

(2024) 10 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CWP No. 10705 Of 2024

Saurabh Sharma

APPELLANT

Vs

Central University of Himachal Pradesh

RESPONDENT

Date of Decision : 03-10-2024

Acts Referred:

Citation : (2024) 10 SHI CK 0012

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Vishwa Bhushan, Balram Sharma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J

CMP No.18011 of 2024

1. In view of the averments made therein, present application is allowed and disposed of.

CWP No.10705 of 2024

2. Mr. Pushpinder Jaswal, learned Additional Advocate General, accepts notice on behalf of the respondents.

3. By way of this petition, the petitioner has prayed for the following reliefs:-

" i) That the action of the respondent- university to called the incumbents under application no's 2300042671, 2300042353, 2300042152, 2300044095, 2300041479, 2300041476 for personal interview for the post of Assistant Professor, Department of environmental Science, under OBC (Non- Creamy Layer) as well as under un-reserved category is arbitrary and illegal, hence the notice dated 06-09-2024 (Annexure-P/4) qua the post of Assistant Professor, Department of Environmental Science, being illegal, arbitrary and against the spirit of the Constitution of Yadia, may kindly be quashed and set aside.

(ii) That the respondent be directed to prepare fresh list for personal Professor, interview for the post of Assistant Professor Environmental science, in accordance with law.”

4. Brief facts necessary for the adjudication of this Writ petition are that an Employment Notice was issued in terms of Annexure P-2, dated 17.01.2024 by the Central University of Himachal Pradesh. In terms of this Employment Notice, two posts were advertised in the Department of Environmental Science on contract basis due to Lien Vacancy. One post was reserved for OBC Category and the other was the Open Category post. The petitioner being eligible applied for being considered for Open Category post as he was fulfilling the eligibility criteria.

5. The grievance of the petitioner is that undue advantage has been given to the candidates belonging to the OBC Category as candidates having Form No.2300042671, 2300042353, 2300042152, 2300044095, 2300041479, 2300041476, who were from OBC Category, stood invited for interview both for the posts reserved for OBC Category as well as General Category, which as per the petitioner is bad in law.

6. Learned counsel for the petitioner has submitted that an OBC Category candidate has a right of consideration only against the post reserved for OBC Category and at the stage of inviting for interview, when inter alia merit of the candidates has not been assessed, the act of inviting candidates who had applied under the OBC Category, for a post under the Open Category is bad in law.

7. When this case was listed on 30.09.2024, the following order was passed:-

“Learned Deputy Solicitor General of India, appearing for the respondent has handed over a copy of instructions, dated 28.09.2024, perusal whereof demonstrates that in terms of the criteria that was adopted by the Screening Committee, those candidates who were belonging to the OBC Category, but who have not taken benefit of relaxation were invited for interview under Open Category as per their over all merit assessed by the Screening Committee as per the U.G.C. Regulations.

Faced with this situation, learned counsel for the petitioner prays that the matter be taken up on 01.10.2024, to enable him to have instructions.

As prayed for, list on 01.10.2024.”

8. These orders were passed on the basis of the instructions that were imparted by the learned Deputy Solicitor General of India, dated 28.09.2024, which are being reproduced hereinbelow:-

“The Central University of Himachal Pradesh advertised various Teaching positions through Direct Recruitment vide its Employment Notice No. 001/2024 dated 17.01.2024 including 02 posts of Assistant Professor (Lien Vacancy) in the Department of Environment Science with the bifurcation as one post under UR and one post under OBC. The last date for receipt of applications was

14.107.2022 which was further extended to 07.02.2024 The copy of employment notice is placed at Annexure-R1

2. The Petitioner vide his Application Form No. 2300043979 has applied through Samarth Portal for the post of Assistant Professor in the Department of Environment Science which was advertised under Unreserved Category. The copy of the Application Form is attached at Annexure-R2.

3. The University in the Employment Notice has made it clear that the recruitment of teaching positions should be made strictly in accordance with provisions as contained in UGC Regulations 2018 as amended from time to time. In the case of Assistant Professor the criteria as contained in Appendix II, Table 3A of UGC Regulations 2018 (Annexure R6). The Samarth Portal developed by Ministry of Education has inbuilt feature of allotment of marks as per provisions of Appendix-II Table 3A of UGC Regulations 2018. The University constituted Screening Committees to screen the applications so received for various teaching positions advertised by the University Employment Notice No. 001/2024. These applications so received on the Samarth Portal were screened by duly constituted Screening Committee(s). The Screening Committee checked and verified the record of each applicant uploaded by them on Samarth Portal and determined their eligibility strictly in accordance with the minimum qualification prescribed by the University vide Employment Notice No. 001/2024 dated 17.01.2024. After the screening the University uploaded the status of the applications for the post of Assistant Professor in the Department of Environment Science vide Public Notice dated 16.08.2024. The notice is attached at Annexure-R3 where in the total academic score of the candidates declared by the Screening Committee is given and all the applicants were advised to go through their details carefully and submit discrepancy/ objections/ representation, if any to the University latest by 19.08.2024 till 05:30 PM.

4. Objections/Observations so received from the applicants were again placed before the Screening Committee and the Screening Committee after examine the representations updated the score of the candidates. Accordingly, the final list of candidates who have been Provisionally Shortlisted for Personal Interviews as per University Rules are uploaded on website vide Important Notice dated 06.09.2024. Copy of the important Notice is attached at Annexure-R4 for kind perusal of Hon'ble Court.

