



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**CWP No. 3275/2020**

**Reserved on: 21.9.2020**

**Decided on : 24.9.2020**

Atul

Versus

Himachal Pradesh Staff Selection Commission .....Respondent

***Coram:***

***The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.***

***The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.***

*Whether approved for reporting?*<sup>1</sup> Yes

For the Petitioner: Mr. Kul Bhushan Khajuria, Advocate.

For the Respondents: Mr. Sanjeev Kumar, Advocate.

**(Through Video Conferencing)**

**Justice Tarlok Singh Chauhan, Judge (oral)**

Whether, in absence of any provision, is it open for the Court to order rounding-off of marks to meet eligibility criteria?

2 The respondent-Commission issued an advertisement on 19.12.2018 for filling up various posts including 51 posts of Junior Engineer (Electricity). The petitioner qualified Diploma in Electrical Engineering, but as against requirement of 55 marks mentioned in the advertisement, had secured 54.6% marks. The request made by the petitioner for rounding-off of 54.6% marks to

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? Yes.

55% marks was rejected by the respondent constraining him to file the instant petition for grant of following substantive reliefs:

- “A. That the impugned rejection communicated through communication dated 5.3.2020 may kindly be quashed and set aside.
- B. That the respondent Board may kindly be directed to consider the candidature of the petitioner for the post of Junior Engineer (Electrical) on the basis of merit.
- C. That the respondent Commission may kindly be directed to disclose the name and address of last selected candidate from the General (UR) category so that he can be arrayed as party respondent in the present case.”

3 On 31.8.2020, the respondent was put to notice directing its counsel to obtain instructions.

4 The instructions as obtained have been placed on record, which reveal that the case of the petitioner was not considered as he failed to meet the essential qualification and in absence of power to round-off of marks, such course was not open to the respondent.

5 We have heard learned counsel for the parties and have also gone through the material placed on record.

6 At the outset, it needs to be noticed that essential qualification for the post in question, as prescribed in Recruitment and Promotional Rules and notified in the advertisement, is that a

candidate must be in possession of full- time diploma in Electrical Engineering from a recognized Institution/University with 55% marks.

7 This position is conceded and the only contention put forth by the petitioner, after placing reliance on certain judgments of the Hon'ble Supreme Court and some High Courts, is that since Diploma was only for the purpose of eligibility and not for the purpose of qualifying marks in the selection, therefore, 54.6% marks obtained by him in Diploma in Electrical Engineering ought to have been rounded-off.

8 In support of such submission, reliance is placed upon the judgment of the Hon'ble Supreme Court in **State of Punjab and anr. Vs. Asha Mehta (1997) 11 SCC 410**, wherein it was observed as under:-

“1. The question whether 32.5% could be rounded off to 33% is purely an arithmetical calculation, a procedure which the public Service Commission in fairness has been adopting in all other cases. The High Court had noticed this aspect of the matter and also relied upon earlier precedents in support thereof. In that view of the matter, we do not think that it is a fit case for interference under Article 136 of the Constitution.”

And in **State of U.P. and anr. Vs. Pawan Kumar Tiwari and ors., (2005) 2 SCC 10**, wherein it was observed as under:-

“6. The High Court has found mainly two faults with the process adopted by the State Government. First, the figure of 46.50 should have been rounded off to 47 and not to 46; and secondly, in the category of freedom fighters and ex-servicemen, total 3 posts have been earmarked as horizontally reserved by inserting such reservation into general quota of 46 posts which had the effect of pushing out of selection zone three candidates from merit list of general category.

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.”

9 Reliance is also sought to be placed on the judgments rendered by the Hon'ble Madras High Court in **W.P. No. 10212/2001, titled M. Ramprakash vs. Pondicherry University and ors., dated 23.3.2009** and in **W.A. No. 1582/2007, titled**

**The Director of Teacher Education, Research and Training & Ors. vs. Joseph Chellamuthu Teacher Training, dated 23.3.2009.**

