

(2020) 11 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 3088 Of 2019

Rahul Patial

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Citation : (2020) 11 SHI CK 0006

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Onkar Jairath, Shubham Sood, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur, Seema Sharma, Yudhbir Singh Thakur, Ajay Sharma,, Aanandita Sharma, Meera Devi, Hemant Kumar Thakur

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner asserts that private respondent No. 5 Shubham Chaudhary has been wrongly selected and appointed as a Constable against a post meant for General (unreserved) category. Respondent No. 5 having applied and availed the benefit of age and fee relaxation in the recruitment process is required to be considered under the OBC category.

2. A recruitment notice was issued on 3.3.2019 for filling-in various posts of Constables. 81 posts of Constables were to be filled in District Una. As per recruitment procedure, following criteria in respect of age limit for candidates belonging to different categories was prescribed:

Sr. No.

Category

Age

Edu. Qlf.

Height

Chest

1.

General

18 to 23 years

xxxx

xxxx

xxxx

2.

SC/ST

18 to 25 years

xxxx

xxxx

xxxx

3.

OBC

18 to 25 years

xxxx

xxxx

xxxx

In terms of Note (i) of clause-3 of the recruitment notice, the cut-off date for calculation of upper and lower age was 1.1.2019 for all categories.

Petitioner with 16.9.1996 as his date of birth applied as a general category candidate under the recruitment notice. Respondent No. 5 Shubham Chaudhary with 1.1.1996 as his date of birth had applied as an OBC candidate.

Respondent No. 5 with 65 marks and date of birth as 1.1.1996 belonging to OBC category was placed at serial No. 14 of the merit list of male general (unreserved) category for recruitment of police Constable in District Una. Petitioner with 64 marks was placed at serial No. 1 in the waiting list of male general (unreserved) category.

3. Instant writ petition has been instituted by the petitioner asserting that he was wrongly kept at serial No. 1 in the waiting list of male general (unreserved) category. Respondent No. 5-Shubham Chaudhary had applied as an OBC

candidate in the recruitment process after availing the benefit of age relaxation, therefore, merely on the basis of higher marks secured by respondent No. 5, his name could not be reflected in the merit list of general category candidates.

4. The factual position projected in the writ petition has not been disputed either by the State or by any of the private respondents including respondent No. 5 during hearing of the writ petition. Respondent No. 5 with 1.1.1996 as his date of birth had completed 23 years on 31.12.2018. As per F.R. 56(a):-

"Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years: Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years....."

Respondent No. 5 was in his 24th year on the cut off date of 1.1.2019. For general category candidates, the age limit was 23 years as on 1.1.2019 whereas candidates belonging to OBC category upto 25 years of age as on 1.1.2019 could partake in the selection process. For participating in the selection process, respondent No. 5 has availed the relaxation in age limit as provided in the recruitment notice for the candidates belonging to OBC category. Hence, in view of judgment passed by Hon'ble Apex Court in (2019) 7 SCC 383, titled Niravkumar Dilipbhai Makwana versus Gujarat Public Service Commission and others, respondent No. 5 could not be allowed to migrate to general category on the basis of his marks.

5. In the supplementary affidavit filed on behalf of respondents No. 1 to 4, it has been submitted that:- shifting of respondent No. 5 from general category merit list to his own category i.e. OBC merit list would in turn result in displacement of respondent No. 6 Shiv Kumar, who is presently placed at last serial No. 6 of merit list of male OBC (unreserved) and belongs to IRDP category; Respondent No. 6 would switch over to merit list of male OBC (IRDP) category; This will ultimately adversely affect respondent No. 7 Amandeep, who will move out of the merit list of male OBC (IRDP) category and will eventually lose his provisional appointment as a Constable in male OBC (IRDP) category.

Learned Counsel for respondent No. 7 submitted that for the faults of respondents No. 1 to 4, respondent No. 7 may not be made to suffer as he had not concealed any facts in his application and pursuant to his provisional appointment, respondent No. 7 is currently undergoing training.

Respondent No. 5 having admittedly taken the benefit of relaxation in age limit is required to be shifted from general category merit list to the merit list of male OBC (unreserved). If in such process respondent No. 7 gets adversely affected, even then the logical consequences flowing from migration of respondent No. 5 from general category merit list to OBC (unreserved) merit list cannot be halted. We accordingly allow this writ petition by directing respondents No. 1 to 4 to re-draw the merit list of provisionally selected male general (unreserved) category

for recruitment of police Constables in District Una, batch-2019, by shifting respondent No. 5 Shubham Chaudhary to his appropriate place in the merit list of male OBC (unreserved) category in light of the observations made heretobefore. Entire resultant process be completed within a period of two weeks from today.

Petition is allowed in these terms. Pending application(s), if any, shall also stand disposed of.

List for compliance on 23.11.2020.