

(2010) 10 SHI CK 0345
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 2 of 2009

Kavita Behal

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) 10 SHI CK 0345

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—Petitioner has prayed for the following relief:

(i) Quash the appointment of respondents No. 7 and 8 who were below the applicant in the written test (merit) and who have been awarded higher interview marks by the Respondent No. 4 & 5 in a most whimsical, arbitrary, illegal biased manner ignoring the merit of the applicant in the written test.

(ii) Quash the appointment of respondents No. 9 to 13 who were below the applicant in the over all merit list.

(iii) Respondent No. 1 to 4 be directed to appoint the applicant to the post of Vidya Upasak in Rajgarh Sub Division, District Sirmaur.

(iv) Or in the alternative respondents No. 1 to 4 be directed to appoint the applicant to the post of Vidya Upasak in Rajgarh Sub Division, District Sirmaur over and above Respondents No. 7 to 13 under general U/R category w.e.f. their date of appointment with all consequential benefits including wages, seniority, increments etc. etc.

(v) Records of the case may be called for.

(vi) Heavy cost be imposed upon the Respondents for forcing the applicant to approach the Hon"ble Tribunal instead of themselves considering the case of the applicant despite clear cut enquiry report favouring the case of the applicant for

appointment.

2. In spite of opportunities afforded reply has been filed only by respondents No. 2, 4 & 5. Respondents No. 1 & 3 have chosen not to file the same. As per office report notice stands issued to private respondents No. 7, 9, 10, 12 & 13. They have also chosen not to come forward and defend the case.

3. Facts are not in dispute. For the post in question petitioner appeared in written test. She was also interviewed which was held on 20.6.2000. However her name was not reflected in the final list.

4. In relation to the entire selection process inquiry was instituted by the State Government. The findings of the report (Annexure A-1), inter alia reads as under:

There were four posts of Ex-serviceman, 2 for general category and one each for OBC and SC category. No suitable candidate was found from Ex-servicemen sub category under category general OBC & SC. Hence four posts of Ex-serviceman were kept vacant. Candidate Kavita Behal Roll No. 61457 has scored total 62 marks in written examination and 2 marks in interview and her total marks become 64. The last candidate recommended for selection under this category is Virender Singh Roll No. 61131 who has scored total marks 60 (W-53, I-07) which are less than the total marks 64 of Kavita Behal Roll No. 61457. There are some pencil writings in remarks column which appears to be written "V. poor". Similarly in column before remarks word "D" appears to have been written almost against every candidate which makes no meaning. No cutting, overwriting, addition or deletion in marks awarded appears to have been done. It appears that name of candidate Kavita Behal Roll No. 61457 has been left out inadvertently without any intention of causing wrongful gain or wrongful loss to any candidate.

In view of facts stated above, it is clear that most deserving candidate namely Kavita Behal who scored highest marks (62) in written test and total marks including interview marks was deprived of her legitimate right of appointment due to careless and casual approach of interviewing board. In the interest of justice matter may be taken up with the Govt. to appoint Kavita Behal Roll No. 61457 as Vidya Upasak in place of Virender Singh Roll No. 61131 or she may be advised to approach the Hon'ble State Administrative Tribunal for this injustice. Matter cannot be probed further as entire record pertaining to selection of Vidya Upasaks including of application forms, cut list, I cards and used question papers cum answer booklets etc. unused question papers and answer sheets have been destroyed by HP SSB Hamirpur on 23.03.2001 (Copy of destruction certificate attached).

(Emphasis supplied)

5. In spite of recommendations petitioner was not given appointment. She applied under the Right to Information Act and gathered the necessary information. She also made a representation dated 18.6.2007 (Annexure A-2). Since the Government did not respond to the same instant petition was filed.

6. In the reply only defence taken is that petition is not maintainable on account of delay and latches.

7. Contention needs to be rejected for the simple reason that inquiry initiated by the State concluded only in the year 2007 and when the Government failed to respond to the petitioner's request, instant petition was promptly filed in the year 2007 itself. Mistake is totally that of the State. Much can be said about the same.

8 Be that as it may be, fact is that petitioner was found to be more meritorious. She had scored more marks in the written test than candidate at Sl. No. 61131. In fact in the written examination she scored highest marks amongst all the private respondents.

9. Consequently petition needs to be allowed. Respondents No. 1 to 5 are directed to consider giving appointment to the petitioner for the post in question, as prayed for. Necessary action be positively taken within a period of three months from the date of receipt of the certified copy of the order.

10. Needless to add, all benefits to which petitioner is entitled to, shall be disbursed in accordance with law.

11. With the aforesaid observations petition stands disposed off.