10 No doubt, in **Pawan Kumar Tiwari and Asha Mehta cases (supra)**, the Hon'ble Supreme Court have held that if friction is 0.5 and above, it has to be read as 1, however in **Bhanu Pratap vs. State of Haryana and ors., (2011) 15 SCC 304**, where the petitioner therein - who had secured 508 marks out of total 1020 marks i.e. 49.8% marks and since the marks obtained by him were short of 50% by just two marks, had sought rounding off to the qualifying marks of 50%, having remained unsuccessful before the learned Single Bench and Division Bench - approached the Hon'ble Supreme Court with a prayer to round-off of the marks, but such plea was rejected by the Hon'ble Supreme Court by observing as under:-

“14. The aforesaid submissions of the counsel appearing for the appellant were however refuted by counsel appearing for the respondents by submitting that the respondents have strictly and minutely followed and complied with the Rules which are statutory in nature and, therefore, the present appeal has no merit at all. He also submitted that there cannot be addition of any marks unless the same is specifically permitted and provided either under the Rules

or in the advertisement and, therefore, there was no illegality or arbitrariness in the selection in question. ◇

15. In the light of the records placed before us we have considered the aforesaid submissions of the counsel appearing for the parties. The relevant Rules have already been extracted above. A bare reading of the aforesaid rules would make it crystal clear that in order to qualify in the written examination a candidate has to obtain at least 33% marks in each of the papers and at least 50% qualifying marks in the aggregate in all the written papers.

16. The further mandate of the rules is that a candidate would not be considered as qualified in the examination unless he obtains at least 50% marks in the aggregate including viva-voce test. When emphasis is given in the Rules itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the concerned candidate there cannot be a question of relaxation or rounding off as sought to be submitted by the counsel appearing for the appellant.

17. There is no power provided in the statute nor any such stipulation was made in the advertisement and also in the statutory Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for providing or giving the benefit of rounding off or relaxation.

18. We may also draw support in this connection from a decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another. v. M. Tripura Sundari Devi reported in (1990) 3 SCC 655. In the said judgment this Court has laid down that:-

when an advertisement mentions a particular qualification and an appointment is made in disregard of the same then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement.”

11 This issue has been recently considered by the Hon'ble Supreme Court, in detail, in **Taniya Malik vs. Registrar General of the High Court of Delhi, (2018) 14 SCC 129**. It shall be apposite here to refer relevant observations as contained in paras 22 and 23 of the judgment, which read as under:-

[22] With regard to question as to rounding off of the marks, in our opinion, when a particular aggregate is prescribed for eligibility, a person must meet the criteria without relaxation. It is not permissible to enhance the marks by rounding off method to make up the minimum aggregate.

[23] This Court, in The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and Ors., 2012 8 SCC 568, held as impermissible the rounding off of

eligibility criteria in relation to qualifying examination for admission to the PG Course in MSc (Nursing). Relying upon the decision rendered in Orissa Public Service Commission & Anr. vs. Rupashree Chowdhary and Anr., 2011 8 SCC 108, this Court observed:

"8. In Orissa Public Service Commission and Anr. v. Rupashree Chowdhary and Anr., 2011 8 SCC 108 this Court in somewhat similar fact situation considered whether the eligibility criteria could be relaxed by the method of rounding off. The Orissa Public Service Commission published an advertisement inviting applications from suitable candidates for the Orissa Judicial Service Examination, 2009 for direct recruitment to fillup 77 posts of Civil Judges (JD). Pursuant to the advertisement, the first Respondent therein applied for the said post. She took the preliminary written examination. She was successful in the said examination. She, then, took the main written examination. The list of successful candidates, who were eligible for interview, was published in which the first Respondent's name was not there. She received the mark sheet. She realized that she had secured 337 marks out of 750 i.e. 44.93% of marks in the aggregate and more than 33% of marks in each subject.

9. As per Rule 24 of the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007 (for short "the Orissa Rules"), the candidates who have secured not less than 45% of the marks in the aggregate and not less than a minimum of 33% of marks in each paper in the written examination should be called for viva voce test. Since the first Respondent therein had secured 44.93% marks in

aggregate she was not called for interview/viva voce. The first Respondent approached the Orissa High Court. The High Court allowed the writ petition. The appeal from the said order was carried to this Court.

