

(2014) 09 P&amp;H CK 0226

**High Court Of Punjab And Haryana At Chandigarh****Case No:** C.W.P. No. 15973 of 2014 (OandM)

Bavil Sidhu

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Sept. 2, 2014**Citation:** (2014) 4 SCT 489**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Advocate:** D.V. Sharma, Senior Advocate and Shivani Sharma, Advocate for the Appellant;  
Vandana Malhotra, Additional Advocate General and Manish Dadwal, Advocate for the Respondent

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**Judgement**

K. Kannan, J.

1. The petitioner, who lost out on his eligibility by 0.28% marks that fell below 40%, has a grievance that if the percentage of marks was rounded off to the nearest whole number, he would have been treated as eligible and that is how his case must have been considered for determining his eligibility for admission to MBBS course. Learned Senior Counsel would rely on a Division Bench ruling of the Bombay High Court in [Shri Anup Prakash Vyas Vs. University of Pune, Ganesh Khind, Pune-411007 and The Controller of Examinations, Ganesh Khind, Pune-411007](#), that held, while considering the eligibility of a candidate for admission to Bachelor of Architecture course, that when the eligibility was 50% and a candidate had obtained 49.846% in aggregate, the fraction must be ignored and it could be rounded off to the nearest whole number. Learned Senior counsel would refer to the fact that the Bombay High Court was relying on a three member Bench judgment of the Supreme Court in [State of U.P. and Another Vs. Pawan Kumar Tiwari and Others](#), , where the Supreme Court was considering a case of application of prescribed percentage apportionment to general and reserved categories for appointment and while noticing the treatment of a fraction of vacancies, the court held that if the fraction was 1/2 or more it should be treated as 1 and if it is less than 1/2, it should be

ignored. With respect, I hold that the reliance on the three members Bench judgment of the Supreme Court in Pawan Kumar Tiwari's (supra) simply does not answer the issue, for, the total number of vacancies can never be in terms of a fraction, for, no person other than a whole individual could be appointed. In the very nature of things, a fraction of vacancy to the post has no meaning. Fraction in marks perfectly is tenable and possible at all times. Importing the principle of rounding off vacancy to appointment to an institute to round off marks was clearly wrong in my view, and I am unable to persuade myself to accept the ruling of the Division Bench of the Bombay High Court in that regard. We do not require to be detained at all, for, this issue, is not without precedents and particularly a precedent of this court through a Full Bench ruling in [Kuldip Singh, Legal Assistant, Punjab Financial Corporation Vs. The State of Punjab and Others,](#) . The point of reference to the Full Bench was the scope of rounding off percentage of marks written in examination for consideration to appointment under the Punjab Civil Services (Judicial Branch) Rules. Dealing with the issue of how the rounding off could mean a treatment of unequals as equals, the Full Bench pointed out illustratively to a situation where a decimal percentage could actually be in terms of marks vary as far as even 4 or 5 marks in the aggregate. It held that it would be impermissible to round off the marks in percentage. I have been informed by the counsel for the respondents that even an SLP filed against this judgment was dismissed. The Supreme Court itself was considering the same issue relating to rounding off percentage of marks in aggregate in [Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another,](#) . The Supreme Court was considering a case of consideration for appointment to Orissa Judicial Service and interpretation became necessary for Rule 24 of the Orissa Judicial Service Rules, 2007 which prescribed 45% as the minimum in the aggregate. The petitioner in that case scored 44.93% in the aggregate and sought for rounding off his marks. The court held that rounding off or relaxation was not possible, in view of the clear and unambiguous language of Rule 24. In yet another judgment of the Supreme Court in [Bhanu Pratap Vs. State of Haryana and Others,](#) , dealing with the Haryana Civil Services (Judicial Branch) Rules 7 and 8, the Supreme Court was holding that grant of grace marks or rounding off to make up the deficit will be impermissible, if the rules themselves do not prescribe for such course. In yet another judgment in the [The Registrar, Rajiv Gandhi University of Health Sciences, Bangalore Vs. G. Hemlatha and Others,](#) , the rounding off percentage of marks for applicant having a B.Sc. Degree in nursing with 54.71% with aggregate marks was tested in the light of eligibility criterion prescribing 55% as the minimum for securing admission in PG course. The Supreme Court held that the eligibility criteria prescribed for qualifying examination must be strictly adhered to. In effect, the Supreme Court was applying the same yardstick of what was governing through statutory rule to also be applicable to the basic criteria laid down in prospectus for admission to educational institutions. The judgment in the Registrar, Rajiv Gandhi University of Health Sciences (supra) squarely answers the issue of what is confronted in this case to us.

2. The learned Senior counsel would make a point about the fact that there is a provision for relaxation of marks even in the notification issued by the MCI on 15.2.2012 and, therefore, there is nothing sacrosanct about the minimum percentage set out as 40% as eligibility. A power to relax uniformly for all candidates where there are not enough candidates who have secured the minimum is different from a selective application of relaxation for the petitioner to secure himself the eligibility criterion by rounding off marks. If the State applies relaxation rules to the ultimate process and provides across the board reduction of marks on the ground that there are not enough candidates to fill up the vacancies, it might choose so to do and if the petitioner comes by a favourable dispensation in such a course, he will have the benefit of the same. However, as of now, there is no scope for a direction to round off the marks which he has secured less than the requisite percentage in the aggregate to make up the deficit in decimal to whole number. The writ petition is dismissed.