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2015(1)

Before Rajesh Bindal, J.

NITIKA—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 10507 of 2011

April 07, 2014

Constitution of India, 1950 - Art. 226 - Recruitment - Date of qualifying examination - Qualification required for post of Vocational Master-General Receptionist M.Com/M.B.A. with knowledge in computer science - Last date for submission of forms 9.10.2009 - Petitioner appeared in MBA examination held in May, 2009 - Result declared on 17.8.2009 in which she was declared passed - Her father's name wrongly mentioned on Result-cum-Detail Marks Card - She was in process of getting it corrected - Hence, date mentioned on her Detail Marks Card was 28.1.2010 - She was declared ineligible for post on ground that she did not have MBA qualification prior to last date of submission of Form - Persons lower in merit offered appointment - Held, that merely because mark sheet issued after cut-off date she cannot be declared ineligible - Petitioner had already acquired the qualification and proof thereof was produced at the time of counselling - Respondents directed to offer appointment to petitioner.

Held, that under these circumstances what is required to be considered is as to whether the date mentioned on the Result-cum-Detail Marks Card of MBA 4th Semester Examination as 28.1.2010 would be considered as the date of qualifying the examination and as a consequence of which the petitioner is to be declared ineligible or the date of declaration of result.

(Para 16)

Further held, that in the present case from the material on record it is established that the result of the petitioner of MBA 4th Semester was notified on 17.8.2009, before the last date fixed for submission of applications, merely because the marks sheet was issued to her after the cutoff date fixed for submission of application, she

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cannot be declared ineligible as she had already acquired the qualification and proof thereof was produced at the time of counselling.

(Para 19)

Further held, that as far as the contention raised by the State that the documents were not submitted by the petitioner at the time of counselling in support of the plea that she had passed her MBA Examination before the cutoff date is concerned, the fact remains that when the petitioner had filled her scrutiny form, she was declared eligible. It was only at the time of declaration of the result that the petitioner was shown to be ineligible. She was not offered any opportunity to clear the doubt, if any, about her ineligibility.

It is admitted position that the petitioner had secured 62.65 marks and the persons who had secured 61.875 marks was offered appointment and further out of 39 vacancies in the General Category only 37 were filled, meaning thereby two posts are still available.

For the reasons mentioned above, the writ petition is allowed. The petitioner is declared eligible for appointment as Vocational Master-General Receptionist.

(Paras 21 to 23)

Vikas Chatrath and Manju Sharma, Advocates, *for the petitioner.*

Monika Chhibber Sharma, Deputy Advocate General, Punjab.

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(1) The petitioner, who was a candidate for the post of Vocational Master - General Receptionist, has approached this Court with a grievance that though she was more meritorious than the selected candidates, but still was not offered appointment.

(2) Learned counsel for the petitioner submitted that on 23.9.2009 advertisement was published in the newspaper inviting applications for various posts in the School Education Department, Punjab. Vocational Master-General Receptionist was one of them. The qualification required was M.Com/ MBA with knowledge in Computer Science. The applications were to be submitted online by 9.10.2009. The petitioner while submitting her application had specifically mentioned that she

had got her MBA qualification in the year 2009 from the Punjab Technical University by securing 2506/3200 (78.31%) marks. The candidates were called for counselling on 9.12.2010 . The petitioner filled in the scrutiny form clearly mentioning the marks obtained by her in the Matriculation, 10+2, B.A. and MBA. Attested copies of the certificates, which were 15 in number, were annexed with the scrutiny form. The same were checked by the scrutiny officer and petitioner was declared eligible.

(3) But when the result was declared after scrutiny of the certificates, against the name of the petitioner in the column of status, it was mentioned “not eligible”. Though other persons, who were lower in merit to the petitioner, were offered appointment but the petitioner was denied the same. The petitioner made a representation but even that was not considered. In fact the petitioner was surprised to notice in the result that she has been declared ineligible though at the time of counselling after checking all the certificates produced by her, the scrutiny officer had declared the petitioner fully eligible.

(4) It was further submitted that the reason which has been assigned for declaring the petitioner ineligible is that the petitioner did not have the qualification of MBA prior to last date of submission of application namely 15.12.2009. In support of that plea, it is sought to be contended by the State that the degree produced by the petitioner for her qualification of MBA is dated 28.1.2010. As the same was after the last date fixed for submission of applications, the candidature of the petitioner was not considered.

