
(2010) 11 SHI CK 0130
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6237 of 2008

Daulat Ram

APPELLANT

Vs

Himachal Pradesh University

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0130

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed for grant of the following substantive reliefs vide para 7(i) and (ii):

7(i) That the advertisement No. 4/99 to the extent impugned may be quashed and set aside.

7(ii) That respondent University may be directed to treat the post of Lecturer in Painting as Post reserved for Scheduled Caste Category and the application of the Scheduled Caste category candidates alone be entertained.

2. In reply, it is stated in paras 3 and 6(vii) as under:

3 It is submitted that the Executive Council of the Respondent University which is the apex body and appointing authority in respect of teaching staff vide Item No. 11 of its meeting held on 28.12.91 decided as under:

It was decided to follow the Govt. Policy in the matter of reservations to the posts of Lecturer. It was also decided that the reservation will be subject wise and will be effective prospectively in all the three wings of the University i.e. 1) Teaching Departments 2) Directorate of Correspondence Courses and 3) H.P. University Evening College. This will apply to the position of Lecturers to be advertised henceforth.

As per reservation policy, 40 point roster is applicable for direct recruitment made on all India basis by open competition according to which the points 1, 8, 14 and 22 goes to Scheduled Caste category. During the year 1990 one post of Lecturer in painting was created which was filled up on 21.2.1994. Being the single vacancy at that time the post was dereserved. The reservation rules further say that where there is single vacancy in initial recruitment year, the post has to be dereserved and subsequent vacancy is to be reserved for Scheduled Caste category although that may be a single vacancy. According to these instructions the subsequent vacancy of Lecturer in Painting which was created during 1996 was reserved for Scheduled Caste category and was advertised for the said category vide Advt. No. 1/98 dated 15.6.98. Later on the state Govt. vide their letter No. PER(AP)CB(

12)1/ 98 dated 20.8.98 received from the Secretary (personnel) to the Govt. of Himachal Pradesh circulated new reservation policy in terms of Supreme Court decision taken in the case of R.K. Sabharwal v. State of Punjab as well as J.C. Mallick v. Ministry of Railways which was also adopted in the respondent University vide Notification No. 31/ 78HPU(Genl) Vol. VII dated 14.10.98 as per Annexure RI. According to the new reservation policy Model Roster for Cadre strength upto 13 posts are applicable which is annexed herewith and marked as Annexure RI. According to this roster the first six posts are unreserved and 7th post goes to Scheduled Caste category. As per new reservation policy both the posts of Lecturers in Painting created in the Deptt. of Visual Arts goes to open category. Accordingly, the Respondent University vide Advt. No. 4/99 dated 29.11.99 advertised the post of Lecturer in Painting for open category. It is, therefore, amply clear that the respondent University has rightly advertised the post of Lecturer in Painting for open category.

(6vii) In reply to this para it is submitted that as already explained above, with the adoption of new reservation policy in the respondent University w.e.f. 14.10.98, the post of Lecturer in Painting earlier reserved for SC category which could not be filled up before adoption of new reservation policy has to go to open category as per 13 point Model Roster. It is further submitted that the applicant was not a candidate on the basis of previous advertisement. Hence, he cannot take plea at this stage regarding the previous applications filed by reserved candidates as he was not the candidate at that time and the applicants who had applied as reserved candidates earlier can be considered as general candidates at this stage if otherwise eligible.

3. In case the petitioner still has any surviving grievance with regard to the factual and legal position, it will be open to him to approach the respondent alongwith a copy of this judgment within a month, in which case the respondent will look into the matter and while considering the case of the petitioner in the light of the above directions, the petitioner shall also be afforded an opportunity of being heard, if so desired and the law laid down by the Hon'ble Supreme Court in (1) S. Rajendran Vs. Union of India and Others, (2) Superintending

Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others, and (3) Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., shall also be taken due note of.

4. It is clarified that since the petitioner has been agitating the matter since January, 2000, earlier before the H.P. State Administrative Tribunal (since abolished) and thereafter before this Court, the respondent University may consider grant of relaxation in the upper age limit in favour of the petitioner.

5. The petition stands disposed so also the pending CMP(s), if any. Interim stay, if any, shall also stand vacated after conclusion of the exercise, as above.