10. After considering the Orissa Rules, this Court in Rupashree Chowdhary, 2011 8 SCC 108 held that Rule 24 thereof made it clear that

"in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% marks in the aggregate in all the written papers in the main examination." (SCC p. 111, para 10)

This Court observed that when emphasis is given in the rule itself to the minimum marks to be obtained, there can be no relaxation or roundingoff. It was observed that no power was provided in the statute/rules permitting any such roundingoff or giving grace marks. It was clarified that: (SCC p. 112, para 10)

"10 . The [Orissa] Rules are statutory in nature and no dilution or amendment to such rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of roundingoff or relaxation."

11. In our opinion, the ratio of this judgment is clearly applicable to the facts of this case. Judgment of the Full Bench of Allahabad High Court in Vani Pati Tripathi v. Director General, Medical Education and Training and Ors, 2003 AIR(All) 164 and judgment of the Full Bench of Punjab and Haryana High Court in Kuldip Singh, Legal Assistant, Punjab Financial Corporation v. State of Punjab and Ors,

1997 117 PunLR 1, were cited before us because they take the same view. However, in view of the authoritative pronouncement of this Court in Orissa Public Service Commission, it is not necessary for us to discuss the said decisions.

12. No provision of any statute or any rules framed thereunder has been shown to us, which permits rounding off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in M.SC (Nursing). When eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that learned Single Judge was right in rounding off of 54.71% to 55% so as to make Respondent 1 eligible for admission to PG course. Such rounding off is impermissible."

12. Apart from above, it has been consistent view of this Court that in absence of any Rules providing for rounding-off of marks, the same is impermissible.

13. Reference in this regard can conveniently be made to a judgment rendered by Division Bench of this Court, of which one of us (Justice Tarlok Singh Chauhan) was a member, in **Devender Kumar vs. State of H.P. and ors., ILR 2015(1) HP 479**, wherein it was observed as under:-

"By the medium of the present writ petition, the petitioner has prayed for the quashing and setting aside of Annexures PH and PJ, (letters dated 9th September, 2014 and 22<sup>nd</sup> September, 2014, respectively), to the extent the same pertain to the petitioner, whereby the petitioner has been called upon to undergo two years special training instead of six months, on the grounds taken in the memo of the writ petition.

2. The facts of the case, as set out in the writ petition, are that the petitioner obtained degree of Graduation (B.Com.) in the year 1995 by securing 44.93% marks. The petitioner came to be appointed as Primary Assistant Teacher on 18th October, 2004. Thereafter, in the year, 2010, the petitioner obtained Bachelor of Education degree from Jammu University by securing 58.5% marks.

3. The main grievance of the petitioner is that he has wrongly been subjected to undergo special training for two years since the marks obtained by him in Graduation (44.93%) should be rounded off and be taken as 45%.

4. The respondents have resisted the writ petition on the ground that a candidate who has passed Graduation with at least 45% marks and one year degree in Bachelor of Education has to undergo training for six months. The petitioner has since passed Graduation by securing only 44.93% marks, he has to undergo special training for two years. Further, the rounding off is not permissible as per the Rules occupying the field. Therefore, the impugned orders made by respondents are stated to be legally correct.

5. We have gone through the notification, dated 29<sup>th</sup> July, 2011, issued by the National Council for Teacher Education, pleadings and the impugned orders. It is

specifically provided in Clause III of the said notification that a candidate has to undergo, after appointment, special training. It is apt to reproduce relevant portion of clause III of the said notification hereunder:

“III (i) Training to be undergone. – A person (a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard, shall also be eligible for appointment to Class I to IV up to 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6-month Special Programme in Elementary Education;”

6. Thus, it is clear from a perusal of the above clause that only those persons are eligible to undergo six months' special training who possess Graduation degree with at least 50% marks and B.Ed. qualification or with at least 45% marks and one year degree in B.Ed. up to 1st January, 2012.

7. During the course of hearing, the learned counsel for the petitioner was asked to show any Rule or Regulation occupying the field which provides that rounding off is permissible and the marks obtained by the petitioner in Graduation i.e. 44.93% can be rounded off as 45%, as pleaded in the writ petition, which he could not.

8. On the other hand, the learned counsel for the respondents specifically argued that rounding off is not permissible. It was further argued that the minimum marks which a candidate has to secure in Graduation were at least 50% and B.Ed. qualification or at least 45% and one year

degree in Bachelor of Education, which qualification the petitioner was lacking. Therefore, it was submitted that the impugned orders are sustainable in the eye of law.

