

(2019) 02 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 363 Of 2019(O&M)

Rajesh Kumar And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Citation : (2019) 02 P&H CK 0151

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Mazlish Khan, Deepak Balyan, A.S. Virk

Final Decision : Dismissed

Judgement

Krishna Murari, CJ

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 11.01.2019, passed by the learned Single Judge, dismissing the writ petition filed by the appellants herein, seeking a direction to the respondents to treat them eligible for registration/enrollment in the Doctorate of Philosophy (Ph.D.) and to entertain their applications.

Admittedly, the petitioners-appellants belong to the Scheduled Caste Category and were entitled to relaxation of 5% marks of 55% marks, which was the criterion fixed for eligibility for the candidates belonging to the General Category. The aforesaid relaxation to SC candidates flows from Ordinance 2.1.1 of the Kurukshetra University Ordinance for Doctorate of Philosophy (Ph.D.), which reads as under:

"2.1.1 A relaxation of 5% marks of 55% marks (2.75%) i.e. from 55% to 52.25% marks in the aforesaid Degrees is allowed for those candidates belonging to SC/ST/Differently Abled (non-creamy layer) of Haryana."

The aforesaid Ordinance has been framed by the respondent University in sync with the notification dated 16.07.2014, issued by the State of Haryana

prescribing the minimum eligibility qualification for various courses. The said notification clearly prescribes as under:

" In a course, a general candidate requires to have 50% marks, than as per Govt. instructions by giving 5% relaxation the minimum eligibility marks for a reserved caste candidate should be calculated as under:

Out of 100 Marks needs to less=5 Out of 1 Marks needs to less= 5 / 100 Out of 50 Marks needs to less= $5/100 \times 50 = 2.50$ "

It is also pertinent to point out that the notification dated 16.07.2014, issued by the State of Haryana, as well as the Ordinance framed by the respondent University on the said basis, are again in sync with the notification/guidelines dated 05.05.2016, issued by the University Grants Commission (UGC), the relevant part whereof is being reproduced hereunder:

"3.2 Candidates who have cleared the M.Phil, course work with at least 55% marks in aggregate or its equivalent grade 'B' in the UGC 7-point scale (or an equivalent grade in a point scale wherever grading system is followed) and successfully completing the M.Phil. Degree shall be eligible to proceed to do research work leading to the Ph.D. Degree in the same Institution in an integrated programme. A relaxation of 5% of marks, from 55% to 50%, or an equivalent relaxation of grade, may be allowed for those belonging to SC/ST/OBC (non-creamy layer)/differently-abled and other categories of candidates as per the decision of the Commission from time to time."

Learned counsel for the appellants vehemently contends that since relaxation to be given to the candidates belonging to the SC/other reserved categories under the University Ordinance, notification dated 16.07.2014 and the UGC guidelines, is 5% marks and in case 55% marks to the General Category candidates were fixed, obviously then a reserved category candidate would become eligible on attaining 50% of the marks and the learned Single Judge has wrongly held that the petitioner/appellants are lacking requisite qualifying marks.

We are afraid that the argument advanced by learned counsel for the appellants is totally mis-founded. The State of Haryana while issuing the notification has given a formula on the basis of which the calculation is required to be made. Applying the said formula the cut of marks for reserved category candidates, in case the minimum qualifying marks are fixed at 55%, comes to 52.3% marks. Whereas, concededly the appellants have secured 50% marks only. Thus, The calculation adopted by the respondent University, on the basis of the notification issued by the State of Haryana, is in accordance with the interpretation given to the identical provisions by the Hon'ble Apex Court in the case of P.V. Indiresan v. Union of India & Ors., (Civil Appeal No.7084 of 2011, arising out of SLP (C) No. 27965 of 2010, decided on 18.08.2011), wherein one of the issues for consideration was that: Jawahar Lal Nehru University while carrying out the admission interpreted the order, dated 14.10.2008, to mean that the minimum marks for admission to be secured by an OBC candidate should not be less than

the marks secured by the last student admitted under General Category less 10%. The admissions for 2008-09 and 2009-10 were done on that basis. The Standing Committee on admissions of JNU in one of its meeting considered the ways and means to fulfill 27% quota for OBC students for 2010-11 and noted the difference between eligibility, qualifying marks and cut of marks. There was a divergence in views as to whether the procedure followed in 2008-09 and 2009-10 should be continued, certain proposals were placed before the Dean Committee and before the Hon'ble Apex Court for clarification in respect of meaning of the words 'Cut off Marks', used in the order dated 14.10.2008, in the judgment rendered in P.V. Indiresan & others v. Union of India & Ors., (2009) 7 SCC 300.

After considering the said issue in details, Hon'ble the Apex Court made the following observations:

"(i) the use of the words, 'extent of cut off marks' in the first sentence refers to the 'minimum eligibility marks' (or to the 'minimum qualifying marks' if there is entrance examination), for admission of OBC candidates.

(ii) The use of the words, "maximum cut-off marks for OBCs" in the first part of the second sentence refers to the percentage of marks by which the eligibility/qualifying marks could be lowered from the minimum eligibility/qualifying marks prescribed for general category students. In other words, it refers to the difference between the minimum eligibility/qualifying marks for general category and minimum eligibility/qualifying marks for OBCs and directs that such difference should not be more than 10% of the minimum eligibility/qualifying marks prescribed for general category candidates.

(iii) The use of the words, "cut off marks of general category candidates" in the latter part of the second sentence, refers to the minimum eligibility marks (or to the minimum qualifying marks if there is an entrance examination) prescribed for general category candidates. The use of the words 'cut-off-marks' in none of the three places in para 2 of the order dated 14.10.2008, refers to the marks secured by the last candidate to be admitted in general category or in any particular category, or to the minimum marks to be possessed by OBC candidates, determined with reference to the marks secured by the last candidate to be admitted under general category."

The Hon'ble Apex Court further went on to clarify the formula to be adopted while calculating the minimum eligibility marks in the qualifying examination for OBC and other reserved categories and the same reads as under:

"40. The order dated 14.10.2008 means that where minimum eligibility marks in the qualifying examinations are prescribed for admission, say as 50% for general category candidates, the minimum eligibility marks for OBCs should not be less than 45% (that is 50 less 10% of 50). The minimum eligibility marks for OBCs can be fixed at any number between 45 and 50, at the discretion of the Institution. Or, where the candidates are required to take an entrance

examination and if the qualifying marks in the entrance examination is fixed as 40% for general category candidates, the qualifying marks for OBC candidates should not be less than 36% (that 40 less 10% of 40)."

In view of the above facts and discussion and the law laid down by the Hon'ble Apex Court, we do not find any infirmity in the view taken by the learned Single Judge for holding that the minimum qualifying marks for General Category candidate being 55% marks, after relaxation of 5% marks, the eligibility to reserved category candidates would come to 52.25% marks and since the appellants-petitioners have secured 50% marks in the Masters of Ancient Indian History Cultural Arcology, they are not eligible for admission.

The appeal is devoid of merits and accordingly stands dismissed in limine.