
R.N.R.

Before M.M. Kumar & A.N. Jindal, JJ.

PAWANDEEPSINGH DHALIWAL,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 10105 of 2010

28th July, 2010

Constitution of India, 1950—Art. 226—Punjab Civil Services (Judicial Branch), Rules, 1951—Appointment to P.C.S. (J.B.)—Essential qualification—A degree of Bachelor of Laws—Cut off date for determining eligibility—Last date of submission of application form—Petitioners not possessing professional degree of LL.B. on cut off date—Whether entitled to be permitted to participate in selection process—Held, no—Petitions dismissed.

Held, that the fixation of cut off date is necessarily a policy matter which has been fixed by the Cadre Controlling Authority under Article 235 of the Constitution by the Punjab and Haryana High Court. The fixation of cut off date brings certainty and avoid any futile exercise—a factor which appears to have weighed with the Punjab and Haryana High Court as well as the Commission who are jointly making recruitment to PCS (Judicial

Branch). The last date of receipt of application has always been considered as the cut off date for determining the eligibility. In the absence of any cut off date an atmosphere of uncertainty would prevail and the employer would be flooded with the applications of ineligible candidates. Moreover, some breathing time is given to the High Court and the Commission who are to process the huge number of applications for determining the eligibility of such candidates.

(Para 11)

Further held, that even in the absence of any cut off announced by the appointing authority or by recruiting agency like the Commission, the last date of receipt of applications form would be deemed to be the cut off date for determining the eligibility of a candidate. It is not disputed that on 17th June, 2010 the petitioners did not have the professional degree of LL.B. to their credit which may entitle them to be enrolled as an Advocate under the Advocates Act, 1961.

(Para 12)

Ramandeep Singh Pandher, P.S. Khurana, H.S. Dhindsa, Sanjeev Verma, Raman Mohinder, S.K. Garg Narwana, Saurabh Garg, B.N. Sehgal, Naveen Batra, Vinod Khunger, G.S. Kaura, Pankaj Middha, Ashok Kumar Khunger, Ms. Mamta Rani for Harit Sharma, S.S. Grewal, Ms. Archna Jain, for A.C. Jain, Arihant Jain Balram Singh, Rahul Chhatwal, D. R. Bansal, Ashutosh Hoshiarpuri, R.K. Sharma, P.K.S. Phoolka, Jasbir Singh, Kanwal Goyal, Mandeep Kaushik, Sunil Bhardwaj for Ravi Sharma, Jai Bhagwan and Sanjiv Ghai, *Advocates for the petitioner(s)*.

Suvir Sehgal, Addl. AG Punjab for the State as well as for Punjab *Public Services Commission*.

Deepak Sibal, *Advocate for Punjab University*.

S.S. Brar, *Advocate for Punjabi University*.

Amrit Paul, *Advocate for GND University*.

Amol Rattan Sidhu, *Advocate for the Punjab and Haryana High Court, Chandigarh*.

M.M. KUMAR, J.

(1) This order shall dispose of a bunch of petitions filed by the final year students of LL.B. Degree course (Professional). They have prayed for issuance of directions to the Punjab Public Services Commission (for brevity 'the Commission') to grant them permission to appear in the Punjab Civil Service (Judicial Branch) Examination, 2010 subject to the condition that they would produce the proof of passing the degree course for being eligible to take preliminary/main examination at a later date than fixed by the respondent. It is pertinent to mention that preliminary examination for appointment to Punjab Civil Service (Judicial Branch) is to be held on 8th August, 2010 and those who would qualify the preliminary examination would be permitted to take the main examination which is to be conducted from 11th October, 2010.

(2) Few facts may be noticed, The Commission has invited applications from the candidates for appointment to the Punjab Civil Services (Judicial Branch) by issuing an advertisement (P.1). The examination is to be conducted jointly by the Punjab and Haryana High Court and the Commission for filling up 85 posts of PCS (Judicial Branch). The advertisement envisages three stages of examination :

- (a) preliminary examination
- (b) main examination and
- (c) *viva-voce*.

