCC 779,** the Hon'ble Supreme Court had an occasion to discuss a case of a girl, who was a daughter of Ex-Serviceman and was discharged from Armed Forces on the ground of disability and the Hon'ble Supreme Court also discussed the aforesaid issue as to what is the effect of filing the certificate after the cut-off

date. In that case, during the course of scrutiny of papers, it was revealed that the certificate pertained to “Disabled/killed in war/hostilities” and therefore, was not found to be eligible, whereas it ought to have been under the ground of “Permanently Disabled” and thereafter, a fresh certificate was obtained by the aforesaid petitioner of that case and relief was granted to her. The Hon’ble Supreme Court while dealing with the principle of law observed that it is a general rule that when a person applies for any post, a person must possess the eligibility qualification on the last date fixed for such purpose, but at the same time depending upon the facts of each and every case, there can also be relaxation in the manner of submission of proof and it will not be proper to apply any rigid principle as it pertains to the domain of procedure and any infraction of any rule relating to the submission of the proof need not necessarily result in rejection of the candidature. In other words, it would mean that there can be no straightjacket formula for rejecting a candidature only on the aforesaid reason. Paras No.7 and 9 of the aforesaid judgment is reproduced as under:-

7. 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 mark-sheets. 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 domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

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9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

15. In **Haryana Staff Selection Commission versus Subhash Chand and others, LPA No.1199 of 2019**, the matter came up for hearing before a Division Bench of this Court in LPA, wherein the candidature was also rejected on the ground that the condition that the certificate should have been issued prior to the last date of submission of online application form was not fulfilled. The matter was pertaining to getting reservation in EBP GC category and the certificate was to be issued by the Welfare of Scheduled Castes and Backward Classes Department, which was issued after the cut-off date. It was held by the Division Bench of this Court that it is important to see that while eligibility i.e. possessing education qualification should be possessed by the cut-off date for claiming benefit of reservation, proof of eligibility to claim such reservation need not to be submitted by the cut-off date. Even if proof of claim of eligibility for reservation is produced beyond the cut-off date, the candidate can be considered for the grant of the said benefit and cannot be denied relief. The Division Bench of this Court in this regard also referred to judgments of

Supreme Court in **Ram Kumar Gijroya versus Delhi Subordinate Services Selection Board and another, 2016 (4) SCC 754** and **Charles K. Skaria and others versus Dr. C. Mathew and others, 1980 (2) SCC 752** and also referred to the aforesaid judgment of Hon'ble Supreme Court in **Dolly Chhanda's case (supra)**. The relevant portion is produced as under:-

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Thus the important thing to be seen is that while eligibility i.e possessing education qualification should be possessed by the cut off date, for claiming benefit of reservation, proof of eligibility to claim such reservation need not be submitted by cut off date. Even if proof of claim of eligibility for reservation is produced beyond cut off date, the candidate can be considered for grant of the said benefit and cannot be denied relief.

*In **Ram Kumar Gijroya** case (4 Supra), 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 acquire 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.

*In **Charles K. Skaria and others Vs. Dr. C. Mathew and others**⁸, the Supreme Court held that the candidates who got admission even though they had not attached the certificate of having passed the diploma alongwith their applications, could not have their admission to a Post Graduate 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 subserves 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.*

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16. The aforesaid Division Bench judgment of this Court was assailed by the Haryana Staff Selection Commission by filing a Civil Appeal before the Hon'ble Supreme Court, which was dismissed on 31.01.2024.

17. The Hon'ble Supreme Court in *Ram Kumar Gijroya's case (supra)* also dealt with this important issue as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not. It also referred to the judgment of the Delhi High Court is *Ms.Pushpa's case (supra)* and another judgment in *Tej Pal Singh & others versus Govt. of NCT of Delhi, ILR 2001 Delhi 298*. It was so held by the Hon'ble Supreme Court that the decision rendered in the case of *Ms.Pushpa's case (supra)* is in conformity with the position of law laid down by the Hon'ble Supreme Court.

18. However, two judgments have been referred by the learned State counsel as aforesaid in the present case. The first judgment i.e. *Madhu Kant Ranjan's case (supra)* pertains to grant of NCC certificate, which is distinguishable on facts and therefore, not applicable to the present case. The second judgment i.e. *Amit Kumar's case (supra)* is also distinguishable on facts since the candidates of that case were not eligible on the cut off date.

19. The facts of the present case would therefore clearly suggest that it was not the fault of the petitioner to have not possessed the aforesaid M.Com certificate at the time of scrutiny of documents despite the fact that much prior to the same i.e. about two years before the same, he had already appeared for the examination and the examination of M.Com was withheld only because of unfair practice adopted by the Guru Jambheshwar University of Science and Technology, Hisar in non-declaration of the result because of non-receipt of some money from the Government.

20. The last date for submission of application was 17.02.2020. When result of the petitioner was declared in the year 2020, the date of certificate is 20.01.2022 as per Annexure P-13, which is after the cut off date. However, the Degree pertained to June, 2019 in Second Division. The aforesaid certificate is reproduced as below:-

SR. No. : 5113625

REGN.-CUM-ROLL NO.17074101034

***GURU JAMBHESHWAR UNIVERSITY OF SCIENCE &
TECHNOLOGY, HISAR (HARYANA)***

*This is to certify that **SAWAN KUMAR** son/daughter of **SH. DHARSHAN LAL**, a student of Master of Commerce (Batch: 2017-2019) in the Directorate of Distance Education is hereby awarded the degree of **MASTER OF COMMERCE** on his/her having passed the entire examination for the said Degree held in **JUNE, 2019** in **SECOND** Division.*

Given under the seal of the University

Controller of Examinations

HISAR-125001, Dated: 20.01.2022

21. A perusal of the same would show that the petitioner had qualification of M.Com pertaining to examination held in June, 2019 which was prior to the cut off date. Even if result was declared later because of no fault of the petitioner but due to fault of the University, the time of acquiring qualification will relate back to June, 2019 which was prior to cut off date. Therefore, the petitioner was eligible much prior to the cut off date.

22. This Court is of the considered view that it is a fit case for exercising its powers under Article 226 of the Constitution of India in the light

of above-stated exceptional circumstances and to direct the Haryana Staff Selection Commission to consider the case of the petitioner in accordance with law.

23. Consequently, the present writ petition is allowed. The respondent-Haryana Staff Selection Commission is hereby directed to consider the case of the petitioner for the post of Senior Account Clerk in the SC Category and after processing the same in accordance with law, in case the petitioner comes on merit, then it shall recommend his case to respondent No.1-HSIIDC, which has already kept one post of Senior Account Clerk vacant in the SC Category in pursuance of the order passed by this Court. The aforesaid exercise shall be completed within a period of three months from today.

16.04.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No