

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.492 of 2019

Decided on: 31st August, 2026

Ajay Kumar ...Petitioner

versus

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. Naresh Verma, Advocate.
For the respondents:	Mr. R.P. Singh, Deputy Advocate General for respondents No.1 and 2-State.
	Mr. Vishwajeet Singh, Advocate for respondent No.3
	None for respondents No.4 & 5.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive reliefs:-

- i) That the impugned orders of selection of respondent no. 4&5 as contained in **Annexure P-4** (Serial No. 28 & 20) is against the Policy and the criteria fixed by respondent No. 1 to 3 for the post of physical Education Teacher, hence the impugned orders deserves to be quashed and set aside by issuing a **writ of certiorari**.
- ii) That the respondents No. 1 to 3 may kindly be directed to consider the petitioner for appointment as PET by issuing a **Writ of Mandamus.**"

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

2. The facts as emerge from the pleadings are that respondent No.3 had advertised the post of Physical Education Teacher (in short 'PET') under Code No.295 vide advertisement No.19/2011 dated 03.06.2011. Out of the total posts, 5 posts were reserved for Scheduled Tribe category (in short 'ST category') and the petitioner was eligible as per the criteria laid down in the advertisement. Since the petitioner belongs to ST category, he also applied for the post of PET. He appeared in the written test conducted on 11.03.2012 and scored 121 marks. Thereafter, he appeared in the personal interview conducted on 19.04.2012 and was awarded 24 marks. Total marks obtained by her were 145 as per the merit list of ST category (PET-295). The petitioner stood in third position scoring 145 marks as per the merit list of PETs (ST category) and as per the result declared on 06.07.2012, he was not considered for the post of PET and the persons who got lesser marks, having scored 144 and 143 marks, were selected by respondent No.3, who have been arrayed as respondent Nos.4 and 5. One person namely Soni Bhandari, who had scored 145 marks, was also selected, whereas the petitioner, who was also having the same marks, was denied appointment.

3. The petitioner feeling aggrieved by the selection of respondent Nos.4 and 5, has approached this Court *inter alia* on the grounds that he was more meritorious than private respondent Nos. 4 and 5 as he had got 145 marks whereas they had got 143 and 142 marks respectively, their selection deserves to be quashed and set aside, with a further direction to respondent Nos.1 to 3 to give him appointment as PET under ST category.

4. Respondent Nos. 1 and 2 filed short reply to the petition and averred that the merit list/recommendations of selected candidates for the post of PET has been prepared by respondent No.3 and they had only placed the requisition before it. These respondents have no role in the selection process and they have only offered appointment to the selected candidates on the basis of the recommendations made by respondent No.3.

5. Respondent No.3 filed separate reply to the petition and averred that no grave injustice has been done to the petitioner by it and hence the petitioner is not entitled to file and maintain the present petition before this Court. It has further been averred that the petitioner had applied in ST (Sportsperson) category and appeared in the written screening test and qualified the same. Further, he also appeared in the interview conducted on 21.06.2012 and scored total 145 marks (i.e. 121 in written examination and 24

marks in viva voce). So far as the contention raised by the petitioner with regard to selection of Soni Bhandari is concerned, it has been submitted that she had applied in ST (Sportsperson) category. However, on the date of interview, she failed to produce the relevant certificate of her claimed category of ST (Sportsperson) and made request that she may be interviewed in ST (UR) category. As such, her name was considered in ST (UR) category. It has further been averred that Kumari Deepika and Narinder Singh had scored 144 and 143 marks respectively and Vijay Singh, Rakesh Kumar had scored 142 marks each. Shri Vijay Singh, Rakesh Kumar and Kumari Deepika had applied in ST (UR) category. As such, their names were rightly considered in their respective applied category of ST (UR). Since the petitioner had applied in ST (Sportsperson) category and there was no post reserved in the applied category of the petitioner, his name was not considered.

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

7. It is not in dispute that the petitioner belongs to ST category. It has also emerged in the reply that there was no post reserved for ST (Sportsperson) category. One Soni Bhandari, who had also scored 145 marks, but applied under ST (Sportsperson) category, could not produce the certificate of ST (Sportsperson)

category, she was considered under ST (UR) category. The persons, who had scored less marks than the petitioner and applied under ST (UR) category, have been offered appointment as PET. In case there was no post reserved for ST (Sportsperson) category, the petitioner could have been considered for the post of ST (UR) category, as was done in case of Soni Bhandari. In not doing so, grave injustice has been caused to the petitioner. The petitioner, immediately after the selection of respondent Nos.4 and 5, has approached this Court by way of instant proceedings. Though no person has put in appearance on behalf of respondent Nos.4 and 5 and further they have not chosen to file any reply to the petition, but keeping in view the fact that there is no fault on their part and they did not make any misrepresentation at the time of offering them appointment to the post of PET, their appointment cannot be set at naught at this juncture. However, the petitioner, who has been denied the appointment for the reason that he had applied for the post of PET under ST (Sportsperson) category, for which, there was no post reserved, he could have been offered the appointment once he was in the merit list as he had scored more marks than respondent Nos.4 and 5, who had scored 144 and 143 marks, whereas the petitioner had scored 145 marks.

8. The petitioner after institution of the present petition has not placed on record any material to suggest that though he was possessing the requisite qualification for the post of PET, but he has not served in any of the institutions. Thus, this Court is not inclined to grant him the wages/salary of the period, when he remained out of job. But at the same time, he cannot be denied the benefit of seniority and other consequential benefits, especially when he has wrongly been ignored for appointment as PET.

9. Consequently, the present petition is allowed and the respondents/competent authority is directed to offer appointment to the petitioner as PET from the date, when respondent Nos.4 and 5 have been offered appointment and he will be assigned seniority above respondent Nos.4 and 5 with all consequential benefits such as seniority, increments, promotions, etc. However, the petitioner is held entitled to the actual salary after expiry of three months from today. In case the petitioner is not offered appointment within three months from today, he shall be paid the salary for the month of December 2026 and onwards till actual offer of appointment. No order as to costs. Pending applications, if any, also stand disposed of.

31st August, 2026
(naveen)

(**Jiya Lal Bhardwaj**)
Judge