
(2011) 09 P&H CK 0212
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3280 of 2011

Rajesh Shekhu

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(1), 16(4)

Citation : (2011) 164 PLR 692

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Haryana Public Service Commission had advertised 1317 posts of Lecturers (School Cadre) in various subjects 320 posts out of these were for Lecturers (School cadre) in the subject of English. Last date of submission of the application was 17.07.2009. The petitioner being fully eligible applied for appointment to the post of Lecturer (School Cadre) English under BC Category. The Commission decided to shortlist the candidates by conducting a screening test. In this regard, public notice was issued on 8.12.2010 and the screening test for the post of Lecturer (School Cadre) English was scheduled on 26.12.2010. The petitioner appeared in the screening test. The result thereof was declared on 14.12.2010.

2. Another notice was issued on 14.12.2010 informing the candidates that the candidates three times to the number of posts would be called for interview. The screening test was to consist of 100 questions from the syllabus of post graduate level and there was no negative marking. On 21.12.2010, a corrigendum was issued that 33% seats would be reserved for women in Haryana as horizontal reservation in view of the law laid down in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217.

3. The result of the screening test was declared on 31.12.2010. The petitioner

was shown to have scored 55 marks out of 100 and was declared unqualified. The petitioner has primarily not been shortlisted as he did not fall within the list of three times candidates called for interview for the post of Lecturer (School Cadre) English. However, the last candidate in General (Male) category, who scored 50 marks, is shown to have qualified and called for interview for the post of Lecturer (School Cadre) English. The petitioner, thus, has made a grievance that having scored more marks than the last General Category candidate, he has been declared disqualified for interview, whereas the General Category candidate, who has scored less marks in the screening test, has been shortlisted. The petitioner, accordingly, has filed this writ petition to seek direction that he be shortlisted for interview being more meritorious than General Category candidate.

4. In response to notice of motion, the short reply is filed on behalf of the respondent/Commission. Having noticed the challenge raised in the writ petition, it is urged that the petitioner has approached this Court primarily on the ground of violation of Articles 14 & 16 of the Constitution and that the normal rule of reservation has been deviated. Though it has been so pleaded, but the respondent-Commission has taken this to be case of the petitioner that he being Backward Class (Male), has been barred from competing under the General Category by fixing more cut off marks. That is not the case as projected by the petitioner. The commission, however, would term this to be a wholly misconceived in law.

5. After making detailed reference to the posts advertised, it is stated that 32 posts were reserved for Backward Class candidates out of which 11 posts i.e. 33% kept for female as a horizontal reservation. As per the counsel, candidates three times of number of advertised posts for BC were to be shortlisted and on this basis, cut off so arrived for BC category, worked out to be 56 marks. The petitioner, who scored 55 marks, thus, was treated to be unqualified. It is otherwise not disputed that the candidates of General (male) category scoring 50 marks have been called for interview and has been shortlisted.

6. The plea of the petitioner for shortlisting him is termed as fallacious. It is stated that the Commission had only resorted to a process of shortlisting the candidates and the marks obtained in the screening test are not going to be counted for determining the merit/select list, which was solely based on the interview. It is also stated that the right of the Commission to shortlist the candidates is a well accepted norm in service jurisprudence. In this regard, reference is made to number of precedents like Doctor Lovkesh Kumar and others v. State of Punjab 1998 (1) RSJ 566. It is further pointed out that the rule of reservation i.e. vertical reservation is to be implemented and operated at the stage of selection and appointment and would not apply at the time of shortlisting the candidates. The case also is that only the candidates three times of the number of vacancies are required to be shortlisted and this list cannot be permitted to increase beyond this limit. Cut off marks for various categories have also been disclosed in the short reply and it is pleaded that the writ petition may

be dismissed.

7. In order to justify the stand, counsel for the Commission has relied upon *Chhattar Pal v. State of Haryana and others*, 1999(2) RSJ 22. The issue before the Court in this case apparently related to the power of the Commission to shortlist the candidates. It is held that the competent authority can evolve appropriate mechanism to call a limited number of candidates for selection. No doubt, the recruiting authority is not bound to invite for selection all those who apply for recruitment and fulfill essential qualifications. But the proposition that is arising in the present case did not arise in *Chhattar Pal's* case (*supra*). Counsel then refers to *Arun Malhotra v. Regional Engineering College, Kurukshetra & others*, 1996 (3) RSJ 694. In this case, the Court found that number of candidates called for interview in accordance with rule. Exclusion of the petitioner at the time of shortlisting, was held to be not arbitrary and unfair. The plea in this case was that the petitioner was excluded from consideration by adopting the process of shortlisting. The issue that the result of shortlisting leading to unfair consequences apparently was not under consideration in this case as well. In *Smt. Nisha Sharma v. Haryana Staff Selection Commission* 1998(4) RSJ 679, the question involved was of shortlisting the candidates for the post of male teacher or for female teacher. Different minimum marks were fixed for male and female candidates and this Court found that this may not be a ground to hold that the criteria is ultra vires to Articles 14, 15 & 16 of the Constitution. The main question in this case was on the basis of an amendment pursuant to the ratio between male and female candidates, which according the petitioner was made applicable with retrospective effect. Finding that the amendment had not been made with retrospective effect, the Court found that criteria could not be quashed on the ground that it is ultra vires to the amended recruitment rules. The ratio of law laid down in this case would also not strictly apply to the facts of the present case.

