

Before Tejinder Singh Dhindsa, J.

GURPREET SINGH—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CWP No. 22493 of 2012

November 9, 2012

Constitution of India - Art.226/227 - Petitioner challenged order whereby his candidature for recruitment to the post of Constable in Punjab Police has been cancelled - Advertisement issued for recruitment of 5726 Vacancies of Constables - Last date for submission of application was fixed as 17.10.2011 - Petitioner was selected - Notice issued to furnish proof of educational qualifications with regard to having qualified B.A. Part III - Petitioner disclosed he secured compartment in B.A. Part III and appeared in re-appear in April, 2012 and qualified - Petitioner's educational qualification was taken as B.A. Part II on cut off date i.e. 17.10.2011- Candidature cancelled - Challenged in writ petition - Writ Petition dismissed holding that petitioner sat in reappear examination in April, 2012 and cleared in May, 2012 - Cannot be held that petitioner had cleared BA Part III on cut of date 17.10.2011

Held, that it was on as such cut-off date that the requisite qualifications of the eligible candidates had to be seen on the basis of which marks were required to be awarded in the light of the criteria disclosed at Annexure P5. The petitioner, admittedly, had appeared in the BA Part III examination in 2011, but had secured a compartment in English paper. It is the admitted case of the petitioner himself that he sat in the re-appear examination pertaining to the English paper in April, 2012 and cleared the same as per certificate issued in the month of May, 2012. Accordingly, it cannot be held that as on the last date of submission of application forms i.e. 17.10.2011, the petitioner had qualified the BA Part III final examination.

(Para 4)

Further held, that the requirement in law would be for the petitioner to have qualified the BA Part III examination up to the last date for submission of application forms i.e. 17.10.2011 to stake his claim for the

extra one mark. The Hon'ble Apex Court in the case of Bhupinder Pal Singh and others v. State of Punjab, (2000) 2 SCT 826 had considered such question and it had been categorically held that where the cut-off date for acquiring the eligibility is prescribed under the statutory Rules, the same shall prevail and where no cut-off date is mentioned in the Rules, the cut-off date notified in the advertisement is to be treated as the date for acquiring eligibility and in the absence of any such stipulation in the statutory Rules or advertisement, the last date for receipt of applications is to be considered as the date of acquiring eligibility.

(Para 5)

DS Gurna, Advocate, *for the petitioner.*

TEJINDER SINGH DHINDSA, J.

(1) The petitioner has filed the instant writ petition being aggrieved of the order dated 11.9.2012, Annexure P4, whereby his candidature for recruitment to the post of Constable in the Punjab Police has been cancelled by taking his educational qualifications as BA Part-II and thereby denying the benefit of BA Part-III.

(2) An advertisement, Annexure P1, was issued inviting applications for recruitment to 5726 vacancies of constables in the District Police Cadre. The eligibility conditions in terms of age, educational qualifications etc. were submitted therein and the last date for submission of application forms from the eligible candidates was fixed as 17.10.2011. It is asserted that the petitioner who belongs to the reserved category of SC (others) category had applied for the post of Constable (Male). The petitioner was required to undergo the physical test and upon clearing the same, he was even called for interview held in December, 2011. Learned counsel would refer to the list of selected candidates and in specific, pertaining to the SC (others) category wherein the name of the petitioner figured at sr.No.38 having been assigned 27.30 marks. It has further been asserted that even though the other selected candidates have been issued appointment letters, yet the petitioner had been issued a notice dated 6.9.2012 as regards personal appearance and calling upon him to furnish the proof of his educational qualifications with regard to having qualified the BA Part III examination. Thereafter, the petitioner has been served with the impugned communication

dated 11.9.2012, P4, issued by the Chairman. Recruitment Board stating therein that at the time of scrutiny of documents, the scrutiny team had reflected the petitioner as BA Part III pass and then had made a cutting thereupon but the computer software had been fed as BA part III pass and thereafter upon checking, it became apparent that the petitioner had only qualified BA part II as on the cut-off date i.e. 17.10.2011 and accordingly, he had been given an opportunity for personal hearing on 8.9.2011. The petitioner had himself disclosed at that point of time that he had secured a compartment in one paper i.e. English in BA part III examination for which he had appeared in the year 2011 and for which he appeared in the re-appear examination conducted by Punjab University, Chandigarh in April 2012 and qualified the same and had been issued the requisite certificate in May, 2012. Accordingly, in terms of the impugned communication at Annexure P4, the petitioner's educational qualifications was taken as BA Part II and, accordingly, by reducing one mark from the total earlier determined i.e. 27.30, the petitioner was assigned 26.30 marks whereupon he was not found to have made the grade for selection to the post of Constable in the SC (others) Category.

