

Before N.K.Sodhi & N. K. Sud, JJ

SURINDER KUMAR,—*Petitioner.*

versus

THE KURUKSHETRA UNIVERSITY, KURUKSHETRA,—
Respondent.

C.W.P. No. 16759 of 1997

26th October, 1999

Constitution of India, 1950—Art. 226—Qualification—Appointment—Percentage of marks required as essential requirement for appointment—Whether could be rounded off to make candidate eligible—Candidate had less than the required percentage—Services terminated—Challenge thereto—Held that rounding off of percentage of marks in view of Full Bench decision is not permissible—Action of University in terminating services upheld.

Held that the question whether the benefit of ‘rounding off’ the marks obtained by a candidate could be given so as to bring him within the zone of eligibility for selection to a post came up for consideration before a Full Bench of this Court in *Kuldip Singh v. State of Punjab and other, 1997* (5) SLR 133 and the same was answered in the negative. In para 19 of the judgment, the learned Chief Justice held as under :—

“Method of rounding off percentage of marks obtained in the written examination for bringing a candidate into the field of choice for selection to a post is not warranted by law. We are also of the considered view that for selecting candidates to any post on competition marks obtained in the examination/test is not to be rounded off to the next whole number unless the Rule governing the selection specifically provides for the same.”

In view of the dictum laid down by the Full Bench, it has to be held that the petitioner was not eligible for the post of Lecturer in Law as he did not possess the minimum percentage of marks.

(Para 5 & 6)

Balram K. Gupta, Advocate,—*for the petitioner.*

S.C. Sibal, Senior Advocate with V.S. Rana, Advocate,—*for the respondent.*

JUDGMENT

N.K. Sodhi, J.

(1) The common question of law that arises in this bunch of four writ petitions which were ordered to be heard together is whether the percentage of marks required as an essential requirement for the appointment to a post can be rounded off so as to make a candidate eligible even though the actual percentage of his marks is less than the requirement. Facts giving rise to these petitions are as under :—

CWPs. 16759 and 16882 of 1997

(2) Counsel for the parties are agreed that the questions of law and fact arising in these petitions are similar and that the decision in CWP 16759 of 1997 would govern the other writ petition as well. Arguments were addressed in CWP 16759 of 1997 and, therefore, facts are being taken from this case.

(3) Petitioner was appointed a part-time Lecturer in Law in the Kurukshetra University (for short the University) and his appointment was approved by its Executive Council. While working as a part-time Lecturer the petitioner did his Ph.D. in Law from the same University. Some posts of Lecturers in the Department of Laws fell vacant and the petitioner along with six others were selected against those posts on the recommendation of the selection committee. The petitioner was appointed on 7th September, 1994 on temporary basis in the pay scale of Rs. 2200-4000 plus usual allowances as admissible under the University Rules. Even though his appointment was temporary it was likely to continue if his work and conduct were not found unsatisfactory. The services could be terminated on one month's notice from either side. It was further stipulated in the letter of appointment that "if the incumbent of the post joins earlier the appointment can be terminated without any notice". However, the Executive Council in its meeting held on 4th November, 1997 resolved that the petitioner be relieved of his duties with immediate effect in view of the terms and conditions of his appointment. A cheque for one month's advance notice period salary was sent along with the communication. It is against this decision of the Executive Council that the petitioner has filed the present writ petition. It is contended that the action of the University in terminating the services of the petitioner is arbitrary.

(4) In the reply filed on behalf of the University it is averred that the petitioner was not eligible to be appointed as Lecturer in Law since he did not possess the minimum percentage of marks at the Post-graduate level as prescribed by the University Grants Commission

(UGC). It is also pleaded that after appointing the petitioner the University referred his case to the UGC for relaxing the condition regarding the minimum percentage of marks but the UGC did not agree to relax the same and since the relaxation was not granted, the University had no choice but to terminate the services of the petitioner in terms of the conditions of his employment.

