

(2011) 08 P&H CK 0248
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 22233 of 2010

Jyoti Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Public Service Commission Rules — Rule 37

Citation : (2011) 08 P&H CK 0248

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Claiming that the Petitioner could not submit her application in time for appointment to the post of School Cadre Lecturer on account of wrong declaration of result by the Board of School Education, which was subsequently corrected, the Petitioner has invoked the jurisdiction of this Court for directing the Respondent State and the Public Service Commission to entertain her application for the appointment to the post, though submitted after cut off date.

2. Whether the Petitioner would have right to a mandamus for commanding the Respondents to entertain this application submitted after cut off date, thus, would be a question requiring adjudication in this case.

3. First, the facts in brief as can be noticed are the Respondent-Board invited applications through an advertisement issued on 18.6.2009 for appointment to the post of School Cadre Lecturers in various subjects, including Economics. One of the eligibility condition was that the candidate must have cleared State Eligibility Test (STET). The Petitioner had appeared for clearing the State Eligibility Test in examination conducted by Respondent No. 3-Board of School Education and the result of the examination was declared in December, 2009. The Petitioner was shown to have failed.

4. The Petitioner applied for correction of her result and submitted a reminder on

9.1.2010 as she had correctly answered two questions, which, according to her were treated incorrect. When nothing transpired, Petitioner sought information under the Right to Information Act through her communication dated 18.5.2010. The last date for submitting application for the post of School Cadre Lecturer was 31.5.2010. Because of Petitioner having failed in the STET test, she could not submit her application form. Respondent, however, still did not supply the information sought by the Petitioner forcing her to prefer an appeal against this inaction. Respondent No. 3 thereafter had agreed to rectify the mistake and declared the result of the Petitioner as "pass" on 31.8.2010. The Petitioner was, thus, issued a certificate having passed State Eligibility Test. The result card was despatched to the Petitioner on 25.9.2010. The Petitioner submitted a representation and filed an application for post of Lecturer on 5.10.2010. Her application was rejected by Respondent No. 2-Board on the ground that the application was received late. The Petitioner thereupon has filed this writ petition with a prayer to direct the Respondents to entertain her application in the peculiar facts and circumstances of the case, as she could not submit her application in time because of the fault of the School Board. The Petitioner pleads that she cannot be made to suffer for illegal action of the School board in declaring the result wrongly and this result has to relate back to the date it was originally declared making the Petitioner eligible for applying for the post of lecturer. The Petitioner, thus, would impugn the action of the Respondent-board to reject her application, which actually was due to the wrong declaration of her result by Respondent No. 3-Board.

5. Written statement is filed by the Respondent Public Service Commission by mainly contending that the application submitted by the Petitioner after the cut off date cannot be entertained. As per the Commission, the cut off date is sacrosanct and not extendable on any count be it a ground of the wrong declaration of result by Respondent No. 3-Board. It is also stated that the result of the examination by the Board declaring the Petitioner as "pass" was announced on 31.8.2010, same being after the last date of receipt of the application, which was 31.5.2010. It is, therefore, stated that the Petitioner did not possess the requisite qualification on the cut off date and, thus, would not be eligible for applying for the post. In support, the counsel for the Commission has relied upon number of precedents to urge that last date for submission of application is sacrosanct and any application received after the last date, as prescribed in the advertisement, cannot be entertained. Besides, it is stated that the eligibility is to be seen on the cut off date and any eligibility acquired subsequent thereto would not make a particular candidate eligible for either appointment or for submitting application for such appointment.

6. There is not much dispute on the factual aspect of the issues involved in the case. Concededly, last date for submission of application form for the post was 31.5.2010 and the Petitioner could not apply upto this date and had submitted the application only on 5.10.2010, i.e., much after the cut off date.

7. Learned senior counsel appearing for the Petitioner, however, would emphasize that the Petitioner cannot be rendered ineligible on account of the fault of the Respondent-School Board, which is agency of the government and the wrong declaration of result, which has led to this position must not, in any manner, result in harm and prejudice to the Petitioner. The counsel, therefore, pleads that application of the Petitioner ought to be entertained by the Respondent-Commission. The counsel would further submit that once the result, which was earlier declared, is found to be wrong and has been corrected, the same must relate back to the date of declaration of the result initially. As per the counsel, the Petitioner cannot be rendered ineligible for submitting application, though it is submitted after cut off date.

8. To the contrary, the counsel for the Commission as well as other Respondents would be vehement in submitting that the cut off date is a sacrosanct and the same cannot be extended in the case of the Petitioner even for the reasons as advanced and in support has made reference to number of precedents.

