

(2022) 10 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4497 Of 2021

Chander Kala

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 14-10-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80

Citation : (2022) 10 SHI CK 0013

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, Raju Ram Rahi, Sanjeev Kumar Motta

Final Decision : Allowed/Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner, working as Anganwari worker in AnganwarI Centre, Shimola, Tehsil Shillai, District Sirmaur HP and eligible to be considered for the post of Supervisor to be filled-in through Limited Departmental Recruitment (LDR) and placed at Serial No.1 in waiting list of OBC category in such process completed by respondents, has approached this Court seeking direction to respondents to provide proportionate reservation to OBC (UR) category against 10 posts requisitioned in addition to originally notified 41 posts advertised vide advertisement dated 28.12.2019, Annexure P-1, with further direction to respondents to offer appointment to petitioner from the same date i.e. July, 2021 when similarly situated persons were offered appointment, with all consequential benefits of pay, arrears, seniority etc.

2. Admittedly, in pursuance to requisition sent by respondents No. 1 and 2, respondent No.3 initiated the process for filling-up 41 posts of Supervisor through LDR, on contract basis, in the Department of Women and Child Welfare through Advertisement No. 35-3/2019. Out of 41 posts, 23 posts were allotted to

General (UR) category whereas 8, 7, and 3 posts were allotted to SC (UR), OBC(UR) and ST (UR) categories respectively. On declaration of result, 41 posts were filled by appointing candidates of various categories as per allotment of posts referred supra. At the time of preparation of select list, merit/categorywise waiting panel was also prepared wherein petitioner was placed at Sr.No.1 in OBC (UR) category.

3. Vide communication/Office letter No. WCD-A-B(I)9/2012-Estt.(Sup.)Vol-XIX-4400 dated 30.6.2021, respondent No.2-Director sent another requisition for recommendation to fill-up 10 posts in addition to 41 posts but in these additional 10 posts available for appointment of candidates from waiting list, reservation was provided only for Scheduled Caste Category (UR) but no reservation was provided for OBC Category and, as such, respondent No.3 vide communication/notification dated 9 th July, 2021 recommended 10 candidates from existing waiting panel as per additional requisition.

4. On knowing aforesaid filling-up of 10 additional posts of General (UR) category, petitioner through counsel served a legal notice dated 12th July, 2021 under Section 80 CPC upon respondent No.2-Director calling upon to rectify the defect/mistake immediately by sending requisition for appointment of candidates from OBC (UR) category by applying reservation roster strictly.

5. Finding no response to notice, present petition was filed on 11th August, 2021.

6. In response to petition, factual matrix has been admitted by respondent, either explicitly or impliedly, by not responding to same, stating it as a matter of record.

7. Respondent No.3-Commission has justified its action of recommendation made on the basis of additional requisition stating that Commission is Recruiting Agency and its work is limited to recommend the candidates as per R&P Rules and break-up of posts provided by Employer Department with admission that petitioner was at Sr. No.1 of waiting panel of OBC (UR) category and a fresh requisition was received from respondent No.2 vide communication dated 30.6.2021 along with break-up of posts and, accordingly, 10 candidates were recommended from waiting panel as per break-up of posts. Requisition dated 30.6.2021 has also been placed on record as Annexure R3/A, whereby requisition of 10 posts was sent with break-up of category and out of 10 posts, 8 posts were allotted to General (UR) category and two posts were allotted to SC (UR) category. In response to it, respondent No.3-Commission, vide communication dated 9th July, 2021 had recommended 8 candidates from waiting list of General (UR) category and two candidates were recommended from waiting list of SC (UR) category.

8. In response filed on behalf of respondents No. 1 and 2, allotment of 8 posts to General category and 2 posts to SC category, out of 10 additional posts available for recruitment through Limited Direct Recruitment process, has been claimed to have been made in accordance with instructions dated 17.11.2014 issued by

Department of Personnel (Annexure R-1) by claiming that as per these instructions, Limited Direct Recruitment is to be construed as part of promotion and at the time of filling-up these vacancies under Limited Direct Recruitment quota reservation is to be provided only to SC and ST categories and no other category is to be provided reservation under Limited Direct Recruitment and, therefore, no posts were reserved for OBC category. It has been further stated in reply that 41 posts, proposed to be filled under Limited Direct Recruitment, were filled after seeking one time relaxation from the Government to fill-up these posts from residuary category as no eligible Anganwari workers were available from categories of Ex-servicemen, Distinguished Sports Persons, BPL, Specially Abled persons, WFF categories under Horizontal Reservation and thus, these posts were filled from residuary category as a special case, allocating quota to OBC category also. However, in addition, 10 posts of second requisition, reservation only for SC category was given in accordance with instructions issued by the Department of Personnel as, according to these instructions, no posts were to be earmarked to OBC category. It has been claimed that earlier allotment of 7 posts to OBC Category, in first requisition, was an exceptional case but not rule.