(5) Counsel for the parties have been heard and it is their common case that the minimum qualifications prescribed for the post of a Lecturer by the University and the UGC are “good academic record with at least 55% marks or an equivalent grade at Master’s degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University”. It is also not in dispute that the petitioner passed his LL.M examination from the Aligarh Muslim University securing 522 marks out of 950. This makes the percentage of his marks at the Master’s degree level less than 54.95 (54.947 to be precise). The contention of the learned counsel for the petitioner is that 54.94% marks should be rounded off to 55% and if that is done the petitioner had the requisite percentage of marks at the Master’s degree level and was, thus, eligible for appointment. Dr. Balram Gupta, counsel for the petitioner referred to a Division Bench judgment of this Court in *Rakesh Kumar vs. Guru Nanak Dev University and others (1)*, in support of his plea. We are unable to agree with this contention. It is not necessary for us to examine on first principles the issue whether percentage of marks could be rounded off so as to make the petitioner eligible because the matter stands concluded against the writ petitioner by a binding precedent. The question whether the benefit of ‘rounding off’ the marks obtained by a candidate could be given so as to bring him within the zone of eligibility for selection to a post came up for consideration before a Full Bench of this Court in *Kuldip Singh vs. State of Punjab and others (2)*, and the same was answered in the negative. K. Sreedharan, CJ (as his Lordship then was) speaking for the Bench observed as under :—

“Rule 7(1) in unmistakable terms state that a candidate should get at least 33% marks in each of the paper. 33% is the rock-bottom marks fixed therein. So also, the rock-bottom for being called for viva-voce test is 50% marks in the aggregate in all the papers. According to us, the rule does not envisage the possibility of making eligible a candidate who did not secure 33% marks in each paper and 50% in the aggregate for being called for viva-voce test. 33% or 50% as the case may be, is not

(1) 1989 (2) RSJ 570
(2) 1997 (5) SLR 133

to be assessed on the basis of rounding off the percentage of marks.

If the marks and not the percentage is rounded off, the premium will not go to this shocking extent, a person who secured 65.5 marks in a paper may claim the benefit of rounding it off to the next whole number. The result of such a procedure may not be that shocking as the rounding off the percentage of marks. If rounding off the actual marks alone is resorted to, then a person who secured 449.5 marks or above, alone will be entitled to be considered as having secured 450 marks. In such a situation, the total benefits a candidate may secure in the situation detailed above is of one or maximum two marks. Even such a benefit should not be granted in competitive examination when academically qualified persons are competing for competitive posts. In this world of high competition even 0.1 percentage of marks counts a lot."

Again in para 19 of the Judgment the learned Chief Justice held as under :—

"Method of rounding off percentage of marks obtained in the written examination for bringing a candidate into the field of choice for selection to a post is not warranted by law. We are also of the considered view that for selecting candidates to any post on competition marks obtained in the examination/test is now to be rounded off to the next whole number unless the Rule governing the selection specifically provides for the same."

(6) In view of the dictum laid down by the Full Bench, it has to be held that the petitioner was not eligible for the post of Lecturer in Law as he did not possess the minimum percentage of marks at the Post Graduate level.

(7) In Rakesh Kumar's case (supra), the petitioner therein was appointed Lecturer in English in a private college which appointment was required to be approved by the Guru Nanak Dev University and the State Government. At the time of his appointment, the eligibility was 50% marks in M.A. examination. While the matter for approval was pending the University amended its earlier decision and raised minimum marks to 55% and on the basis of the amended decision refused to grant approval. The Division Bench quashed the action of the University and directed it to grant approval as it had to be granted on the basis of the eligibility as on the date of the appointment. It was

also observed in passing that the action of the University was otherwise not justified for the reason that the Petitioner therein had obtained 54.6% marks in M.A. which had to be rounded off to make it 55%. The Division Bench observed as under :—

“We do not appreciate the stand of the University in being so stringent about the percentage in the instant case because the rounding off is a principle which is recognised almost everywhere and the University would have been well advised to make the petitioner eligible as well.”

These observations do support the contention of the petitioner but since they run counter to the decision of the Full Bench in Kuldip Singh’s case (supra) these must be taken to have been over ruled even though the Full Bench did not specifically notice this case. In view of the judgment of the Full Bench in Kuldip Singh’s case (supra), we have no hesitation in rejecting the contention of the petitioner.

(8) It was then contended that the Executive Council before terminating the services of the petitioner did not give any notice to him nor was he afforded an opportunity of being heard and, therefore, the order was violative of the principles of natural justice. Learned counsel relied upon a judgment of the Apex Court in *Basudeo Tiwary vs. Sido Kanhu University and others* (3) in support of this argument. We find no merit in this contention either. Petitioner was a temporary employee and his services have been terminated in accordance with the terms contained in the letter of his appointment and, therefore, no notice was required to be given to the petitioner. Moreover, there is no controversy in the case before us which had to be settled for which notice was necessary to be issued. The judgment of their Lordship in *Basudeo Tiwary’s case* (supra) is on different facts and does not advance the case of the petitioner.

