
(2012) 04 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 180 of 2008 (O and M)

State of Haryana and another	Vs	APPELLANT
Pawan Kumar and others		RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Citation : (2012) 04 P&H CK 0075

Hon'ble Judges : Ranjan Gogoi, C.J.;Mahesh Grover, J

Bench : Division Bench

Advocate : Vinod S. Bhardwaj, A.A.G., Haryana and Mr. Saurabh Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, C.J.

C.M. No. 638 of 2008:

For the reasons stated in the miscellaneous application, delay of 106 days in re-filing the appeal is condoned. Application stands disposed of.

LPA No. 180 of 2008:

1. This LPA has been filed against an order dated 17.11.2007 passed in CWP No. 9790 of 2006. By the aforesaid order, the learned single Judge had interfered with the order dated 1.3.2006 (Annexure P-3) passed by the appellants herein by which the respondent-writ petitioner's candidature for the post of Lecturer in Mechanical Engineering had been rejected. The learned single Judge had further issued a direction that the respondent-writ petitioner is entitled to be considered for appointment as Lecturer from the date on which his other batch-mates were so appointed. It must be put on record, at this stage, that the respondent-writ petitioner has since been appointed as a Lecturer in Mechanical Engineering in the month of September-2008 and is presently working in the said post. The controversy between the parties arises in the following facts.

2. An advertisement was issued by the Haryana Public Service Commission inviting applications for filling up of nine posts of Lecturer including one post in Mechanical Engineering in the Chaudhary Devi Lal Memorial Engineering College, Panniwala Mota, Sirsa. The petitioner applied for the post of Lecturer in Mechanical Engineering and found a berth in the merit list prepared by the selection committee. It may be noticed, at this stage, that the petitioner had passed his degree in Mechanical Engineering from Penza State University, Penza (Russia). The said University is duly recognized by the Association of Indian Universities as would be evident from the materials on record. One of the conditions of eligibility was that the candidate to be eligible must have at least a bachelor's degree in the first division in Mechanical Engineering. The controversy in the present case is whether the petitioner satisfies the said eligibility condition or not.

3. The materials on record (Annexure P-5) would indicate that in the Penza State University there is a grading system in force and the different grades with equivalent percentage of marks are as follows:-

Excellent : 95%

Good : 75%

Satisfactory : 60%

4. The petitioner was tested in a total of 57 papers out of which in 8 papers no written examination was held. The petitioner, therefore, calculated his total percentage of marks secured in the following manner.

5. In 29 of the 49 papers he secured "Satisfactory" grading; in 18 papers he had secured "Good" grading and in two papers he had secured "Excellent" grading. Credit of marks to be given against the said gradings brought the total marks secured by the petitioner to 3280 and the same being divided by 49 papers the average marks secured by the petitioner was worked out at 66.93% which is a first division.

6. The appellants-respondents in the written statement did not raise any objection with regard to the manner in which the total marks were worked out by the petitioner and the percentage of marks so calculated. The objection raised by the appellants was only to the effect that the total marks should have been divided by 57 papers in which the petitioner was tested and not 49 papers as has been done by him. So calculated, according to the appellants, the petitioner's percentage would be less than 60% and he is not eligible for consideration. The relevant part of the written statement containing the aforesaid objection is extracted hereinbelow:

There are 57 papers and he had obtained satisfactory grade in 29 papers, good grade in 18 papers and excellent grade in 2 papers only. He has divided the total marks 3280 by 49 instead of dividing the same by 57. As there were 57 papers, therefore, he should have divided the total marks by 57 for working out the

average percentage.

7. The learned single Judge, hearing the writ petition, took the view that the petitioner appeared only in 49 papers in which he secured 3280 marks; in the remaining 8 papers the petitioner did not appear in any written examination and calculation of percentage of marks on the basis of 49 papers was justified. The learned single Judge, therefore, held that the petitioner was eligible and he was rightly selected by the Haryana Public Service Commission.

8. From the conspectus of the relevant facts stated above, we find that out of the 57 papers in which the respondent-writ petitioner was tested he had appeared in the written examination only in 49 papers and in the remaining 8 papers there was no written examination. The percentage of marks secured by the respondent-writ petitioner, therefore, has to be worked out by taking into account the 49 papers and not the total of 57 papers. The University from where the respondent-writ petitioner qualified awarded grades instead of marks; though what would be the equivalent marks for each grade has been specified. If equivalent marks for each grade as specified had been taken into account in working out the total marks so as to calculate the percentage thereof, we do not find that the said process is vitiated by any fundamental illegality or irregularity which will call for our interference.

9. We, therefore, conclude that the final conclusion arrived at by the learned single Judge is a possible conclusion which ought not to be disturbed in an intra-court appeal. Coupled with the aforesaid view, there is an additional fact which cannot be ignored by us, viz., the petitioner has been given appointment as a Lecturer in Mechanical Engineering in September-2008 and has been working since then. Taking into account all the aforesaid facts and circumstances, we are of the view that no interference with the order of the learned single Judge will be justified. The appeal is, therefore, dismissed. However, in the facts and circumstances of the case we make no order as to costs.