9. The counsel appearing for the Petitioner has relied upon some of the precedents to urge that the State cannot be permitted to take advantage of its own wrong. In this regard, he would first refer to Union of India (UOI) and Others Vs. Shantiranjan Sarkar, . This was a case where the Respondent-State knew that a person was entitled to the benefit of status of Scheduled Caste in the Andaman and Nicobar Islands, irrespective of the fact that the advertisement issued recognised only two categories of reserved categories, viz. Scheduled Tribes and "OC".The Hon"ble Supreme Court observed that there was No. reason to deprive the person from the said benefit. He had not been appointed and finding that this was because of the mistake committed on the part of the authorities it was observed that they cannot be permitted to take advantage of the same.For the same proposition, the counsel has placed reliance on Full Bench decision of this Court in Tek Chand v. State of Haryana, 2002 (1) S.C.T 308. In this case, the Full Bench has made some stray observations that the Government was debarred from taking advantage of its own wrong. These observations are made in the context of considering the validity of instructions laid down for regularizing the services of the employees in the State.

10. The counsel has then referred to the case of Charles K. Skaria and Ors. v. Dr. C. Mathew and Ors. AIR 1980 (SC) 1230. This was a case relating to admission in Postgraduate course in Medicine where 2% of seats were reserved for candidates from Universities from other States. The issue related to awarding of 10 marks for Post-graduate diploma-holders as per the Government directive. The communication in this case from the University was received after last date for application for the candidate having obtained diploma but the same had been obtained before the last date of application. The Hon"ble Court has observed that there is nothing unreasonable nor arbitrary in adding 10 marks for holders of a diploma. It is noticed that to earn these marks, diploma must be obtained at least on or before the last date of application and not later. As is observed by the

Court, proof of having obtained diploma is different from the factum of having got it. The question posed was-Has the candidate in fact, secured a diploma before the final date of application for admission to the degree course? The Court went on to hold that it is prudent to produce the evidence of the diploma alongwith the application, but it is secondary. Significantly, the court has observed that relaxation of the date on the first is illegal, not so on the second. As observed, academic excellence, through a diploma for which extra mark is granted, cannot be denuded because the proof is produced only later, yet before the date of actual selection. It is held that emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor.

11. On the other hand, the counsel for the Commission has placed heavy reliance on Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, and some other judgments to say that the cut off date is sacrosanct and cannot be extended in any circumstances. In this case, the Hon''ble Supreme Court has held that proposition that where applications are called for prescribing a particular date as the last date for filing the application, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well established one. While so holding, the Bench had differed with the majority judgment rendered earlier in the same case in this regard to be unsustainable in law. The court has further observed that a person who acquires prescribed qualification subsequent to such prescribed date cannot be considered at all. The relevant observations are:

An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, . The reasoning in the majority opinion that by allowing the 33 Respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 Respondents could not have been allowed to appear for the interview.

12. Reference is then made to *Ashok Kumar Sonkar v. Union of India* and Ors. 2007 (2) RSJ 288 , where the Hon''ble Supreme Court has clearly held the Appellant therein not eligible as he did not hold the requisite qualification as on the cut off date. The court by referring to the case of *Bhupinderpal Singh and Others Vs. State of Punjab and Others*, , has disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview. While making observations about the sanctity of the cut off date, the Court in this case has observed that possession of a requisite educational qualification is a mandatory and the same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with the applications of ineligible candidates. A cut off date for the purpose of determining the eligibility *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others*, concerned must therefore be fixed in the absence of rule or any specific date having been fixed in the advertisement, the law, therefore, would be the last date for filing the application.

13. While approving the decision of the High Court holding that if there be No. date appointed in the advertisement calling for applications, then the eligibility criteria shall be applied by reference to the last date fixed by which the application has to be received by the competent authority. In the case of *Bhupinder Singh (supra)* the Hon''ble Supreme Court has noticed with approval number of precedents which were relied upon by the High Court while taking this view. These are:

Ashok Kumar Sharma v. Chander Shekhar and Anr. 1997 (3) RSJ 26 (SC) : JT 1997 (4) SC 99; *A.P. Public Service Commission v. B. Sarat Chandra and Ors.* 1990 (2) RSJ 141 (SC) : 1990 (4) SLR 235; *the Distt. Collector and Chairman, Social Welfare Residential School Society Vizianagaram and Anr. v. M. Tripura Sundari Deve* 1990 (2) RSJ 139 (SC) : 1990 (4) SLR 237, *Mrs. Rekha Chaturvedi v. University of Rajasthan and Ors.* 1993 (2) RSJ 329 (SC) : JT 1993 (2) SCC 429; and *U.P. Public Service Commission, U.P. Allahabad and Anr. v. Alpaa* 1994 (3) RSJ 438 (SC): JT 1994(1) SC 94. 14. The ratio that can be culled out from all these precedents is that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking public employment is the date appointed and if there is No. cut off date appointed by the rules, then such date as may be appointed for the purpose of advertisement calling for application. Further if there be No. such date appointed, then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. This view was noticed to be a well settled one and hence was not found with any fault in *Bhupinder Singh's* case (*supra*).