(9) The action of the University in terminating the services of the petitioner cannot be termed as arbitrary. It may be mentioned that the petitioner in his application form had rounded off his marks obtained in the LLM examination and stated that he had to his credit 55% marks which was not so. When the University realised that he had obtained only 54.947% marks it referred his case to the UGC for granting relaxation. Admittedly, the relaxation was not granted and, therefore, the University was left with no choice but to terminate his services in accordance with the letter of appointment. For this reason as well, no fault can be found with the impugned action of the University.

CWPs 17094 of 1997 and 42 of 1998

(10) Challenge in these writ petitions is to the appointment of Rameshwar Das Mehla respondent 3 who has been appointed Librarian of the University.

(11) By an advertisement No. 2 of 1997 the University advertised the post of a Librarian inviting applications from all eligible persons. The last date for the receipt of applications was 11th August, 1997. The qualifications prescribed for the post, amongst others, were "Master's degree in Library Science/Information Science/Documentation with at least fifty five *per cent* (55%) marks or its equivalent grade and a consistently good academic record." To meet the criterion of 'consistently good academic record' a candidate is required to have either obtained 50% marks in each of the two lower examinations prior to Master's degree or average of 55% marks of two of the lower examinations. It is not in dispute that respondent 3 obtained 439 marks out of 800 in Master of Library Science examination which are less than 55% The exact percentage comes to 54.8. In his case the University rounded off the marks to 55% and treated him eligible and found him suitable for the post and he was appointed to the post as per appointment letter dated 4th November, 1997. The grievance of the petitioner in CWP 42 of 1998 is that he had 49.7% marks in B.A. and had these been rounded off to 50% he would have satisfied the criterion of 'good academic record' and would have become eligible for the post but the University did not round off the marks in his case and treated him as ineligible. Petitioner in CWP 17094 of 1997 was also found ineligible for the post because he did not have 10 years experience as a Deputy Librarian in a University Library or 15 years experience as a College Librarian which was an essential requirement for appointment to the post. The candidature of the petitioners in both the cases was rejected as they were ineligible.

(12) Now coming to the appointment of respondent 3. We are of the view that the same cannot be sustained. A perusal of the marks obtained by him in Master of Library Science examination makes it clear that they were less than 55%. As already observed, they were 54.8%. The University was not justified in rounding off these marks to 55% to make him eligible. This is contrary to the dictum laid down by this Court in *Kuldip Singh's* case (*supra*). Learned counsel for respondent 3 in trying to justify the appointment of respondent 3 as Librarian sought to place reliance on a notification dated 24th December, 1998 issued by the UGC to all the Universities regarding minimum qualifications for the appointment of teachers in Universities and Colleges and measures for the maintenance of standards according to which the minimum requirement of 55% marks should not be insisted

upon for some of the posts including Librarian for the existing incumbents who are already in the University system. This notification which was produced during the course of arguments will not, in our opinion, govern the appointment of respondent 3 which was made in November, 1997 in response to the advertisement issued in that year. The notification of the UGC relied upon was issued in December, 1998. This notification issued in the year 1998 cannot validate an appointment made in the year 1997 which was then invalid. It is true that the petitioners in both these petitions were not eligible for the post but that does not justify the University in selecting respondent 3 who was also ineligible.

(13) It is interesting to note that in the case of the petitioners in CWPs 16759 and 16882 of 1997 the University declared them ineligible for appointment as Lecturers in Law by refusing to round off the percentage of their marks and also in the case of the petitioner in CWP 42 of 1998 whereas it chose to adopt a different yardstick in the case of respondent 3 in CWPs 17904 of 1997 and 42 of 1998 and rounded off his marks to make him eligible. The action is obviously arbitrary on the face of it and cannot be sustained.

(14) In the result, CWPs 16759 and 16882 of 1997 are without any merit and the same stand dismissed whereas CWPs 17094 of 1997 and 42 of 1998 are allowed and the appointment of Rameshwar Das Mehla as Librarian of the University is quashed. Parties to bear their own costs.

J.S.T.

Before G.S. Singhvi & M.S. Gill, JJ.

R.S. KHATRA,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 16018 of 1998

8th July, 1999

Protection of Human Rights Act, 1993—Ss. 2(d), 12 (a) (i) (ii) and 13 to 16—Complaint before Human Rights Commission against a Police Officer for lodging false FIR—Commission taking cognizance of