

(2012) 02 P&H CK 0305

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 21387 and 21347 of 2011

Shabir Khan and another

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Citation : (2012) 167 PLR 29

Hon'ble Judges : Rajive Narain Raina, J

Bench : Single Bench

Advocate : G.S. Saini in C.W.P. No. 21347 of 2011 and Mr. Rahul Sharma C.W.P. No. 21387 of 2011, for the Appellant; R.S. Chauhan, Addl. A.G., Punjab, Mr. Naveen S. Bhardwaj, in C.W.P. No. 21387 of 2011 and Mr. Gagandeep Singh, for Respondent No.2 in C.W.P. No. 21387 of 2011, for the Respondent

Judgement

Rajiv Narain Raina, J.—This order disposes of the above noted two connected writ petitions. The facts are being taken from CWP No. 21387 of 2011. The petitioners before this Court are members of the Other Backward Classes (OBC). They appeared for the Punjab State Teacher Eligibility Test (PSTET)-2011. The written examination was held on 3.7.2011. Petitioner No. I secured 88 marks while petitioner No.2 secured 84 marks. Both were declared fail in TET Paper-II in the PSTET exam. The petitioners plead that they have been wrongly declared fail. They ought to have been given relaxation of 5% as OBC candidates. If they qualify the examination they have a right of consideration for appointment as Teachers to impart instructions to students from Class I to VIII in a school. The issue involved owes its genesis to the promulgation of the Right of Children to Free and Compulsory Education, Act, 2009 (for short RTE) enacted by the Government of India. Section 23 of the Act lays down qualifications for appointment and terms & conditions of service of Teachers. Section 23 itself does not lay down the minimum qualifications for being eligible for appointment as a Teacher but refers to such minimum qualifications as are laid down by an "Academic Authority" authorized by the Central Government by a notification in

this behalf.

2. The Central Government has issued a notification on 31.3.2010 authorizing the National Council for Teacher Education (NCTE) as the "Academic Authority" to lay down the minimum qualifications with reference to Section 23 of the Act. In turn the NCTE has issued two notifications dated 23.8.2010 and 29.7.2011 laying down minimum qualifications of a person to become eligible for appointment as a teacher for Classes I to VIII. A candidate in order to become eligible for appointment as a teacher in a school is required in terms of these notifications to pass the Teacher Eligibility Test (TET) to be conducted by the "appropriate Government" in accordance with the guidelines framed by the NCTE for the purpose. What is material for the present case is that the NCTE in its notification has provided relaxation of 5% in the qualifying marks for candidates belonging to reserved categories such as SC/ST/OBC/PH. This reservation policy is incorporated in the notification dated 29.7.2011 (P-3). The respondent-State of Punjab is the designated "appropriate Government" with respect to its State charged with responsibility of conducting PSTET-2011. The holding of the test was delegated and entrusted by the Department of School Education, Government of Punjab to the State Council of Education, Research and Training (for short "SCERT"), Punjab, Chandigarh-respondent No. 4. It is the SCERT, Punjab that published the guidelines for the PSTET (P-5). The passing of the PSTET confers no right of recruitment or employment. It is only one of the eligibility criteria for consideration for appointment. The PSTET guidelines require a score of 60% or more in the examination to be considered as "pass". This score would give a right to a candidate to compete for appointment in schools run by Government, Local Bodies and aided and unaided institutions throughout the land. The guidelines, however, lay down that the States "(a) May consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons etc., in accordance with their extant reservation policy;". This condition in the guidelines brings out the dichotomy between the decision of the "Academic Authority"-NCTE (P-3) and the guidelines of the "appropriate Government" (Punjab Government in the present case) (P-5). While NCTE grants relaxation upto 5% in the qualifying marks, the guidelines stultify it by saying that State Government may consider it in accordance with its extant reservation policy. NCTE uses the word "shall" while the guidelines use the word "may". It is broadly this issue, which has to be resolved in the present case. In case, the relaxation is given to the petitioners of 5% they would have to be declared pass in the PSTET.

3. Before this Court proceeds further in its attempt to resolve the issue a few crucial dates would be absolutely necessary to be kept in view. The PSTET examination process started on 11.2.2011. The matter of grant of relaxation upto 5% in the qualifying marks for "SCs/STs etc" in accordance with the extant policy of the State Governments/ UTs and other school managements was considered by the NCTE in its meeting held on 16.3.2011, wherein it was decided to grant the relaxation upto 5%.

4. The decision taken is contained in NCTE letter dated 1.4.2011. It is recorded therein that NCTE had received representations from State Governments and others stake holders i.e. in respect of "SCs/STs etc" that relaxation upto 5% marks should be allowed, since such relaxation is permissible by the NCTE for admission in various Teacher Education Courses. To continue with the narration of important dates, the examination was conducted on 3.7.2011. Thereafter, notification dated 29.7.2011 (P-3) was issued by the NCTE in exercise of powers conferred by Section 23(1) of the 2009 Act etc. laying down the reservation policy in para (III)(2)(i), which reads as follows:

Relaxation upto 5% in the qualifying marks shall be allowed to the candidates belonging to reserve categories, such as SC/ST/OBC/PH.

5. The notification dated 29.7.2011 substitutes para 3 of the "Principal Notification dated 23.8.2010". The principal notification dated 28.3.2010 has been placed on record as Annexure P-2. It speaks of no relaxation or reservation.