(3) The last date for receipt of application form was 17th June, 2010 and preliminary examination is to be held on 8th August, 2010. In column No. 3 of the advertisement essential qualifications have been prescribed which reads thus :

“3. Essential qualifications :—

- (i) Candidates must possess a Degree of Bachelor of Laws of any University incorporated by Law in India or a Degree of Bachelor of Laws of Panjab University (undivided) the Dacca University, The Tribhuwan University, Nepal, The Sind University or of the Rangoon or Mandalay University in Burma, or should be a Barrister of England or Ireland or member of the Faculty of Advocates of Scotland.

The expression “Degree of Bachelor of Laws” means a degree entitled a candidate to be enrolled as an advocate under the Advocates Act, 1961 and the rule made thereunder :

(ii) Punjabi up to Matric or its equivalent standard.”

(4) The grievance made by the petitioners is that they have appeared in the final year LL.B. (Professional) examination and their result is expected by the end of July, 2010 and therefore they would not be considered eligible for taking the PCS (Judicial Branch) preliminary examination as the last date of receipt of applications fixed by the Commission is 17th June, 2010 which is also the date fixed for determining eligibility. Therefore, they would not be eligible on the cut off date which is 17th June, 2010. The petitioners have placed reliance on the earlier two examinations conducted in the years 2007 and 2009 for appointment as member of PCS (Judicial Branch) where the final year students of LL.B. Degree (Professional) course were permitted to participate in the selection process and they were required to qualify the Bachelor of Law (Professional) before the commencement of *viva-voce* failing which their candidature was to be cancelled. Likewise, reliance has also been placed on another examination to be conducted in the year 2009 wherein degree of LL.B. Course was required to be acquired at stage II when the final examination was to take place.

(5) The stand of respondents 1 and 2 in their written statement is that as per Rule 3 of Punjab Civil Services (Judicial Branch) Rules, 1951 (1st amendment Rules, 2003) (for brevity ‘the Rules’) no person could be appointed as a Subordinate Judge who has not obtained the degree of Bachelor of Law which entitles him to be enrolled as an Advocate under the Advocates Act, 1961. Once the petitioners do not fulfil the requisite qualification as on 17th June, 2010 they would not be eligible to apply for the post of PCS (Judicial Branch).

(6) In a separate reply filed in CWP No. 10671 of 2010, the stand of the Punjab and Haryana High Court—respondent No. 4 is that cut off date of 17th June, 2010 has been consciously prescribed and the candidate should have acquired the basic eligibility professional degree of Bachelor of Law. In that regard reliance has been placed on Clause 3 of Rule 3 of the Rules. The respondents have also placed reliance on the judgement of Hon’ble the Supreme Court in the case of **Malik Mazhar Sultan and another versus UP Public Service Commission and others** (1) wherein calendar for the selection process has been given. According

to the respondent in order to ensure timely conduct of examination and eventual selection of candidates as per the schedule given by Hon'ble the Supreme Court it was decided as a policy that only such candidates who have obtained professional degree of LL.B. by the last date of submission of application form should be considered as eligible and admitted to the examination. If the candidates who have taken final year/final semester LL.B. Examination are permitted to appear in the selection process then it may create an anomaly because one who might be selected in the PCS (Judicial Branch) may not be able to obtain professional degree of LL.B. by the date of his appointment as Subordinate Judge then it would result into futile exercise. Respondent(s) have placed reliance on the judgments of Hon'ble the Supreme Court rendered in the cases of **Rekha Chaturvedi versus University of Rajasthan and others (2)** and **Ashok Kumar Sonkar versus UOI (3)**.

(7) We have heard the learned counsel for the parties at a considerable length.

(8) It has been submitted by learned counsel for the petitioners that once the selection process is spread over to three stages which is to commence from 8th August, 2010 when the preliminary examination is to take place leading to the final examination on 11th October, 2010, 12th October, 2010 and 13th October, 2010 and *viva-voce* to be conducted on 27th December, 2010 then it would mean that the long process of six months would result into clear deprivation of chance to those candidates to appear who would answer the qualification during this long selection process of six months. Another submission made by the learned counsel for the petitioner is that in the years 2007 and 2009 the Commission alongwith the Punjab and Haryana High Court had taken into account the aforesaid difficulty of the students and accordingly fixed the date of *viva-voce* to determine the eligibility in the year 2007 and date of commencement of final examination in the year 2009. According to the learned counsel there was legitimate expectation that the course adopted during the last selections would be followed even in the year 2010.

