

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1910 of 2014(O&M)

Date of decision:7.7.2015

State of Punjab and another

....Appellants

VERSUS

Shaveta Kamboj

.....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vinod S. Bhardwaj, Additional Advocate General,
Punjab for the appellants.

Mr. Sukhdev Kamboj, Advocate for the respondent.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 07.07.2014 whereby the writ petition filed by the petitioner (respondent herein) for granting relaxation in the qualifying marks for Punjab State Teachers Eligibility Test (PSTET-II) was allowed.

An examination was conducted to test eligibility of the teachers before their appointment to comply with the mandate of The Right of Children to Free and Compulsory Education Act, 2009 in pursuance of a notification dated 23.08.2010. The respondent applied for such examination as a General Category candidate and secured 83

marks out of 150 and was not successful. The notification of conducting examination dated 23.08.2010 was amended subsequently on 29.07.2011 whereby relaxation was to be given in the qualifying marks to the candidates belonging to the Scheduled Castes/Scheduled Tribes/Other Backward Classes/Physically Handicapped categories. The grievance of the respondent is that she as an Other Backward Class candidate is entitled to relaxation in terms of notification dated 29.07.2011.

It is contended that though such notification was issued after the result was declared but in terms of the judgment of this Court in CWP No.21387 of 2011 titled Shabir Khan and another v. The State of Punjab and others, decided on 29.02.2012, the benefit of notification is to be given to all those candidates who appeared in the examination on 03.07.2011. Learned Single Bench allowed the writ petition relying upon a judgment of this Court in Shabir Khan's case (supra), when the Court said to the following effect:-

“After hearing counsel for the parties, this Court is of the opinion that the present writ petition is liable to be allowed. This Court in Shabir Khan's case (supra) has held that notification dated 29.07.2011 was substituting the reservation policy and was to be read into the principal notification dated 23.08.2010 and relate back to 16.03.2011 before the process of the test started on 01.04.2011. Directions were issued that the respondents should treat similarly situated candidates of OBC category equally so they are not necessarily compelled to approach this Court. The reasoning given by the respondent no. 2 was not justified that it would lead to change of category as such since admittedly, at that point of time when the petitioner filled her form, she would get no benefit on the strength of her backward class certificate and it was only subsequently after the test was held on 03.07.2011, the subsequent notification came into force which provided that the relaxation upto

5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories. The State had dilly dallied and issued instructions only by issuing guidelines by saying that the State Government may consider it which was in contradiction to the word 'shall' used by the NCTE. Accordingly, necessary directions were issued by this Court. Thus, the petitioner at that stage would get no benefit as applying as a backward class candidate and her right only came in on 29.07.2011.”

We do not find that such reasoning given by learned Single Judge is sustainable in law. The respondent never applied as a candidate belonging to Other Backward Classes. She competed in the test as a General Category candidate. The relaxation as notified on 29.07.2011 is to be granted to those candidates who applied as Scheduled Castes/Scheduled Tribes or Other Backward Classes candidate and cannot be claimed by a candidate who applied as a General Category candidate. In Shabir Khan's case (Supra), the candidate had applied as Backward Class candidate but the benefit of relaxation was not given for the reason that the notification to grant relaxation was published after the declaration of result. The said distinction has escaped the attention of the learned Single Bench.

The argument that there was no relaxation for the candidates belonging to Other Backward Classes in the advertisement in the matter of fee or for any other purpose and therefore, the respondent did not disclose that she belongs to Other Backward Classes is not tenable. The respondent applied as a General Category candidate though there was a column that ‘Whether the candidate belongs to Other Backward Classes?’, but once the respondent has chosen to apply and appear in the examination as a General Category

candidate, she cannot claim benefit of Other Backward Classes after the result was declared. The relaxation is to the candidates who appeared as Scheduled Castes/Scheduled Tribes or Other Backward Classes candidates and not to a candidate who appeared as a General Category candidate but subsequently claims to be a candidate belonging to the reserved category.

Another argument raised by learned counsel for the respondent is that a Single Bench of this Court in CWP No.2998 of 2013 titled Baljeet Singh v. State of Punjab and others, decided on 22.05.2013, has granted benefit of relaxation of 5% marks to a candidate who appeared in the test as a General Category Candidate. A perusal of the judgment (Annexure P-8) shows that the candidate in the aforesaid case was offered appointment under the Backward Class category on the strength of marks obtained in the entrance test but the posting order was not issued. It is at that stage, the candidate invoked the writ jurisdiction of this Court while relying upon Shabir Khan's case (supra). It was held that the candidate is entitled to benefit of relaxation, he being a Backward Class category candidate.

Even if the State has accepted the aforesaid judgment, it will not confer any right on the respondent to claim benefit of relaxation. The respondent applied as a General Category candidate; therefore, there was no question of relaxation to such candidate. The judgment of this Court in Baljeet Singh's case (supra) in fact runs counter to the view now taken in the Division Bench. Therefore, the judgment of learned Single Bench cannot be said to be a correct enunciation of law.

Even otherwise, an illegality once committed cannot be allowed to be perpetuated. Reference may be made to judgment of Hon'ble Supreme Court reported as (1995) 1 SCC 745 titled Chandigarh Administration and another v. Jagjit Singh and another. Still further, the said candidate has secured more marks than the respondent, therefore, no right of the respondent can be said to be suffered by appointment of such candidate.

In view thereof, we find that the order of learned Single Judge allowing the writ petition cannot be sustained. Thus, the same is set aside and the writ petition is dismissed.

Consequently, the present Letters Patent Appeal is allowed.

(HEMANT GUPTA)
JUDGE

JULY 7, 2015
'D. Gulati'

(LISA GILL)
JUDGE