9. As far as the question of rounding off of marks is concerned, the learned counsel for the respondents relied upon the decision of the Apex Court in Orissa Public Service Commission & Anr. vs. Rupashree Chowdhary & Anr., AIR 2011 Supreme Court 3276. It is apt to reproduce paragraphs 7, 10 and 14 of the said decision hereunder:

“7. Learned counsel appearing for the respondents during the course of his arguments relied upon the decisions of this Court in State of Orissa and Another v. Damodar Nayak, 1997 4 SCC 560, State of U.P. and Another v. Pawan Kumar Tiwari and Others, 2005 2 SCC 10, Union of India v. S. Vinodh Kumar, 2007 8 SCC 100 and Bhudev Sharma v. District Judge, Bulandshahr and Another, 2008

1 SCC 233. On scrutiny, we find that the findings recorded in the above referred cases are not applicable to the facts of the present case. Facts and findings recorded by this Court in the above referred cases are distinguishable to facts of the case in hand. Almost all the aforesaid cases dealt with post or vacancies where it was allowed to be rounded off to make one whole post. Understandably there cannot be a fraction of a post.

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10 There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or

possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation. ◇

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14. The High Court, in our considered opinion, has also committed an error apparent on the face of the records by allowing two more persons, who secured marks between 44.5% and 45%, to be called for interview who were not even parties before it and who had not even shown interest subsequently to be appointed subsequent to the declaration of the results of the examination but despite the said fact the High Court directed them also to be called for the interview only on the ground that they have secured more than 44.5% of marks but less than 45% marks in the main written examination in aggregate.”

10. Keeping in view the pleadings, Rules and the law expressed by the Apex Court, the petitioner has failed to carve out a case for interference.”

14

Similar reiteration of law can be found in a Division Bench judgment, dated 29.2.2020, authored by one of us (Justice Jyotsna Rewal Dua) in **CWP No. 2344/2019, titled as Jagdish**

**Thakur vs. State of H.P. and ors.**, wherein it was observed as under:

“The petitioner participated in the written examination for the post of TGT (Arts) held under advertisement No.34-2/2018, dated 19.12.2018 (Annexure P-2). The minimum essential qualification for the post of TGT (Arts), as per R&P Rules mentioned in the advertisement issued by respondent

No.2, was BA with atleast 45% marks. The petitioner though qualified the written examination, however, in the interview, he was disqualified as he did not possess 45% marks in BA, which is essential qualification. The petitioner had 44.8% marks in BA, which was less than the minimum requirement of 45% marks. Instant writ petition has preferred by the petitioner seeking direction to respondents for considering his candidature for the post of TGT (Arts).

2. The prayer made in the writ petition has been opposed by the respondents by filing their replies submitting therein that the petitioner is not eligible for the post as he does not possess prescribed minimum qualification and there is no provision in the R&P Rules/Advertisement/Rules of Business & Procedure of respondent No.2, for relaxing the prescribed minimum essential qualifications required for the post.

Since, the recruitment cannot be carried out in the contravention of R&P Rules and the terms of advertisement for the post, which are sacrosanct for direct recruitment, hence, we find no merit in the writ petition. Accordingly the writ petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.”

15            Thus, it is more than settled that there can be no relaxation for rounding-off of marks when the Rules itself prescribe minimum marks for eligibility.

16            This Court is not persuaded by the submissions of the petitioner. Accepting it and allowing the petition would mean that

candidates who secure marks which are less than what is stipulated as eligibility norm can nevertheless, on some grounds or rationale outside of the rules or the relaxation norms, be considered.

17        The starkness of such consequence is apparent from the fact between 54.6 and 55 as there may be several candidates far more meritorious than the petitioner who may be kept out. This in turn would mean that the petitioner would be granted relief only for having approached the Court; clearly violative of the non discrimination principle underlying Article 14 of the Constitution. Furthermore, in the absence of the rule permitting such relaxation or rounding-off, the Court cannot of its own accord and carry out an exception.

18        In view of aforesaid discussion and for the reasons stated above, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending application(s), if any, leaving the parties to bear their own costs.

**(Tarlok Singh Chauhan)  
Judge**

**24.9.2020**

*(pankaj)*

**(Jyotsna Rewal Dua)  
Judge**