6. On notice being issued, the respondents have put in appearance and replies on behalf of respondent Nos. 1, 3 & 4 have been filed by way of counter affidavit of Deputy Director, O/o Director State Council of Educational Research and Training, Punjab, Chandigarh. The respondents have relied on their prospectus/guidelines and on the executive instructions dated 6/9.10.1964 (R-1) of the Punjab Government to contend that relaxation of 5% marks in PSTET has been given only to SC candidates by the Government in terms of instructions (R-1) and since the petitioners are OBCs they have no right of relaxation. The respondents urge that the notification Annexure P-3 dated 29.7.2011 which is relied upon by the petitioners is subsequent to the date of PSTET held on 3.7.2011 and thus the notification cannot come to their aid. It is further stated that Ms. Anita, Roll No. 20438 belongs to SC category, whereas the petitioner belongs to OBC category to which the benefit has not been extended by the Government. Dismissal of the writ petition has, therefore, been prayed for.

7. I have heard the learned counsel for the parties at length and have perused the record available on the file with their able assistance.

8. Mr. Rahul Sharma, learned counsel for the petitioner submits that the final arbiter under the RTE Act, 2009 for minimum qualifications has been delegated by the Central Government to the NCTE to lay down minimum qualifications of eligibility for appointment as a Teacher. He submits that the minimum qualifications for eligibility would include relaxations, concessions and reservations. The NCTE for the first time decided on 5% relaxation to "SCs/STs etc." on 16.3.2011. Therefore, the decision to grant relaxation was taken before the first advertisement was published for holding the test. That advertisement was issued on 26.4.2011. Therefore, the Rules of the game had been laid down before the game started. The examination was conducted on 3.7.2011. The Punjab Government was appointed as an appropriate Government only to conduct the Test in accordance with the guidelines framed by the NCTE as

evidenced by the letter, of NCTE of 11.2.2011 (Annexure P-6). The letter dated 11.2.2011 (P-6) was issued to all State Governments enclosing guidelines for conducting TET. The guidelines appended to the 11.2.2011 letter of NCTE laid down qualifying marks as follow:

Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment."

10. However, subsequently on 16.3.2011, the council changed the rule when it decided to give relaxation of 5% to "SCs/STs etc.

9. On 29.7.2011 the second notification was issued by NCTE substituting the reservation policy to be read into the principal notification. By substitution, the 29.7.2011 notification would relate back to the principal notification dated 23.8.2010, which required the TET to be conducted by the appropriate government in accordance with the guidelines framed by the NCTE for the purpose and not the State Government guidelines, which apparently appears to be the mistake the State Government has committed. In any case, I find it an acceptable argument that the 29.7.2011 notification should at least relate back to 16.3.2011, well before the process started on 1.4.2011 when letter Annexure P-4 was issued by NCTE laying down fresh norms for teacher qualifications. Punjab Government appear to have picked up the un-amended/old guidelines (page 32 of the paper book) and unwittingly or blindly planted them in the prospectus issued by the Director SCERT, Punjab, Chandigarh (at page 23 of the paper book). When confronted with this situation, Mr. R.S. Chauhan, learned D.A.G., Punjab could not give any plausible answer, explanation or reason to accept the stand of the State presented in its written statement based on the Punjab Government circular dated 6/7.10.1964 (R-1) that such relaxation would not be available to OBCs. I find no justifiable ground to make any departure from the substitution notification dated 29.7.2011, which contains no riders so far as OBCs are concerned. I would agree with Mr. Sharma, learned counsel for the petitioner that the combination "SCs/STs etc." would include OBCs as being part of "etc."

10. The learned counsel for the petitioner has taken me to the representation of petitioner No.2 (P-12) dated 2.8.2011 addressed to the Director SCERT, Punjab, Chandigarh requesting relaxation of marks to OBCs. Petitioner No. 1 has also made a similar representation on 3.8.2011. Both the representations have met

with no response from the respondents. In reply to 14 where this assertion is made the State Government has admitted receipt of representations but say that it is under consideration and no final decision has been taken by the Government on them. The matter cannot be left hanging at the mercy of the respondent State as that would be unjust. The matter involves some complexity which deserves to be settled by this Court and the petitioners ought not to be relegated to have their representation decided first. In any case the motion Bench did not adopt that course.

11. To sum up I would reject the argument of the State that the 29.7.2011 notification would not govern the case since it was issued after the examination was conducted on 3.7.2011. A substitution notification would relate back to the principal enactment/notification unless indicated to the contrary in the amendment by way of substitution.

12. The TET was of 150 marks. The minimum qualifying percentage was 60% for general category i.e. 90/150. For SC/STs the qualifying percentage was 55%. If the petitioners are declared to have a right of relaxation upto 5% they would be declared pass.

13. In the result, and for reasons recorded above, this writ petition is allowed. The petitioners are held entitled to relaxation upto 5% as OBC candidates. The respondents are directed to grant the petitioners the benefit of the relaxation and issue a rectified result and notify it immediately within 15 days from the date of receipt of certified copy of this order. The interim directions of this Court dated 18.11.2011 are made absolute and part of this order. The interim direction was to the following effect:

Present: Mr. Rahul Sharma, Advocate for the petitioners.

Relies upon the Notification dated 29.07.2011

(Annexure P3) issued by the National Council for Teachers"

Education (NCTE).

Dasti as well.

It is directed that in case the petitioners' claim is accepted, there shall be a general direction permitting the Other Backward Class category candidates to attend the Counselling.

14. The respondents are directed to do the needful and treat similarly situated candidates of OBC category equally, so that they are not unnecessarily compelled to approach to this Court. A copy of this order be placed on the file of the other connected case.