(9) On behalf of the respondents, Mr. Amol Rattan Sidhu, learned counsel for the Punjab and Haryana High Court has submitted that as a policy matter it has been decided that the cut off date for determining the eligibility must be the last date of submission of application form which is

(2) 1993 Suppl. (3) S.C.C. 168

(3) (2007) 3 S.C.C. 54

17th June, 2010. According to the learned counsel postponing the date of eligibility creates unnecessary confusion. It results in and futile exercise in cases where the candidates fail to qualify the LL.B. Degree course. He has maintained that it involves wastage of time and finance. Therefore the cut off date of 17th June, 2010 does not suffer from any illegality warranting interference of this Court.

(10) Mr. Suvir Sehgal, learned State counsel, has also pointed out that any cut off date would attract the same arguments which have been advanced by the learned counsel for the petitioner because if they are appearing in the LL.B. Examination then compartment candidates might have to appear three months later and there cannot be any end to such a situation. Therefore, fixation of any other date would also attract the same arguments which have been addressed with regard to the cut off date of 17th June, 2010.

(11) Having heard the learned counsel for the parties and perusing the various paper books, we are of the view that there is no merit in these petitions. The fixation of cut off date is necessarily a policy matter which in the present case has been fixed by the Cadre Controlling Authority under Article 235 of the Constitution by the Punjab and Haryana High Court. The fixation of cut off date brings certainty and avoid any futile exercise—a factor which appears to have weighed with the Punjab and Haryana High Court as well as the Commission who are jointly making recruitment to PCS (Judicial Branch). The last date of receipt of application has always been considered as the cut off date for determining the eligibility as has been held by Hon'ble the Supreme Court in the cases of **Rekha Chaturvedi** (supra) and **Ashok Kumar Sonkar** (supra). In the absence of any cut off date an atmosphere of uncertainty would prevail and the employer would be flooded with the applications of ineligible candidates. Moreover, some breathing time is given to the High Court and the Commission who are to process the huge number of applications for determining the eligibility of such candidates. In the present case 17th June, 2010 is the cut off date and for the preliminary test is slated for 8th August, 2010. The Commission might have to deal with thousands of applications and leaving the determination of eligibility to any later date may not be conducive in the absence of any policy decision to the contrary. In that regard, reliance

may be placed on para 20 of the judgement of Hon'ble the Supreme Court in the case of **Ashok Kumar Sonkar** (supra) which reads thus :

“20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.”

(12) We are further of the view that prescription of any cut off date would attract similar argument as has been rightly contended because of a cut off date of 11th October, 2010 as suggested on behalf of the petitioners is kept when the main examination is to commence or the cut off date of commencement of *viva-voce* of 27th December, 2010 is fixed then there might be candidates who may argue that they have taken re-appear examination in one/two papers of LL.B (Final year) and they would be eligible either on the date of commencement of the main examination or on the date of commencement of *viva-voce* on 11th October, 2010 and 27th December, 2010 respectively. It is because of the aforesaid reason that Hon'ble the Supreme Court in various judgements has held that even in the absence of any cut off date announced by the appointing authority or by recruiting agency like the Commission, the last date of receipt of application from would be deemed to be the cut off date for determining the eligibility of a candidate. It is not disputed that on 17th June, 2010 the petitioner did not have the professional degree of LL.B to their credit which may entitle them to be enrolled as an Advocate under the Advocates Act, 1961. Therefore, the writ petitions are liable to be dismissed.

(13) As a sequel to the above discussion, these writ petitions fail and the same are dismissed.

(14) A copy of this order be placed on the file of connected cases.

(15) A copy of this order be given *dasti* after due attestation under the signatures of the Bench Secretaty to the learned coounsel for the parties.