

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.1595 of 2020

Decided on: 23rd July, 2026

Hardyal Singh

...Petitioner

Versus

The State of H.P. and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner:

Mr. R.K. Gautam, Senior Advocate with Mr. Jai Ram Sharma and Mr. Sahil Dixit, Advocates.

For the respondents:

Mr. Rupinder Singh Thakur, Additional Advocate General and Mr. Amit Kumar Chaudhary, Deputy Advocate General, for respondents No.1 to 3-State.

Mr. Anil Kumar and Mr. Shagun Sharma, Advocates, vice Mr. Arun Kaushal, Advocate, for respondent No.4.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has
prayed for the following substantive relief:-

“(a) That in view of the facts and circumstances as mentioned in this original application, the original application may kindly be allowed and selection and appointment of respondent No.4 as PET vide office order

¹ Whether reporters of Local Papers may be allowed to see the judgment?

dated 19.1.2017 may kindly be quashed and set aside and the respondents may kindly be directed to reconsider the matter and in case the applicant is found more meritorious than respondent No.4, the appointment may be offered to the applicant along with all consequential benefits."

2. The facts as emerge from the pleadings are that the petitioner after doing 10+2 examination in the year 1996 with 62% marks from H.P. Board of School Education, obtained Bachelor of Physical Education Degree from Nagpur University in First Division. Thereafter, he worked as Physical Education Teacher (in short "PET") in a private school w.e.f. 01.04.2008 to 31.03.2012. The petitioner belongs to Scheduled Tribe (in short "ST") Category. It has been averred that the respondent-State had advertised the posts of PET to be filled on contract basis and since the name of the petitioner was also registered with the Employment Exchange, Nalagarh, he was also called for the interview for the post of PET, as evident from letter dated 06.09.2016 (Annexure A-5). It has further been averred that one post was reserved for ST category and the petitioner belongs to the said category. The petitioner appeared in the interview,

however, instead of recommending him for appointment to the post of PET, respondent No.4 was offered appointment as per office order dated 19.01.2017 (Annexure A-6).

3. The petitioner feeling aggrieved by the selection of respondent No.4 has approached this Court *inter alia* on the grounds that since he had scored more marks than respondent No.4, he ought to have been selected. It has been averred that he had obtained the information under the Right to Information Act, 2005 (in short "RTI"), supplied by respondent No.3 dated 15.02.2017 (Annexure A-8), whereby it was conveyed that the selection for the post of PET was conducted as per R&P Rules for the post of PET, on batch wise basis and the selection was to be made on batch wise merit basis.

4. It has further been averred that though respondent No.4 belongs to the same batch, but the petitioner was higher in merit than him. The respondents have ignored candidature of the petitioner to offer him appointment and wrongly offered appointment to

respondent No.4, who is less meritorious and as such, the action on the part of the respondents-State is illegal, arbitrary and against the principles of natural justice and thus the petitioner prayed for quashing the appointment of respondent No.4.

5. Respondents No.1 to 3 filed reply to the petition and raised preliminary submissions that respondent-Department had conducted the interviews for the posts of PET in District Solan, H.P. on 23rd and 24th September, 2016. As per session/batch wise merit list, so prepared by the respondent-Department, the name of the petitioner was at Sr. No.22 under ST category, since he had passed his course on 14.09.2000, scoring 43.17 marks, whereas the name of respondent No.4 was at Sr. No.21 under ST Category, and he had passed his course on 09.09.2000, thus he was offered appointment to the post of PET. It has further been averred that no doubt, respondent No.4 had scored 36.36 marks in the interview, but as per the degree course submitted by him, his result was declared on 09.09.2000 and he was declared

'fail' in the examination for the Degree of Bachelor of Physical Education (One year Degree Course). However, he had applied for re-evaluation against the result declared by the University and subsequently, when the result was declared, he was declared 'pass' under the same roll number. Since respondent No.4 did not appear in the said examination subsequently, the result remained under consideration at the level of concerned University and the failure certificate issued by the concerned University on 09.09.2000, though declared to have passed under the same roll number on 28.05.2001 was considered. Hence, batch of respondent No.4 has been taken into consideration by the respondents-State w.e.f. 09.09.2000. The respondents-State has also placed on record the merit list of candidates for the posts of PET interview/counselling (Annexure R-1), in which respondent No.4 has been shown at Sr. No.21 and the petitioner at Sr. No.22. It has been averred that respondent No.4 had been considered for the batch of 2000 and has thus rightly been appointed as PET.

6. Respondent No.4 filed separate reply and averred that the petition filed by the petitioner is not maintainable since he has failed to show any cause of action. It has further been averred that the respondent-State has rightly selected him as he belongs to 2000 batch since he had passed the examination in the Summer of 2000. Respondent No.4 was initially declared 'fail', however, he applied for re-evaluation and during re-evaluation he was declared 'pass' and, therefore, the result of re-evaluation will relate back to the initial date of declaration of the result.

