
(2011) 07 SHI CK 0122
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 11836 of 2008

Opinder Negi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 07 SHI CK 0122

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Respondent-State has laid down the guidelines for providing reservation to the distinguished sports persons in various services under the Government vide notification dated 28th May, 1999 (Annexure A-3). 3% reservation is provided by way of this notification in direct recruitment posts in Class-III & Class-IV categories in all the State Government Departments, Boards, Corporations and Autonomous Bodies etc.. According to the eligibility criteria, the sports persons participating in games as per Annexure (A) and falling within categories I to IV Annexure (B) will be the distinguished sports persons. Sports persons falling in these categories only will be eligible to claim benefit of reservation. According to the Regulation of reservation, the distinguished sports persons are required to fulfill educational and other professional qualifications prescribed for the post. The Department of Youth Services & Sports acts as nodal agency for implementation of reservation in all classes of posts. The sports persons belonging to category-I are eligible for direct employment in various Government Departments/Boards/Corporations etc. against reserved posts. It is further stipulated in the notification dated 28th May, 1999 that the Department of Youth Services & Sports will set up a Sports Person Employment Cell and maintain a live register with respect to all eligible sports persons. Thereafter, the recruiting department will send requisition to the Department of Youth Services &

Sports for sponsoring names against sports quota whenever recruitment is to be made. The sports persons recruitment cell is to sponsor one name per vacancy from live register according to priority as per rules from category I, II & III. The requisition department is thereafter required to recruit these persons only. It is specifically stipulated in the notification that in case No. suitable candidate is available in categories I, II & III, the Sports Persons Employment Cell will issue non-availability certificate. After non-availability certificate is obtained for categories I, II and III, the recruiting department will be free to fill up the sports vacancy out of category-IV through H.P. Public Service Commission/Subordinate Staff Selection Board or Department Recruitment Committee in accordance with the recruitment procedure laid down, but they will give preference in category - IV to Gold Medal winner over Silver medal winner and Silver medal winner over Bronze medal winner.

2. Petitioner got his name registered with Respondent No. 3-Department on 20.12.2001. The Education Department sent a requisition for filling up the posts of T.G.T. (Non-Medical/Medical/Arts) on 13th August, 2004. The name of Petitioner was registered in category-III and his name was sponsored on 6th September, 2004. He was interviewed on 29.11.2004. Respondent No. 3 has also sent a letter dated 07.03.2005 to the Director of Education, wherein the name of Petitioner is at Sr. No. 1 and the names of private Respondents are below him.

3. It will be apt at this stage to take note of letter dated 07.03.2005 (Annexure A-4). It is specifically mentioned therein that the names of the sportsman sent by this office vide different letters have been sent according to the seniority list and the Director was requested not to dis-obey the departmental merit list. It was further stated therein that the Petitioner belongs to Class-III and the other sportsmen belong to Class-IV. However, fact of the matter is that the Petitioner was not offered appointment to the post of T.G.T. and the persons who were in category -IV, were appointed.

4. Only Respondents No. 1 to 4, 5, 6, 8, 9, 11 and 14 have filed the replies.

5. Mr. C.N. Singh, learned Counsel for the Petitioner has strenuously argued that the action of the Respondent-State not to consider the candidature of the Petitioner for the post of T.G.T. though he belongs to category-III candidates is illegal, arbitrary and, thus, violative of Articles 14 and 16 of the Constitution of India. He then contended that his client should be considered for appointment from the date the persons belonging to Class-IV category were appointed as T.G.T. (Arts).

6. Mr. Vikas Rathore, learned Deputy Advocate General has brought to the notice of the Court that the Petitioner was offered appointment initially as T.G.T. on contract basis, however, subsequently he was offered regular appointment w.e.f. 10.03.2009 as per order dated 30.05.2011.

7. Mr. Aman Sood, Mr. P.K. Singh, Mr. Hamender Chandel, Mr. J.S. Bagga and Mr. P.P. Chauhan, Advocates have justified the appointments of their clients to the

posts of T.G.Ts. under sports quota.

8. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

9. It is evident from the facts enumerated hereinabove that the Petitioner has got his name registered with Respondent No. 3 on 20.12.2001. His name was sponsored by Respondent No. 3 to Respondent No. 2 on 06.09.2004. He was also interviewed. The Court is of the considered view that since the Petitioner has been placed in category-III, he was required to be considered for appointment by giving him preference over private Respondents, who, admittedly, as per Annexure A-4, belong to category-IV. It is evident from the phraseology employed in the notification dated 28.05.1999 that the sports persons recruitment cell will sponsor one name per vacancy from live register according to priority as per rules from category I, II and III. Thereafter, the requisition department has to recruit these persons only and in case, No. suitable candidate is available from categories 1, II & III, the non-availability certificate has to be issued by the Sports Persons Employment Cell. In the instant case, the Petitioner though available was not considered for appointment to the post of T.G.T. and the private Respondents, who belong to category-IV were considered and appointed as T.G.Ts.. Initially, the stand of the Respondent-State, as per the affidavit filed, was that since the Petitioner belongs to 2004 batch, he was in waiting list. This position was contrary to the record, since few of the private Respondents belonging to category-IV, as per the record were also belonging to 2004 batch, but were appointed as T.G.Ts.. Respondent-State was directed to file a supplementary affidavit to ascertain why the Petitioner has been overlooked. The first supplementary affidavit was filed on 11th May, 2011, reiterating the stand taken in the reply that since the Petitioner has passed his B.Ed. in 2004, he will belong to 2004 session and his name figure at Sr. No. 6 and he was still at Sr. No. 2 in the waiting list. It was also reiterated that B.Ed. session of all the selected candidates was before 2004. This position was found to be incorrect, as noticed above. The candidates who have been selected and arrayed as Respondents, few of them belong to 2004 batch. Ultimately, the Respondent-State admitted in the second supplementary affidavit filed on 31st May, 2011 that the then screening committee has not considered the Petitioner for appointment despite being sponsored in category-III under the sportsman quota. In the meantime, the Petitioner was also offered appointment on contract basis w.e.f. 10.03.2009. It was directed vide order dated 30.05.2011 issued by Respondent No. 2 that the Petitioner will be deemed to have been appointed on regular basis from the date of his appointment on contract basis, i.e., 10.03.2009. The court is of the considered view that the Petitioner ought to have been appointed on regular basis from the date the persons belonging to category -IV were appointed as T.G.Ts.. The Petitioner cannot be made to suffer for the illegal action of the screening committee, which has overlooked to consider his case, though he belonged to category-III (sports quota).

10. Since the private Respondents have already been appointed, though not strictly as per the procedure prescribed under notification dated 28th May, 1999, their appointments at this juncture is not disturbed in the interest of justice.

11. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. The Petitioner will be deemed to have been appointed T.G.T. (Arts) on regular basis from the date, the private Respondents were appointed with all consequential benefits. The needful shall be done within a period of ten weeks from the date of production of a certified copy this judgment by the Petitioner. No costs.