
(2000) 08 DEL CK 0091

In the Delhi High Court

Case No : CWP. No"s. 5941 and 7711 of 1999

Gagan Kumar Singh and Another

APPELLANT

Vs

N.C.T. of Delhi and Others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Citation : (2000) 55 DRJ 126

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Vikas Singh and Reetesh Singh, for the Appellant; Alakh Kumar, Sanjay Bansal and Mala Kapoor for DSSSB Advs. and Raman Duggal, for MCD Advs., for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—On 11th June, 1998, Delhi, Subordinate Service Selection Board (hereinafter referred to as "DSSSB") issued an advertisement calling applications from Indian Nationals for appointment to the post of Primary Teachers/Nursery Teachers/Assistant Teachers in the Municipal Corporation of Delhi New Delhi Municipal Council and Directorate of Education, Govt. of India respectively. Petitioners in both the writ petitions applied for being appointed to various posts of Teacher as advertised above. On 21/22nd September, 1998, DSSSB published in the newspapers the method by which the score of every candidate was to be computed giving certain weightage to various degrees possessed by a candidate and also indicated the cut off score below which candidates were to be considered for appointment. Interviews of the candidates having scored above the cut off point was held from 6th October, 1998 onwards. Thereafter vide notices dated 15th/16th October, 1998 & 26/27th October, 1998 of those candidates whose name did not appear in the list of candidates found to be above the cut off point by the DSSSB who had actually got higher scores were called for verification of their papers by DSSSB. The purpose was to ensure that no candidate who had been left out in the list of successful candidates should be

missed if he had a score higher than the cut off point. After this verification, on 26th February, 1999, revised cut off point was intimated and it was informed that candidates having scored higher than that of cut off point will be appointed in the service. Along with this list of selected candidates was also displayed. The petitioners submit that they appeared before the DSSSB on the dates specified in the advertisement along with all their original documents. The score obtained by the petitioners is much more than the cut off point electron by DSSSB. However they were not given the appointment as the second list which was displayed on the notice board of DSSSB on 13th September, 1999 the cut off point of the petitioners was reduced to below cut off point. In these circumstances, present writ petitions were filed.

2. The dispute is about the manner in which the scores of the petitioners for their graduation qualification are calculated. The petitioners had done their graduation from Patna & Bhagalpur Universities which was 3 years course. As "per the mark sheet submitted by them, first 2 years study undertaken by the petitioners was as Pass Course and 3rd year as Ho"ns. It is the case of the petitioners that the petitioners should be treated having passed 3 year's Bachelor degree in Hons. course and marks of the petitioners in all 3 years should be treated as marked obtained in Hons. course. In support of this submission, Mr. Vikas Singh, learned counsel for the petitioner argued that as per the system prevailing in these Universities, a student even after doing first 2 years course in Pass course, can do. Hons. course in the 3rd year and after he has qualified the examination in 3rd year as well, the decree which is awarded is that of Hons. course. He referred to the decree awarded to the petitioners as per which petitioners have passed the examination for the "3 years degree Bachelor of course(Hons.)". He also relied upon the judgment of the Patna High Court in the case of Sri Kant Pandey Vs. State of Bihar and Others, dealing with same aspect and holding that the degree is to be treated as Hon. course and marks obtained in all 3 years should be treated as marks obtained in Hon. papers.

3. Counsel appearing for the respondent however submitted that the candidates had applied for the posts pursuant to the advertisement issued by the DSSSB from all over India. DSSSB had adopted a uniform policy in taking into consideration those papers only which a particular candidate had passed as Hon. student. Therefore while making the calculations, the papers of 3rd year only which the petitioners did as Hon. students were taken into consideration and this was a uniform practice adopted by the DSSSB. The Court would not interfere with such a procedure adopted by DSSSB which was neither arbitrary nor mala fide and which was uniformly adopted.

