

(2023) 08 SHI CK 0153
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 4282 Of 2020

Thakru Ram

APPELLANT

Vs

State Of H.P & Anr

RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 16(4)

Citation : (2023) 08 SHI CK 0153

Hon'ble Judges : Vivek Singh Thakur, J: Bipin Chander Negi, J

Bench : Division Bench

Advocate : Tek Chand, Anup Rattan, Ramakant Sharma, Vikrant Thakur

Final Decision : Dismissed

Judgement

Bipin Chander Negi, J

1. Respondent No.2/Himachal Pradesh Public Service Commission, vide advertisement No.8/2017, advertised 204 posts of Assistant Professor (College Cadre) in History on 12th July, 2017.

2. For the purpose of present writ petition, we are concerned with the post of Assistant Professor (College Cadre) in History. The essential qualification for the same were defined in the aforesaid advertisement.

3. For the purpose of present writ petition, it would be appropriate to refer the relevant portion of 'essential qualification' specified in the advertisement specifically clause-7 thereof:

"(vii) "NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professor in Universities/Colleges/Institutions.)"

4. Besides the aforesaid, relevant eligibility condition specified in the advertisement is being reproduced hereinbelow:-

"(ii) If no post is reserved for a particular reserved category falling under vertical

reservation, then such candidates can be considered against General/UR category, provided such candidates will have to fulfill the criteria, i.e. age limit, experience, qualification etc. which are applicable to General category candidates. In other words, when a relaxed standard is applied in selecting SC/ST/OBC candidate, for example in the age limit, experience, qualification, etc. then such candidates would be deemed as unavailable for consideration against unreserved vacancies in accordance with the instructions of the Government (in the Department of Personnel) issued vide letter No.PER (AP)-C-F (1)-2/2001 dated 12 th November, 2014.”

5. The petitioner being eligible for the post of Assistant Professor (College Cadre) in History applied for the post in question. Admittedly, the petitioner belongs to Schedule Tribe category, as is evident from Annexure A-1. Other than, the aforesaid Annexure A-2, reflects that the petitioner had appeared in the State Eligibility Test for Assistant Professor held on 24.7.2016, in the Schedule Tribe category and cleared the same by securing cut-off marks prescribed for the Schedule Tribe category. In furtherance of aforesaid advertisement, petitioner appeared in screening test held on 25.11.2017, under Roll No.250361.

6. A perusal of advertisement Annexure A-3, for the post of Assistant Professor (College Cadre) in History clearly reflects that there is no post reserved for the Schedule Tribe category. The candidature of the petitioner was rejected vide Annexure A-4. A perusal whereof reflects that the candidature of the petitioner had been rejected on account of the fact that the petitioner had passed State Eligibility Test on relaxed standard under the Schedule Tribe category.

7. In the aforesaid facts and circumstances of the case, present petition has been filed seeking following substantive reliefs:-

i. That the rejection order of the candidature of the applicant (Annexure A-4) may kindly be quashed and set aside.

ii. That the respondents may kindly be directed to consider the candidature of the applicant for the post of History under General category.

8. We have heard learned counsel for parties and have gone through the entire material available on record carefully.

9. In the advertisement issued for the post in question, under the head ‘eligibility condition’, a reference has been made to the instructions issued by the Department of Personnel dated 12th November, 2014, wherein it has been made absolutely clear that if no post is reserved for a particular reserved category falling under vertical reservation, then such a candidate can be considered against the General category, provided such candidates will have to fulfill the criteria i.e. age limit, experience, ‘qualification’ etc; which are applicable to the General category candidate. In other words, when a reserved standard applied in selecting SC/ST/OBC candidates for example in age limit, experience, ‘qualification’ etc. then such candidates would be deemed as unavailable for

consideration against General vacancy.

10. Admittedly, there is no challenge to the aforesaid instructions or to the aforesaid eligibility condition specified in the advertisement in question.

11. A relaxation granted to the candidates belongs to SC/ST category is an incident of reservation under Article 16 (4) of the Constitution of India. In terms of the reservation Policy of the State, as has been enunciated, vide instructions of the Government (Department of Personnel) dated 12th November, 2014 i.e. Annexure A-5, the petitioner, who belongs to reserve category having availed a relaxation standard in clearing the State Eligibility Test, is required to be considered for reserved category only and is not entitled to be considered in the General category.

12. In support of the aforesaid, reliance is drawn on a judgment in 2019 (7) Supreme Court Cases 383, titled Niravkumar Dilipbhai Makwana vs. Gujarat Public Service Commission and others.

13. Per contra, learned counsel for the petitioner has placed reliance of judgment titled Vikas Sankhala and others vs. Vikas Kumar Agarwal and others (2017) 1 Supreme Court Cases, 350. Reliance upon the same is misconceived, as in the said case findings returned therein were on the basis of Circular dated 11.5.2011 issued by the Rajasthan Government. Para-75 of the judgment reads as under:-

"On the basis of the aforesaid circulars, the High Court commented that only those reserved category candidates were entitled to be migrated to general quota if they compete with availing any special concessions in terms of age, attempts and otherwise except concession regarding fee. However, this norm was changed by impugned Circular No. F.7(1)DOP/A-II/99 dated 11.5.2011 which was issued in supersession of the earlier circular dated 4.3.2002 and permitted reserved category candidates to be counted against unreserved category vacancies if in the selection they had secured more marks than the marks obtained by the last unreserved category candidate who is selected, irrespective of the fact that as to whether they avail special concessions or not. As pointed out above, the High Court has held that since this change in norms took place after the initiation of selection process vide advertisement dated 30.3.2011, the Circular dated 11.5.2011 was not applied as the aforesaid move/amendment in selection norms was impermissible as held by this Court in K. Manjusree vs. State of A.P."

14. Similarly placing reliance in CWP No.2350 of 2019 titled Banita vs. State of H.P and another, decided on 9.1.2020, is of no avail, as there was no condition as is existing in the present case. The same is evident from para-10 of the judgment:-

"A perusal of the advertisement demonstrates that Essential Qualifications Clause therein simply mentions that a candidate besides fulfilling the educational

qualifications contained therein, should have cleared the eligibility test (NET) for Assistant Professor conducted by the UGC, CSIR or similar test. There is no rider in the advertisement that a candidate who has cleared the NET test as a Scheduled Caste category candidate or Scheduled Tribe Category candidate, was not eligible to compete for the post meant for open category. Once the petitioner was fulfilling the academic criteria contained in the advertisement for applying to the post under the open category, she could not have been denied appointment for the post of Assistant Professor meant for open category on the ground that she had cleared National Eligibility Test (NET) as a Scheduled Caste category candidate. I reiterate that the advertisement only refers to the passing of NET test as the minimum eligibility condition for recruitment and appointment to the post of Assistant Professor. There is nothing contained in the advertisement from which it could be inferred that a candidate who had cleared NET test as Scheduled Caste category candidate was eligible to apply only for the posts reserved for Scheduled Caste category.”

15. Similarly reliance placed on judgment dated 11.1.2023, in CWP No.22498/2022, titled Ravish vs. State of Haryana and others, is of no help, as there was no rider in the advertisement therein that a candidate who has cleared the NET as a General (EWS) Category candidate, was not eligible to compete for the post meant for the General Category.

16. In view of aforesaid facts, we find no merit in the instant petition and the same is dismissed. No order as to costs.

All pending application(s), if any, also stand disposed of.