8. On the other hand counsel for the petitioner has referred to the case of *Jitendra Kumar Singh and another v. State of U.P.*, 2010 (4) RSJ 62. In this case, the General Category candidates had challenged the action of the respondents in appointing reserved category candidate against the General category post, who had obtained more marks than the last selected candidate in General Category. The contention on behalf of the General Category candidates as raised was that after availing the benefit of relaxation in fee and upper age limit of 5 years, OBC reserved candidates would stand deprived to compete against the General Category candidates. This submission was held without any foundation. Noticing the reasoning in this regard the Court has held:-

It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in

age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in view of Articles 14, 15, 16 & 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates at par with General Category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.

9. Even in *Indra Sawhney's* case (supra), the Court recognised the larger concept of reservation which would include incidental and ancillary provisions with a view to make the main provision of reservation effective. It is noticed as under:-

743. The question then arises whether Clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question, it is well to examine the meaning and content of the expression "reservation". Its meaning has to be ascertained having regard to the context in which it occurs. The relevant words are "any provision for the reservation of appointments or posts". The question is whether the said words contemplate only one form of provision namely reservation simplicitor, or do they take in other forms of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16(4) induces us to take view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in *Karamchari Sangh* are instances of Supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e., to ensure that the members of the reserved class fully avail of the provision for reservation in their favour....

10. Though not exactly, but this ratio of law in this case may have some relevance. Besides the issue arising in the present writ petition, it may have to be noticed that reservation under Article 16 of the Constitution includes the preference concession and exemption. The mandate of the Constitution is to bestow certain benefits to the reserved category candidates and with this purpose special provision in the Constitution has been so harmonized. Under these circumstances, can a reserved category candidate who is more meritorious, ousted from a zone of consideration on the ground that he has not

been able to make grade for shortlisting on the basis of number of vacancies? It is not disputed before me that after selection, if the reserved category candidate is found to be more meritorious than last shortlisted General Category candidate, then he would have to be adjusted against the seat meant for General Category candidate and thus, additional seat would fall in the reserved category candidates even more than the seat reserved for them. Undisputedly, the petitioner is more meritorious than the General Category candidate, who has been shortlisted, whereas the petitioner has not been able to get shortlisted. The benefit of reservation rather is operating conversely and has led to prejudice and in a way would violate the mandate of the Constitution for making special provision for reserved category candidates.

11. A short solution of this problem can easily be found. To do away the effect of merit being sacrificed for reserved category candidate for the purpose of shortlisting the merit mainly for BC can certainly be brought at par with the merit of last shortlisted candidate in the General Category. The submission made by the counsel for the Commission that candidates not more than three times of vacancies are to be shortlisted, in my view, would not be a bar to prepare the list of shortlisted candidates. It is a general view that three times of vacancies, the candidates are to be shortlisted. There is no provision or rule brought to my notice where exception cannot be made to this principle. There may be example in large number of cases, where more than three times candidates are shortlisted for final selection. Recently candidates 10 times in number of vacancies have been shortlisted in Judicial Branch Examination. Even otherwise, it may be noticed that even if merit is to be seen as urged by the Commission, still the chance of shortlisting more than three times candidates to the number of vacancies in various categories, cannot be ruled out. An example in this regard can be noticed. Suppose if more than one candidate score equal marks and are bracketing on merits, they all will be shortlisted. Thus, candidates more than three times the vacancies would be shortlisted. If the submission of the Commission is accepted, then it may not possibly be done. Same would be the situation in all reserved category posts if more than one candidate has obtained same merit equal to shortlisted candidate by obtaining 56 marks. All such candidates should have to be shortlisted being bracketed. This would also increase the number of candidates more than three times the vacancies. Thus, the submission that the candidates more than three times of vacancies cannot be shortlisted, apparently is misplaced.

12. The solution to the problem, in my view, is that the candidates belonging to reserved category of Backward Class, who have obtained marks equivalent to the last shortlisted candidate in General Category, can be shortlisted in the category of BC. After all, it is a case of shortlisting of candidates and not a selection. If the mode as adopted by the Commission is allowed it will debar the meritorious candidates of reserved category from consideration and ultimate selection. This process as held above, in my view, would be fair and would not result in any prejudice to any other candidate. No candidate in the General Category is going

to be ousted if this method is adopted. This will only increase the area of consideration by giving chance to some more candidates in a reserved category, who are more meritorious than the General category candidates. This, to my mind, would be a fair approach and would undo the prejudice being caused. If such a candidate had applied in the General Category, then he would have been shortlisted. Is he not to be shortlisted because he is from reserved category? If it is allowed, then it would negate the mandate of Constitution" The course as adopted would also advance the aim of the Constitution of making special provision for reserved category candidates like S.C. & B.C. Thus, all the BC category candidates, who are equal in merit to General Category candidates, may be shortlisted and permitted to appear for the final selection.

The writ petition is allowed in the above terms.