15. The cut off date, thus, can be held to be a sacrosanct and even if No. cut off date is provided in a particular advertisement, then the eligibility is required to be checked as on the date by which the applications are to be submitted.

16. The submission by the counsel for the Petitioner that the State cannot be

permitted to take advantage of its own wrong, may not strictly be attracted in the facts of this case. No. doubt, the Board may have been at a fault in declaring the result of the Petitioner wrongly, but the Petitioner could not submit her application by the cut off date being not eligible. Even if for the sake of argument, it is conceded that the result of the Petitioner as declared subsequently is to relate back to the date when the original result failing her was declared, it would only make the Petitioner eligible as on the cut off date. The fact, however, still remains that the Petitioner had not submitted any application by the cut off date. Can he be permitted now to submit an application much beyond the cut off date. Whatever may be the reason, or whosoever fault it may be, but the factual position is that there is No. application form submitted by the Petitioner by due date. There may be so many candidates who are eligible but may not have applied for variety of reasons. They certainly cannot be heard to say that they somehow could not submit their application forms though were eligible on the cut off date and so should be permitted to apply after the cut off date as they could not apply earlier may be due to somebody else's fault. They certainly cannot and ought not to be permitted to maintain such a plea simply because of some circumstance has intervened rendering the Petitioner ineligible or unable to apply in time would not give any right and entitlement to the Petitioner to seek a mandamus for entertaining her application much after the cut off date. It will make the cut off date to lose its sanctity, which, as per various decisions noticed above has to be kept inviolate.

17. It may need a notice here that the Hon''ble Supreme Court in Ashok Kumar Sharma's case (supra) was dealing with a review petition which had been admitted on the following two issues:

(1) Whether the view taken by the majority (Hon''ble Dr Thommen and v. Ramaswami, JJ.) that it is enough for a candidate to be qualified by the date of interview even if he was not qualified by the last date prescribed for receiving the applications, is correct in law and whether the majority was right in extending the principle of Rule 37 of the Public Service Commission rules to be present case by analogy?

(2) Whether in the facts and circumstances of the case, would it not be just to restore the direction of the Division Bench to treat the candidates who were not qualified by the last date of receipt of applications as juniors, as a class, to those who were qualified, was not a just one?

The Hon''ble Supreme Court held the view expressed and issue No. 1 to be unsustainable in the eyes of law as is noticed in earlier part of this judgment.

18. Even in Charles K. Skaria's case what was observed was that a diploma must be obtained at least on or before the last date of application and the proof thereof is different from factum of having got it. Applying this ratio, it can be observed that the Petitioner may have passed the examination by the cut off date and, thus, was eligible to apply and it was prudent for him to produce this

evidence if he had applied for the post. The Hon''ble Supreme Court has clearly held that relaxation of a date about obtaining an eligibility would be illegal but not so for providing proof. This would have been relevant if the Petitioner had submitted her application by the due date. Here the question of proof does not arise as there is No. application submitted by the Petitioner. Moreover, the diploma in case only entitled the Petitioner therein addition of 10 marks but was not relevant for determining the eligibility or essential qualification for submitting application. The ratio in this case would not apply to the facts in this case.

19. Taking the totality of the circumstances and the facts in view, it will not be fair to issue direction for entertaining the application of the Petitioner, who somehow was unable to apply, may be because of wrong declaration of her result. It is primarily because of some fault on the part of Respondent-School Board that this situation has resulted. If the Petitioner feels aggrieved against this action and is able to establish some culpable neglect or any such ground entitling her to seek damages or compensation, she may adopt that course, if so advised. This would not be a ground to issue mandamus as prayed for by the Petitioner. One may sympathise with the Petitioner but sympathy has No. role to play while construing legal provision or a statute. The Court cannot interpret the provision or a legal position by ignoring the binding decisions by way of sympathy-[See Maruti Udyog Ltd. v. Ram Lal and Ors. 2005 (2) SCC 638].

The writ petition is accordingly dismissed. There shall be No. order as to costs.