5. It is pertinent to mention here as per the decision given by the Executive Council of the University in its 59th meeting held on 15.02.2023 vide item No. 59.13 in case of recruitment to teaching positions in the University in future, maximum 30 candidates (who are found "Provisionally Eligible for the said post after recommendations of Screening Committee) be shortlisted /called for personal interview against first post. The Executive council further approved that in case of each subsequent teaching post (of same cadre, same subject and same category), additional fifteen candidates (who are found 'Provisionally Eligible for the said post after recommendation of the Screening Committee) be

called/shortlisted for personal interview.

1. The Executive Council ratified and approved the constitution of the Screening Committees by the Vice-Chancellor alongwith the recommendations of these Screening Committees.

2. The Chairman of the Executive Council apprised the Executive Council about the current provision of the university regarding number of candidates to be shortlisted. / called for interview against one post and the subsequent posts. After detailed deliberations on the Issue, the Executive Council approved that in case of recruitment to teaching positions in the university in future, maximum 30 candidates (who are found Provisionally Eligible for the said post after recommendation of the Screening Committee) be shortlisted/called for Personal Interview against first Post. The Executive Council further approved that in case of each subsequent teaching post (of same cadre. same subject and same category), additional fifteen candidates (who are found Provisionally Eligible for the said post after recommendation of the Screening Committee) be called/shortlisted for Personal Interview.

3. It was also approved by the Executive Council that for conducting convening Selection Committee meeting for teaching positions in the university in future, there should be atleast three.

6. It is submitted that as per Rules (Annexure-R5) the candidates who have applied for the post of Assistant Professor and belongs to OBC category but not claimed any relaxation are also eligible for post under Unreserved Category. When the merit of 30 candidates have been drawn for OBC cut off marks is 83 and for Unreserved Category cut off marks are 67.5. These sis candidates scored more than 87.5 so candidates are eligible (under their own merit) for both the categories under own merit Since all these candidates have not claimed any kind of relaxation under OBC category they become eligible for Unreserved Post as well. It is their right to attend the interview for both the posts. All other OBC candidates whose score is below 87.5 (Cut off marks for UR post) have been not called for interview for past in Unreserved category, Details of marks obtained by these candidates are given in the list uploaded vide important notice dated 6. 09.2024."

9. Learned Deputy Solicitor General of India has submitted that in terms of Annexure P-4, appended with the Writ petition, dated 06.09.2024, it was clear that for one vacancy maximum 30 candidates were to be invited for interview. How these 30 candidates were identified was duly spelled out in the instructions dated 28.09.2024. He further submits that after the evaluation of the scores of the candidates as per the UGC Guidelines, as the candidates belonging to the OBC Category were found to be amongst the 30 most meritorious candidates who had applied, they were invited for the Open Category seat also, because they have a right to be considered under this category also in addition to the OBC Category.

10. I have heard learned counsel for the parties and have also carefully gone through the petition as well as documents appended therewith as also the documents which were later on filed by the petitioner, which are taken on record and also the instructions placed before the Court by the learned Deputy Solicitor General of India.

11. A perusal of the documents appended with the petition demonstrates that as a large number of candidates had applied for the two posts of Assistant Professor in the stream concerned, both under the Open Category as well as under the Category of OBC, in order to narrow down the invitation for interview to 30 candidates, a Screening Committee was constituted. It determined the eligibility of the candidates as per the UGC Guidance, in terms of the academic score, research obtained as per Appendix-2, Table-2 of UGC Regulations, 2018, which was the test for the eligibility even in terms of Annexure P-2. The documents further demonstrate that the assessment of the merit of the candidates so made by the Screening Committee was uploaded on the website and objections were invited. Petitioner did not file any objection thereto, meaning thereby that the merit of the candidates that was assessed by the Screening Committee was not disputed by the petitioner. It is further not the case of the petitioner that the candidates belonging to the OBC Category who have been invited for interview under the Open Category are less meritorious than him as per the marks allotted by the Screening Committee. This fact is undisputed. In other words, all those candidates who have been invited under the OBC Category are those who have scored more marks in the eligibility criteria/assessment criteria as was laid down by the Selection Committee than the petitioner.

12. It is settled law that an Open Category seat is open for everyone, meaning thereby that even a candidate who otherwise belongs to reserve category can apply for the post in issue and if he is selected against the post then he is considered to be selected as an Open Category candidate. Simply because some of the candidates who had applied under the OBC Category were invited for interview for the Open Category post does not render the act of the respondents to be bad in law, for the reason that if an OBC candidate otherwise on the basis of his merit was eligible to find a place amongst the 30 most meritorious candidates who are to be invited for interview under the Open Category seat then they had a legal right to be invited as such besides their right of being considered against the post reserved for the OBC Category.

13. At this stage, it is necessary to refer to the Hon'ble Five Judge Bench judgment of the Hon'ble Supreme Court in R.K. Sabharwal and others vs. State of Punjab and others, (1995) 2 Supreme Court Cases 745, in which Hon'ble Supreme Court has been pleased to hold that when a percentage of reservation is fixed in respect of a particular cadre and the Roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve category and candidates belonging to the General Category are not entitled to be considered for the reserve posts.

On the other hand the reserve category candidate can compete for the non-reserve post and in the event of their appointment to the said post their number cannot be added and taken into consideration for working out the percentage of reservation.

14. In the light of the above discussion this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous applications, if any, stand disposed of.