

(2020) 08 SHI CK 0129
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2606 Of 2019

Shobhan Choudhary	Vs	APPELLANT
Himachal Pradesh Public Service Commission & Anr		RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16, 39A
Code Of Civil Procedure, 1908 — Section 141, Order 1 Rule 9

Citation : (2020) 08 SHI CK 0129

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

Bench : Division Bench

Advocate : Naveen K. Bhardwaj, Vikrant Thakur, Surender Verma, Vikas Rajput

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of following substantive reliefs:

(i) That impugned notifications dated 10.6.2020 (Annexure PÂ? 4) and 18.7.2020 (Annexure PÂ?6) may be quashed and set aside.

(ii) That the respondent No.1 may be directed to declare the result of the petitioner in the screening test and if in merit, may be allowed to appear for next round of selection process.

2 The respondent's Commission issued an advertisement No. 20/2019, dated 9.11.2019 (Annexure PÂ2) for filling up the various posts including the post of Traffic Manager, Class's II, (on contract basis) in Himachal Road Transport Corporation under the Department of Transport.

3 The petitioner being fully eligible applied for the said post under the OBC category by filling up on's line application. The screening test was held on

15.3.2020 in which the petitioner appeared under Roll No. 14626858 (Application No. 1216489).

4. It is averred that 15 minutes before examination, the petitioner was asked to show his documents like marks sheets, identity proof, admit card and category certificate etc. and after the petitioner showed all these documents, he was permitted to participate in the screening test.

5. The petitioner thereafter was anxiously waiting for the result of the examination, but to his utter surprise, he came across notification dated

10.6.2020 issued by respondent's Commission containing list of rejected candidates along with reasons thereof and against Sr. No.5, name of the

petitioner was shown and the reason that had been mentioned was "for want of valid OBC certificate in support of his category claim".

The petitioner represented to the respondents, but to no avail. Hence this petition.

6. In order to appreciate controversy, it would be necessary to refer to the advertisement dated 9.11.2019, more particularly, the procedure that was

provided for filling up online recruitment applications, which reads as under:

HOW TO APPLY: Detailed instructions for filling up Online Recruitment Applications are available on the above mentioned website.

a) Desirous/ eligible candidates will have to apply online through official website of the Commission. Applications received through any other mode

would not be accepted and will be rejected straightway.

b) The candidates, who wish to apply for more than one post, should apply separately for each post and will have to pay the requisite examination fees

for each post in the prescribed manner.

c) After submitting the Online Recruitment Application(s) (ORA), the candidates are required to take a printout of the finally submitted Online

Recruitment Application and submit the same along with requisite attested/ self attested documents / certificates in support of their eligibility to the

Commission on the day of Screening Test for the concerned post and in other cases where direct Personality Test will be held, 10 days time will be

given to submit the documents failing which his/her candidature shall stand finally rejected. Non submission of the certificates will make them ineligible

to sit in the examination/ to appear in the Personality Test.

d) In case the candidate has applied against more than one item i.e. post

published in the advertisement, the candidate is required to submit separate copies of requisite attested documents/ certificates along with the printout of the Online Recruitment Application of each post on the day of Screening

Test for the respective posts.â??

7. In addition to the aforesaid, advertisement notice contains another provision titled as submissions of Certificates/Documents and the same reads as

under:Â?

â??SUBMISSION OF CERTIFICATES/ DOCUMENTS:Â?

THE CANDIDATES WILL HAVE TO UPLOAD ALL THE DOCUMENTS I.E. ESSENTIAL QUALIFICATION(S), AGE, EXPERIENCE

AND CATEGORY IN SUPPORT OF THEIR ELIGIBILITY WHILE APPLYING FOR THE POST ON THE OTRS PORTAL AVAILABLE

ON THE COMMISSION'S WEBSITE.