(5) Assailing the aforesaid reason assigned in the reply for rejection of her candidature, learned counsel for the petitioner submitted that the petitioner had appeared in the MBA Examination held in May, 2009, the result of which was declared on 17.8.2009 and notified, however considering the fact that name of father of the petitioner was wrongly spelled in the result as ‘Ram Moorti Modi’ instead of ‘Ram Murti Modi’, the petitioner remained in the process of getting a correct copy of the DMC and degree, as a result of which on the Result-cum-Detail Marks Card, the date of issue was mentioned as 28.1.2010. In fact, when the result was declared on 17.8.2009, the petitioner was

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declared passed. As at the time of counselling, no objection regarding the aforesaid issue was raised, the petitioner had no opportunity to clarify the same.

(6) It was further submitted that other candidates, who had appeared for the MBA 4th Semester in May, 2009, the result of which was declared on 17.8.2009, had been issued the Result-cum-Detail Marks Card on 18.9.2009, much prior to last date for submission of application.

(7) The qualification obtained by a candidate relates back to the date of declaration of the result. On account of certain procedural formalities to be fulfilled, certificates/degree is issued late, the date of acquisition of qualification is not to be taken from that date. The petitioner being eligible on the last date for submission of application, rejection of her candidature is totally illegal. She deserves to be offered appointment as the persons lower in merit than her were appointed. In support of the plea, reliance was placed upon judgment of Hon'ble the Supreme Court in *Dolly Chhanda v. Chairman, JEE(1)*, and judgments of this Court in CWP No. 5379 of 2010 - *Raj Kumar v. State of Haryana and others*, decided on 6.9.2010, CWP No. 16841 of 2009 *Ashok Chauhan v. State of Harayna and others*, decided on 1.2.2011.

(8) On the other hand, learned counsel for the State submitted that the applications were to be submitted online. No doubt, the petitioner had mentioned therein that she is eligible having acquired the qualification of MBA before the last date fixed for submission of applications, however, when the certificate of MBA produced by her was perused, it was found that the same had been issued on 28.1.2010, much after the last date. Hence, the petitioner was declared ineligible. In the scrutiny form erroneously it was mentioned that the petitioner was eligible, but the same will confer any right on the petitioner. All the documents which have been placed on record along with writ petition showing the declaration of result and the issuance of marks sheets to other candidates were not produced before the authorities.

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She did not dispute the fact that the last selected candidate had secured 61.875 marks, whereas the petitioner secured 62.65 marks.

(9) Learned counsel for the State further submitted that if certificates as produced by the petitioner are to be considered for declaring her eligible, there may be other candidates, whose claim was rejected only on that ground. They will have preferential right if they are more meritorious than the petitioner.

(10) It was further submitted that there were total 39 posts in General category, out of which 37 were filled.

(11) Heard learned counsel for the parties and perused the paper book.

(12) The issue under consideration in the present writ petition is as to whether the petitioner is eligible for the post of Vocational Master-General Receptionist, considering that her result for MBA had been notified prior to last date for submission of application, however, on account of error in the spellings in the name of father of the petitioner, the Result-cum-Detail marks Card was issued later on.

(13) It is a case in which the applications for the posts of Vocational Master-General Receptionist were invited vide advertisement published in the newspaper on 23.9.2009 by the School Education Department, Punjab. The qualification required was M.Com/ MBA with knowledge in Computer Science. The applications were to be submitted online by 9.10.2009. The candidates were called for counselling on 9.12.2010. The documents were checked by the scrutiny officer and petitioner was declared eligible. But when the result was declared, against the name of the petitioner in the column of status, it was mentioned “not eligible”.

(14) The petitioner appeared in her 4th Semester MBA examination conducted by Punjab Technical University, Jalandhar, in May 2009, the result of which was notified on 17.8.2009. The petitioner was declared passed. Prior to the declaration of the result of 4th Semester of MBA, as there were certain spelling mistakes in the name of father of the petitioner even in the earlier certificates, a request was made to the University through the Institute where the petitioner was studying,

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for correction thereof vide letter dated 15.7.2009 (Annexure P-13). The name of father of the petitioner was wrongly spelled as ‘Ram Moorti Modi’ instead of ‘Ram Murti Modi’.

(15) To establish the fact that the result of MBA 4th Semester was declared on 17.8.2009, the petitioner has produced on record a certificate issued by the Institute and also the marks sheet of another candidate namely Tinku Garg, who had appeared along with the petitioner in 4th Semester in May 2009. The marks sheet to Tinku Garg had been issued on 18.9.2009 (Annexure P-18), the result of which was notified on 17.8.2009. From the Detailed Marks Card produced by the petitioner, it is clear that she had secured 2506 marks in total in four semesters. The petitioner also got a certificate issued on 31.8.2009 (Annexure P-4/A), certifying that the petitioner had passed her MBA Examination in 2007-2009 batch by securing 2506/3200 (78.31%) marks. The aforesaid certificate was issued to her prior to the last date for submission of applications.