9. Admittedly, respondent/State does not consider Anganwari workers its employees but they are considered to have been engaged as Anganwari workers in the ICDS Scheme formulated by Central/State Government, in terms of Scheme/Guidelines for appointment of Anganwari Workers/Helpers under ICDS Programme in Himachal Pradesh on honorary basis, under ICDS Scheme run by Social Justice and Empowerment Department, notified and revised by Government of Himachal Pradesh, vide Notifications No.WLF-B(14)-3/87 dated 11.4.2007, 6.7.2007, 20.9.2007, 17.6.2008, 18.11.2008, 7.1.2009 and 5.10.2009. Under this Scheme, Anganwari Workers are appointed on honorarium basis, paid by Centre and State Governments on sharing basis, as agreed and notified and they are responsible to perform all duties/ responsibilities related to ICDS and Women Empowerment Programmes, as per ICDS manual and instructions issued by the Centre and State Government from time to time. As per Scheme, Anganwari Workers or Helpers engaged under the Scheme shall have no right to claim regularization/absorption/appointment as regular employees of the State Government. Thus, Anganwari Workers are not extended any benefit as an employee of State Government or department of Women and Child Welfare, whereas Supervisor is Government employee of the said department and appointment to the post of Supervisor is made through Direct Recruitment, wherein certain percentage of posts, as per R&P Rules, are to be filled from amongst the candidates working as Anganwari workers by way of Limited Direct Recruitment restricting the eligibility of candidates for such percentage of posts of Supervisor, who are serving as Anganwari Workers with certain qualification with specified length of period of service. Therefore, appointment of Anganwari workers as a Supervisor is not a promotion but is a direct recruitment to the said post, but by limiting the source for such direct

recruitment for a particular percentage of posts. This fact is also evident from Advertisement 35-3/2019 (Annexure P-1) whereby 41 posts of Supervisor were advertised to be filled by direct recruitment by inviting Online applications for direct recruitment to the post advertised through this advertisement.

10. Had Anganwari workers been employees of Department, the Limited Direct Recruitment may have been construed as promotion channel provided to such employees. But Anganwari workers are not employees of Government, therefore, Limited Direct Recruitment provided for Anganwari worker to the post of Supervisor can at no stretch of imagination be considered a promotion. Therefore, plea of respondents-department for not providing any post to OBC (UR) category in additional 10 posts is misconceived, irrational, arbitrary and unreasonable.

11. Instructions dated 17th November, 2014 issued by the Department of Personnel are not the instructions dealing with Limited Direct Recruitment as provided to the post of Supervisor in Women and Child Welfare Department from amongst Anganwari workers who are not employees of State but are only engaged Anganwari workers on honorarium basis under a project/scheme. These instructions are applicable where LDR is provided to the Government employees as promotion to next higher post. Further, quota in these instructions clearly indicates that instructions are related to promotion of Class-IV employees to the post of Clerk, meaning thereby that such limited direct recruitment quota is that quota which has been provided to already serving employees in the department to next higher post i.e. from Class-IV to Class-III post and as discussed earlier Anganwari workers are not any kind of employees of Government, muchless Class-IV or Class-III employees of department.

12. As recruitment to the post of Supervisor from amongst Anganwari workers is a direct recruitment out of non-Governmental employees, who have been engaged as Anganwari workers on honorarium basis under the Project/Scheme, therefore, reservation applicable to direct recruitment at the time of initial appointment shall also be applicable to vacancies/posts available to be filled by way of Limited Direct Recruitment from amongst Anganwari workers as applicable for other direct recruitment and therefore, candidates belonging to Other Backward Classes working (engaged) as Anganwari workers are also entitled for reservation in Limited Direct Recruitment to the post of Supervisor through Limited Direct Recruitment. Thus, omission or commission on part of respondents No.1 and 2 by not providing reservation to OBC category (UR) in 10 additional posts is unconstitutional, arbitrary, unreasonable and irrational and, therefore, respondents No. 1 and 2 are directed to provide proportionate reservation to OBC (UR) category against the 10 posts of Supervisor requisitioned to be filled vide communication/ requisition dated 30.6.2021 and to offer appointment to petitioner against post allotted against the said category, since 1st July, 2021 or the date from which 10 persons recommended for additional posts in pursuance to requisition dated 30.6.2021 were offered

appointment and to extend all consequential benefits, including pay, arrears, seniority etc. to petitioner on or before 31st December, 2022 failing which petitioner shall also be entitled for interest on arrears at the rate of 5% per annum from the date of accrual thereof.

Petition is allowed and disposed of in aforesaid terms.