
(2011) 08 SHI CK 0237
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14520 of 2008

Smt. Raman Jakhotra

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Citation : (2011) 08 SHI CK 0237

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—For the post of Primary Assistant Teacher, certain candidates were interviewed. Committee headed by Sub Divisional Magistrate, prepared list, Annexure A-6. Undisputedly, candidates at Sr. No. 2, Sanjita Sahotra, Sr. No. 14, Rashim Sahotra, Sr. No. 42, Raman Jakhotra (Petitioner) and Sr. No. 45, Sheetal Mehra were not interviewed for the reason that being OBC candidates they were found to be ineligible.

2. There is No. dispute that the post was of general category. In view of law laid down by the Apex Court in *Bihari Lal Rada v. Anil Jain (Tinu)* and Ors. 2009 (2) RAJ 7 (S.C) and *R.K. Sabharwal and others Vs. State of Punjab and others*, non-consideration of the aforesaid candidates only on the ground that they belong to OBC category is obviously wrong. Candidates belonging to OBC category ought to have been interviewed and their cases considered for appointment. To this extent, the challenge made by Petitioner to the process adopted by Selection Committee is sustainable in law. Record reveals that Respondents have been taking contradictory stands in different proceedings in relation to similarly situated persons. In the instant case, it is the stand of the Respondents that Petitioner being an OBC candidate, was ineligible for being considered for the post in question, whereas in OA No. (D) 418/2006, the stand is totally contradictory. As such Respondent No. 1 is directed to look into the matter and take appropriate action against the erring officer (s) who did not consider the Petitioner and other similarly situated candidates eligible for appointment.

3. But the question however is as to whether, at this stage, should the Court, in equity set aside the appointment of the private Respondent. Pursuant to the selection process, private Respondent No. 5 who was awarded 59.07 marks and placed at Sr. No. 1 of merit list, was given appointment in terms of impugned order dated 25.8.2006, (Annexure A-5). It cannot be disputed that since then private Respondent has been discharging her duties to the satisfaction of the Authorities.

4. Even though her appointment was assailed by the Petitioner in the year, 2006 itself, but however, No. interim order was passed, restraining private Respondent from discharging her duties. However her appointment was subject to final decision is the petition.

5. Significantly, total marks awarded to the Petitioner, as per objective criteria laid down by the Selection Committee are 53.06%. This does not include marks for personal interview as none were awarded for the same. Private Respondent was awarded 59.07 marks out of which 12 marks are for personal interview. It could be that Petitioner could have secured more marks than private Respondent, if some marks for interview were awarded to the Petitioner. But however, candidate at Sr. No. 2, Smt. Sanjita Sahotra, even without marks for interview has secured 58.3 marks, which is higher than the marks awarded to the Petitioner. This candidate is not only B.Ed, but is having higher qualification than the Petitioner, as such, it cannot be said if appointment of private Respondents is set aside Petitioner would automatically be appointed to the post in question

6. In Ravinder Kumar Vs. State of Haryana and Others, the Apex Court has held as under:

19. It is evident from the above that in Ex-servicemen (General) category the last two candidates, namely, Subhash Chander and Takt Singh had scored only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC (B) category had however scored more marks than Subhash Chander and Takt Singh. Sube Singh and Veer Bhan could and indeed ought to have been selected against the vacancies in Ex-servicemen (General) category as per their merit. This in other words would require the select list to be recast and candidates suitably shifted from the reserved category to the general category in which event appointments can be offered to other candidates in the Ex-servicemen BC(B) category depending on their merit. Such an exercise long after the selection process was completed may unsettle the settled position and lead to removal of candidates who stand already selected and who have been serving for a long time after undergoing the prescribed training. This may also mean that candidates who have accepted the result of the selection and may even have become overage may have to be brought in. We do not see any compelling reason for us to adopt that course at this distant point of time especially when the same would upset what stand settled for a long time.

20. Interest of justice in our opinion be sufficiently served if we direct the appointment of the Appellant against an Ex-servicemen BC(B) vacancy and if No. such vacancy is available, against an Ex-servicemen (General) category vacancy. In the unlikely event of there being No. vacancy in either one of these categories the Appellant could be appointed against any other vacancy in the general category. Any such appointment would, however, in keeping with the statement made by the Appellant be effective from the date the same is made and shall not entitle the Appellant to claim any back wages, seniority or other benefits. The appointment shall for all purposes be treated as a first appointment subject to the condition that the competent authority shall be free to direct that the Appellant shall undergo the training afresh or take a refresher course of such training, if deemed fit.

7. Keeping in view the aforesaid observation made by the Apex Court, I am, in equity, and at this stage, not inclined to quash the appointment of private Respondent for the reason that it is not that Petitioner is alone and automatically entitled to be selected to the post in question. Private Respondent otherwise has been successfully discharging her duties on the said post. Private Respondent is not at fault for her appointment. Other eligible candidates have also not been arrayed as parties. Fault is obviously of that of the concerned Sub Divisional Magistrate, Nurpur, District Kangra, against whom Respondent No. 1 has already been directed to take appropriate action. Needless to add, action after fully complying with the principles of natural justice, in accordance with law, shall positively be taken within a period of three months from the date of receipt of certified copy of this judgment.

8. With the aforesaid observations the petition stand disposed of.