7. The petitioner filed rejoinders to the replies filed by the respondents and controverted the averments made therein.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. It is not in dispute that the petitioner and respondent No.4 had passed their examination of PET in the same batch i.e. 2000. The dispute is only with respect to the fact that the petitioner, who had passed the examination in

the same batch, was issued the certificate on 14.09.2000, whereas respondent No.4, though initially failed, but on re-evaluation has been declared pass and his date of passing the course has been considered as per certificate issued on 09.09.2000 and thus he being qualified earlier has been offered appointment for the batch of 2000.

10. Once the respondent-State had been filling up the vacancies on batch wise basis, irrespective of the date of issuance of the certificate of course of PET, which is the qualification required for the purpose of appointment to the post of PET, if the petitioner and respondent No.4 were of the same batch, for the purpose of selection, the petitioner who had scored more marks in the examination, ought to have been given preference, otherwise the very purpose of conducting the recruitment on batch wise basis would be of no consequence.

11. In the present case, admittedly, as per the merit list drawn by the respondent-State (Annexure R-1), the petitioner had scored 43.17 marks and respondent No.4 had

scored 36.36 marks and both of them belong to ST Category. Respondent No.4 was offered appointment only for the reason that his date of issuance of certificate of PET was 09.09.2000, whereas in the case of the petitioner it was 14.09.2000.

12. Once both the petitioner and respondent No.4 had acquired their qualification of PET in the same year, respondent-State has committed illegality while offering appointment to respondent No.4 by taking the date of issuance of certificate i.e. 09.09.2000, ignoring the merit of the petitioner.

13. As per the information supplied by respondent No.3, which has been placed on record, it clearly suggests that in case of batch wise recruitment, the selection has to be made on batch wise merit basis. For batch wise merit determination, it is the marks obtained in the qualification which was to be given preference rather than the date of issuance of the certificate, especially when petitioner as well as respondent No.4 were of the same batch of the year 2000.

It is settled law that after re-evaluation, if the candidate is declared pass, the degree/course will relate back to the initial date of declaring the result and not the date of declaring the result of re-evaluation.

14. It is also worth to mention that the R&P Rules nowhere mentions that date of issuance of certificate given in the certificate would be relevant for batch wise selection rather the information provided under RTI states that the selection would be batch wise merit. The batch would be of a year and in case a person has more marks in the overall merit drawn, he has to be given preference while making selection on batch wise basis.

15. Learned counsel for respondent No.4 submits that he did not make any false statement while offering him appointment as PET and if the respondent-State had offered him appointment ignoring the petitioner, taking the date mentioned in the certificate for the purpose of determining the batch, he may be protected since he had neither misrepresented the facts nor played fraud, while securing the

appointment.

16. Learned counsel for respondent No.4 has placed reliance upon the judgment passed by the Apex Court in ***Vikas Pratap Singh and others versus State of Chhattisgarh and others***, (2013) 14 SCC 494 and ***Anmol Kumar Tiwari and others vs. State of Jharkhand and others***, (2021) 5 SCC 424, wherein it has been held that if there is no misrepresentation made by the selected candidate at the time of offering the appointment, after a lapse of few years, the appointment cannot be set at naught. Relevant para of the judgment in ***Vikas Pratap Singh*** (supra) is reproduced hereunder:

"28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependents but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list."

17. Similar view has been taken in **Anmol Kumar Tiwari** (supra) and the relevant para of the judgment reads as under:-

"11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case, where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the appellants in Vikas Pratap Singh case, we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted.

Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present."

18. From a perusal of the judgments referred above, only one thing that can be culled out is that respondent No.4 has been offered appointment in the year 2017 and now after a lapse of more than 9 years, his appointment cannot be quashed but at the same time, the petitioner who is not at fault and had immediately come to the Court after he was denied the offer of appointment, without disturbing the appointment of respondent No.4, the respondent-State is directed to offer him appointment to the post of PET. However, since the petitioner has not worked and further there is no material placed on record that the petitioner after denial of appointment has not served anywhere, the petitioner is not entitled to any monetary benefits from the date when respondent No.4 was offered the appointment, as per office order dated 19.01.2017, but at the same time to balance the equity, the respondents-State has to grant him all the benefits such as seniority from the date when respondent

No.4 has been offered appointment, but he shall be placed below respondent No.4 in the seniority list.

19. It is settled law that the merit should not be ignored for the purpose of offering the appointment and since admittedly the petitioner had scored more marks than respondent No.4 and both of them had passed the course of PET in the same batch i.e. 2000, in the peculiar facts and circumstances of the case, the respondents-State is directed to offer the appointment to the petitioner, more particularly when he belongs to ST Category.

20. Consequently, the present petition is disposed of with a direction to the respondent-State to offer the appointment to the petitioner as PET with all consequential benefits except monetary benefits. In case, the petitioner is offered the appointment within three months from today, he shall be paid the salary from the date of joining and in case the respondent-State does not offer him the appointment within three months from today, he shall be paid salary from the month of August, 2026 onwards. It is made clear that the

petitioner shall be assigned seniority below respondent No.4.

No order as to costs. Pending application(s), if any, shall also stand disposed of.

23rd July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**