(16) From the facts, as have been noticed above, it is clear that the MBA 4th Semester Examination was held in May, 2009, the result of which was declared on 17.8.2009 and the petitioner secured 2506/3200 marks, as were filled in by her in the online application. Under these circumstances what is required to be considered is as to whether the date mentioned on the Result-cum-Detail Marks Card of MBA 4th Semester Examination as 28.1.2010 would be considered as the date of qualifying the examination and as a consequence of which the petitioner is to be declared ineligible or the date of declaration of result.

(17) A similar issue was considered by Hon’ble the Supreme Court in *Charles K. Skaria and others v. Dr. C. Mathew and others*(2), wherein for admission to a Post Graduate Course in Medicine, rule provided for addition of 10% marks if a candidate possessed qualification of diploma in the relevant subject. It was opined therein that having a qualification is different than producing the proof thereof. Relaxation of the date on the first is illegal but not on the second. Mode of proof is geared to the goal of the qualification in question. What is essential is the possession of qualification before the given date; what is ancillary

(2) (1980) 2 SCC 752

is the safe mode of proof of qualification. The relevant paragraph thereof is extracted below:-

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma, the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

(4) (b) : 10% to Diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. *Certificates to be produced* :- In all cases true copies of the following documents have to be produced:-

(k) Any other certificates required along with the application.

This composite statement cannot be read (sic in a) formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential in the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown

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that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the hand maid but the mistress and form not as subservient to substance but as superior to the essence.” [emphasis supplied]

The aforesaid judgment was followed in *Dolly Chhanda*'s case (supra).

(18) The issue was recently considered by Hon'ble the Supreme Court in *Rakesh Kumar Sharma v. Govt. of NCT of Delhi and others(2)*, wherein it was opined that the date of declaration of result is the date on which a qualification is acquired.

(19) In the present case from the material on record it is established that the result of the petitioner of MBA 4th Semester was notified on 17.8.2009, before the last date fixed for submission of applications, merely because the marks sheet was issued to her after the cut off date fixed for submission of application, she cannot be declared ineligible as she had already acquired the qualification and proof thereof was produced at the time of counselling.

(20) As far as the contention regarding other persons being similarly placed, who may be higher in merit, is concerned, the same is merely to be noticed and rejected for the reason that they never felt aggrieved against the rejection of their candidature. The petitioner, who is fighting for her cause, cannot be denied relief on that ground.

(21) As far as the contention raised by learned counsel for the State that the documents were not submitted by the petitioner at the time of counselling in support of the plea that she had passed her MBA Examination before the cut off date is concerned, the fact remains that when the petitioner had filled her scrutiny form, she was declared eligible. It was only at the time of declaration of the result that the petitioner was shown to be ineligible. She was not offered any opportunity to clear the doubt, if any, about her ineligibility.

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(22) It is admitted position that the petitioner had secured 62.65 marks and the persons who had secured 61.875 marks was offered appointment and further out of 39 vacancies in the General Category only 37 were filled, meaning thereby two posts are still available.

(23) For the reasons mentioned above, the writ petition is allowed. The petitioner is declared eligible for appointment as Vocational Master-General Receptionist. The respondents are directed to offer appointment to the petitioner within a period of two months from the date of receipt of copy of the order. The petitioner shall be entitled to all the benefits notionally from the date, person lower in merit than the petitioner was appointed, however, the actual payment shall be made only from the date the petitioner joins service.

J.S. Mehndiratta

Before Rakesh Kumar Garg, J.

STATE OF PUNJAB AND OTHERS—*Appellants*

versus

CONSTABLE BUDH SINGH—*Respondent*

RSA No. 2315 of 1993

January 21, 2014

Punjab Police Rules, 1934 - Rls. 1.8 and 16.2 - Code of Civil Procedure, 1908 - S. 100 - Dismissal - Respondent Constable was dismissed from service by SP on account of wilful absence of 4 months without permission - IG upheld dismissal - Suit filed by Respondent Constable was decreed - First appellate Court held that absence from duty is not a gravest act of insubordination, for which penalty of dismissal was required - Held, that once Punishing Authority itself comes to conclusion that a particular act of delinquent official constitutes gravest act of misconduct warranting his dismissal from service, then Courts have no jurisdiction to re-examine question as to whether such act constituted gravest act of misconduct or not - Courts cannot sit over the findings of the disciplinary authority and act as a court of appeal unless it is shown that the findings are without any evidence.