4. Doing 2 years course as Pass course and 3rd year as Hons. appears to be peculiar in Patna or Bhagalpur University. Be as it may, that is the system of education adopted by the aforesaid universities. Facts reveal that after doing 3rd year course as Hons. student is awarded Hons. degree which is stated to be Hons. degree of graduation covering the entire 3 years period. The relevant

portion of the degree awarded to the student is reproduced below: .

"This is to certify that Shivesh Kumar Jha of Vanijya Mahavidyalaya held in the month of January, 1991, who passed the Examination for the Three year degrees Bachelor of Commerce (Honours) in Account group and was placed in the First class with Distinction, was this day admitted to the degree"

5. Thus the petitioners have ultimately passed the examination for 3 years degree Bachelor course as Hons. student, and Therefore, the degree has to be treated as Hons. degree for all 3 years. In fact, precisely the same dispute of calculating the marks in the manner done by the respondents here was the subject-matter of the case decided by Patna High Court in Madhu Sinha (supra) and the Court while allowing the petitions of the petitioners therein, held as under:-

"In the counter affidavit, both the petitioners have been shown to have obtained lesser than 54.5 points. In the case of Meena Kumari, the counsel for the State replied that on the basis of the Graduation mark-sheet,, she has been provided with 50.5 points and 2 points for age. Thus she has a total of 52.5 points.

I have gone through the mark sheet of this petitioner (Meena Kumari) of B.A. (Hons.) Examination, as contained in Annexure-4. She has been provided with 369 marks out of 600 marks. In Philosophy, this petitioner was provided with Degree in Honours. According to the procedure of the University, for Honours candidates, the other subjects than the Honours subject, are not taken into account for the purpose of awarding class. For example; Hindi Vernacular Composition, English, Psychology and General Knowledge, the four subjects were additional to the Honours subject of Philosophy in the matter of grant of Degree in Honours only subject in Philosophy was taken into note to award 1st Class Honours in favor of the petitioner, Meena Kumari and not the total marks. However, if appears that the respondents have taken into note the total marks, including the optional papers, for calculating to points of the petitioner. According to this Court such calculation is not. otherwise it will lead to anomaly. It will make not only an Honours student equivalent to a Pass Course, but will result to down graduation of Class inspire of giving a higher class by the University in favor of a person. It is admitted that the Pass Course in Graduation, standard in the State of Bihar is two years, whereas the Honours Course is for three years. If the total marks are taken into note then it will make two unequals equal because even an Honours student can compete and pass in all the papers after two years, but does not obtain degree without completing the three years" course.

This apart, if the total marks are taken into note then in some cases, it will lower down the class as in the present case. If total marks are taken into note then it will be less than 60 marks and in that case the petitioner is to be treated to have passed in 2nd Class. But the fact remains is that she was provided with 1st Class on the basis of marks obtained in the Honours papers.

Accordingly, I hold that the petitioner is entitled for calculation of marks at the

Gradual standard on the basis of marks obtained in the Honours papers, she having passed the Degree with Honours. If such marks are allowed in favor of the petitioner then it will get more than 60 points and thus the petitioner (Meena Kumari) automatically becomes eligible for appointment, the persons having lower points have been provided with appointment."

6. I am in agreement with the view taken by Patna High Court in the aforesaid judgment and following the said judgment, these writ petitions are allowed. Respondents are directed to treat the petitioners degree as three years Honours degree and to calculate the marks obtained by the petitioners for the papers in all 3 years and not only for 3rd year alone. It on the basis of these calculations, the petitioners' score are above the cut off point, for a particular post, the petitioners would be entitled to appointment to the said post. The necessary exercise be done by the respondents as expeditious as possible.

7. If the posts are available with the appointing authority i.e. the Departments to which the names are sent, and they have already given appointment to the persons with lesser marks, appointments to these petitioners should be given immediately subject to fulfilling all necessary requirements/formalities by the petitioner for such appointment and their notional seniority be also fixed from the date from which the person with lesser marks is already given appointment. However, these petitioners shall not be entitled to any salary or allowances for the past period and would be entitled to salary only from the date of their appointment.