THE CANDIDATES WILL ALSO HAVE TO SUBMIT THE PRINTOUT/ HARD COPY OF ONLINE APPLICATIONS ALONGWITH SELF

ATTESTED/ATTESTED COPIES OF REQUISITE DOCUMENTS/ CERTIFICATES, i.e. ESSENTIAL QUALIFICATION(S), AGE,

EXPERIENCE AND CATEGORY IN SUPPORT OF THEIR ELIGIBILITY ON THE DAY OF SCREENING TEST/ (COMPUTER BASED

TEST/ OFF LINE TEST/ EXAMINATION) FOR THE CONCERNED POST AND IN OTHER CASES WHERE DIRECT PERSONALITY

TEST WILL BE HELD, 10 DAYS TIME WILL BE GIVEN TO SUBMIT THE DOCUMENTS, FAILING WHICH THEIR CANDIDATURE

WILL STAND CANCELLED.

Note:Â? Original certificates will have to be produced at the time of personality test. If any, if their claim is found to be incorrect; besides rejection they

may render themselves liable to disciplinary action by the Commission.

The detailed particulars of such candidates will be uploaded on the website of the Commission to blacklist such debarred candidates.â??

8. It appears that the entire controversy has arisen only because of there being no clear instructions with regard to the submission of

certificates/documents. In case these certificates were required to be submitted on the date of screening test as envisaged, then there ought to be a

provision for issuance of receipt, which alone could have established the fact

whether the petitioner had or had not submitted the OBC certificate at the relevant time.

9. We really fail to comprehend or understand the object and purpose of submitting certificates at the time of screening test that too to the Invigilators, who otherwise may not have any knowledge regarding authenticity, genuineness and veracity etc. of the certificates, especially when the original of the certificates in terms of the note are required to be submitted at the time of personality test. The respondent's Commission will be well advised to streamline the procedure by simplifying the same.

10. Lastly and more importantly, it would be noticed that there is no cut-off date for submission of the certificates, which otherwise were required to be produced in original at the time of personality test. This issue is no longer res integra in view of the judgment rendered by the Hon'ble Supreme Court in Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and another, (2016) 4 SCC 75,4 wherein the Hon'ble Supreme Court has observed that non-submission of certificate by reserved OBC category candidate within cut-off date mentioned in advertisement rendering ineligible otherwise selected candidate only on that ground would amount to denial of equality of opportunity contemplated under Articles 14, 15, 16 and 39A of the Constitution.

11. Unfortunately, the successful candidates in screening test have not been impleaded as respondents despite the petition being filed after declaration of result.

12. It is more than settled that the selected candidates are necessary parties as they would be only ones, who would be directly affected by the outcome of this litigation. It is also equally settled that no adverse order can be passed against a person, who is not made party to the litigation.

13. In Prabodh Verma and others versus State of Uttar Pradesh and others AIR 1985 SC 167 and Tridip Kumar Dingal versus State of West Bengal and others (2009) 1 SCC 768, it has been held that if a person challenges the selection process, successful candidate or atleast some of them are necessary parties.

14. In Public Service Commission, Uttaranchal versus Mamta Bisht and others (2010) 12 SCC 204 while dealing with the concept of necessary parties

and effect of non impleadment of such party in the matter when the selection process is assailed, the Honâ??ble Supreme Court observed thus:Â?

â??9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary

party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a

Constitution Bench of this Court in Udit Narain Singh Malpaharia v. Board of Revenue AIR 1963 SC 786 ,wherein the Court has explained the

distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the

court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called â??CPCâ?) provides that nonÂ?joinder of necessary

party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles

enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat AIR 1965 SC 1153, Babubhai Muljibhai Patel v. Nandlal

Khodidas Barot (1974) 2 SCC 706 and Sarguja Transport Service v. STAT (1987) 1 SCC 5.).

15. In Prabodh Verma v. State of U.P. AIR 1985 SC 167 and Tridip Kumar Dingal v. State of W.B.(2009) 1 SCC 768, it has been held that if a

person challenges the selection process, successful candidates or at least some of them are necessary parties.

16. In view of aforesaid discussions, we find some merit in the writ petition and the same is partly allowed to the extent that the impugned notification

dated 10.6.2020, whereby the candidatures of the petitioner has been rejected for want of valid OBC certificate in support of his category claim, is set

aside and partly dismiss the petition as regards it seeks quashing of notification dated 18.7.2020, whereby result of the screening test has been

declared, as the same cannot be quashed on the ground that none of the selected candidates has been impleaded as party respondents despite the fact

that the petition was prepared on 20.7.2020 and filed on 23.7.2020. Pending application(s), if any, also stands disposed of.