(3) Learned counsel for the petitioner has vehemently argued that the petitioner had appeared in the BA part III examination in the year 2011 and except compartment in the English paper, he had successfully cleared the BA Examination. Accordingly, it is sought to be contended that as on the last date for submission of application forms i.e. 17.10.2011 as also at the stage of interview i.e. in December 2011, the case of the petitioner was not of a candidate who had completely failed in the BA III examination as per the Punjab University calendar but, in fact, the petitioner was liable to be considered as provisionally having qualified the BA Part III examination.

(4) There is no dispute as regards the fact that the petitioner had sought for the selection criteria adopted by the Recruitment Board under the Right to Information Act and the same had been duly supplied to him at Annexure P5. In terms thereof, different marks had been assigned for physical attribute i.e. Height, four marks had been assigned for the interview and the marks to be awarded on the basis of educational qualifications were also stipulated. Ten marks were assigned for 10+2, 11 marks for BA-I,

Bsc.I/B.Com.I or equivalent, 12 marks for BA-II, Bsc.II/B.Com.-II or equivalent and 13 marks for BA-III, B.Sc.- III and B.Com.-III or equivalent. The last date for submission of application forms in the advertisement had been stipulated is 17.10.2011. As such, it was on such cut-off date that the requisite qualifications of the eligible candidates had to be seen on the basis of which marks were required to be awarded in the light of the criteria disclosed at Annexure P5. The petitioner, admittedly, had appeared in the BA part III examination in 2011, but had secured a compartment in English paper. It is the admitted case of the petitioner himself that he sat in the reappear examination pertaining to the English paper in April, 2012 and cleared the same as per certificate issued in the month of May, 2012. Accordingly, it cannot be held that as on the last date of submission of application forms i.e. 17.10.2011, the petitioner had qualified the BA Part III final examination.

(5) The submission raised by learned counsel to treat the petitioner as having provisionally qualified the BA Part III examination in the light of certain provisions contained in the Punjab University calender is wholly misconceived. The petitioner had applied for the post in question in response to an advertisement issued by the respondent-Department. It is the conditions and stipulations contained in the advertisement that would govern eligibility and recruitment to the post in question. The question of acquiring eligibility as on the last date of submission of application forms as stipulated in the advertisement is no longer res-integra. The requirement in law would be for the petitioner to have qualified the BA Part III examination upto the last date for submission of application forms i.e. 17.10.2011 to stake his claim for that extra one mark. The Hon'ble Apex Court in the case of *Bhupinder Pal Singh and others versus State of Punjab (1)*, had considered such question and it had been categorically held that where the cut-off date for acquiring the eligibility is prescribed under the statutory Rules, the same shall prevail and where no cut-off date is mentioned in the Rules, the cut-off date notified in the advertisement is to be treated as the date for acquiring eligibility and in the absence of any such stipulation in the statutory Rules or advertisement, the last date for receipt of applications is to be considered as the date of acquiring eligibility.

(6) Even the feasibility and requirement of stipulation of a cut-off date with reference to the qualifications laid down for a particular post came up for consideration before the Hon'ble Apex Court in *Mrs. Rekha Chaturvedi versus University of Rajasthan (2)*, and it was held in the following terms:

"The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the

(Rajesh Bindal, J.)

selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission, Hyderabad and another v. B. Sarat Chandra & others, (1990)4 SLR 235 and The District Collector and Chairman, Vizianagaram (Social Welfare Residential School Society), Vizianagaram and another v. M. Tripura Sundari Devi (1990)4 SLR 237."

(7) Accordingly, in the light of the facts noticed hereinabove, I do not find any basis that would warrant interference in the decision of the respondent-authorities in holding the petitioner to be not eligible for being assigned the extra one mark on account of having qualified the BA Part III examination in April/May 2012 in the light of the cut-off date i.e. 17.10.2011 as regards the last date for submission of application forms prescribed in the advertisement.

(8) No merit. Dismissed.

A. Jain