

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.23896 of 2012
Date of Decision: 10.01.2013

Preeti Gulia

. . . .Petitioner

Versus

State of Haryana and another

. . . . Respondents

CWP No.26134 of 2012

Mamta

. . . .Petitioner

Versus

State of Haryana and another

. . . . Respondents

CWP No.24195 of 2012

Parveen Kumari

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CWP No.25386 of 2012

Surender Kumar

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE A.K. SIKRI, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rajbir Sherawat, Advocate,
for the petitioner
(in CWP No.23896 of 2012)

Mr.Jagbir Malik, Advocate,
for the petitioner
(in CWP No.26134 of 2012)

Mr.Parveen Kumar Rohilla, Advocate,
for the petitioner
(in CWP No.24195 of 2012)

Mr.Rajesh Duhan, Advocate,
for the petitioner
(in CWP No.25386 of 2012)

Mr.Anil Rathee, Addl. A.G. Haryana.

A.K. SIKRI, C.J. (ORAL)

Though one week time to file reply was taken by counsel for the State on 21.12.2012 but no reply has been filed. However, counsel for the parties are ready to argue the matter as it involves pure question of law. In these petitions similar issue pertaining to recruitment process, which has been initiated pursuant to advertisement dated 7.6.2012 advertising, inter alia, for the posts of Graduate Teachers (PGT), is raised. For the sake of convenience, we reproduce the facts as per the case of CWP No.23896 of 2012.

On 7.6.2012, respondent No.2 advertised posts of Graduate Teacher (PGT) in the subject of Commerce vide advertisement No.1 of 2012 Category No.16. As per the advertisement the candidates were required to have Matric with

Hindi, Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied, conducted by Board of School Education Haryana, Bhiwani/with one time exemption of HTET for those candidates who has worked in private manage aided school for minimum four years till 11.4.2012 with the rider that such shall have to qualify the HTET not later than 1.4.2015 otherwise their service shall be terminated automatically. Besides this, as per note 4 the candidates who had passed HTET/STET before 11.4.2012 without qualification of B.Ed. shall be treated as eligible for the post of PGT. Except as above the candidates were required to have essential qualification as under:

EQ: - M. Com, with Accounting/Cost accounting/Financial accounting as a major subject of study with at least 50% marks and B.Ed. from recognized University. Holders of degree of M.Com in Applied/Business Economics shall not be eligible.

Since the petitioner fulfilled the qualifications prescribed for these posts, therefore, on 18.6.2012, she applied for these posts well within time and along with all the requisite documents and the prescribed fee in the General Category along with fees challan with Registration No.11601522. Earlier the

petitioner was having 55.52 % marks in M.Com. degree. Thereafter the petitioner improved her marks of M.com. degree by appearing for improvement exam and as per result declared on 28.9.2012 after improvement she is having 57.6% (720/1250) marks in M.Com degree.

It is clear from the above that as per the eligibility conditions specified in the advertisement which is inconsonance with the rules, 50% marks were required in M.Com. It is also an admitted position that at the time when the petitioner applied for the post, she was having more than 50% marks and was fulfilling other eligibility conditions as well. Therefore, as on 18.6.2012, when she made application for appointment to the said posts, she was qualified for consideration for the said post in all respect.

It appears that large numbers of applications were received for these posts and because of such large numbers of applications the respondent decided to raise the bar of 50%. The cut off marks in different disciplines and for different categories of persons which were re-fixed vide order dated 26.9.2012 are as under:-

Sr No	Category	%age Hindi, Cat. No.13	%age Political science, Cat. No.14	%age Commerce, Cat. No.16	%age History, Cat. No.17
1	Gen	54	56	57	55
2	Sc	50	53	48	51
3	BC	54	56	57	55
4	ESM	All Eligible	All Eligible	All Eligible	All Eligible
5	PHC	All Eligible	All Eligible	All Eligible	All Eligible
6	DESM, DFF	As per cut off %age in their respective category of Gen/SC/BC			

The petitioner though had 55.52% marks when she applied for the posts but as noted above, in the meantime, she had re-appeared in some of the papers of M.Com. for improving her result and she was successful in this attempt inasmuch as in the result of improvement examination which was declared on 28.9.2012 she attained 57.6% marks. With this improvement, she becomes eligible for consideration even after the raise of bar from 50% to 57%.

Same is the position qua the other petitioners in their disciplines as they had also improved their results by appearing in the improvement examinations and as per the said result the percentage of marks secured by them is above than the cut off marks.

The question thus falls for consideration is *“as to whether the result of improvement examination should be taken into consideration or their cases would be governed by the earlier marks which were obtained by them earlier?”*

The respondent has rejected their candidature on the ground that the marks are to be seen as on the last date of submission of the application. Normally, such a rule is to be applied, as contended by the respondents, in other cases but it cannot be made applicable to the cases at hand. It is because of the reason that subsequent appearing in the examination for improvement and after getting the improved results that would

relate back to the earlier date and the implication thereof is as if the petitioner had passed her M.Com. degree with 57.6% marks. Insofar as her earlier result with 55.52% marks is concerned that is weighed out for all admissions to come. Therefore, for all practical purposes it is to be treated that the petitioner has obtained M.Com. degree with 57.6% marks. Once that is the result of improvement, it has to be given effect as well and has to be taken to its logical end. Going by these considerations, we are of the opinion that the case of the petitioner in CWP No.23896 of 2012 has to be examined on the basis that she obtained 57.6% marks in M.Com. degree and since the revised cut off fixed by the respondent is 57% marks for General Category and 48% marks for Scheduled Caste category in the said subject (i.e. commerce at Cat. No.16), she would be eligible for consideration to the post applied. Same would be the result in other cases as well.

These writ petitions are, accordingly, allowed. Since the petitioners have already made applications, the decision of the respondent rejecting those applications is set aside. The petitioners shall be called for interview and shall be considered for the posts applied for.

(A.K. SIKRI)
CHIEF JUSTICE

(RAKESH KUMAR JAIN)
JUDGE

JANUARY 10, 2013

Vivek