

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

(1) CWP No. 23138 of 2016 (O&M)
Date of decision: 25.04.2018

Manpreet Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(2) CWP No. 1768 of 2017 (O&M)
Date of decision: 25.04.2018

Lakhwinder Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Ms. Aruna Sachdeva, Advocate for the petitioner(s)
in CWP-23138-2016.

Mr. H.S. Saini, Advocate for the petitioner(s)
in CWP-1768-2017.

Mr. Amit Mehta, Sr. DAG, Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned two petitions are being decided by way of common order, as common questions of law and facts are involved in the matter. However, the facts are being derived from CWP-23138-2016 in order to avoid repetition.

By way of instant writ petitions, the petitioner(s) seek(s)

issuance of a writ in the nature of certiorari for quashing the remarks “PSTET marks less than 90” qua the petitioner(s) in the final merit list dated 27.10.2016 (Annexure P-18) vide the the eligibility of the petitioner(s) has been withheld in an illegal and arbitrary manner.

It is contended that the petitioners belong to Saini caste which falls under the category of Other Backward Class (for short 'OBC') in the State of Punjab. Respondent No.2 issued an advertisement dated 20.11.2015 whereby online applications were invited for the recruitment of posts of Social Studies and Punjabi Masters/Mistresses. In pursuance of advertisement, petitioner Manpreet Kaur applied in Ex-Servicemen General Category whereas petitioner Lakhwinder Kaur applied under Freedom Fighter category. Petitioner Manpreet Kaur had applied for Punjabi Mistresses whereas petitioner Lakhwinder Kaur applied for Social Studies Mistress. After declaration of result and finalization of merit of the candidates, petitioner Manpreet Kaur secured total 168 marks and petitioner Lakhwinder Kaur secured 185 marks. The petitioners were not selected on the ground that their marks in PSTET were less than 90 despite the fact that the the qualifying marks in the PSTET examination in the OBC category was 82 marks as per advertisement along with the qualification was passing of PSTET-2 examination in addition to the Bachelor's degree and B.Ed from a recognized university.

In support of assertions, learned counsel for the petitioner(s) cite **Vikas Sankhala and others** Vs. **Vikas Kumar Aggarwal and**

others, 2017(1) SCT 83 and V. Lavanya and others Vs. State of Tamil Nadu represented by its Principal Secretary and others, 2017(1) SCT 143.

On the other hand, learned State counsel submits that both the petitioners passed the PSTET-2 under OBC category, therefore, they were not considered by the authorities under Ex-servicemen general category and freedom fighter category.

Heard.

Hon'ble the Supreme Court in Vikas Sankhala's case (supra) while relying upon Jitendra Kumar Singh and another Vs. State of Uttar Pradesh and others, 2010(3) SCT 826 held as under:-

“(a) Those reserved category candidates who secured pass marks on the application of relaxed standards as contained in the extant policy of the Government in its communication dated March 23, 2011 to be treated as having qualified TET examination and, thus, eligible to participate in the selection undertaken by the State Government.

(b) Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.”

The short question which needs determination is as to whether the petitioners who have passed PSTET-2 under OBC category

are eligible for the respective posts against the respective category they applied for. The advertisement apart from the other educational qualification mentions that the candidates should have passed PSTET-2 conducted by the Punjab Government. The candidature of the petitioners was withheld/rejected with the remarks 'TET marks less than 90'. As per record, both the petitioners belong to OBC category and in the advertisement, there is no mention that the candidate who has passed the PSTET-2 in the reserved or OBC category with less than 90 marks will not be entitled to be considered against any other category like Ex-servicemen category. Further, as per notification issued by National Council for Teacher Education, relaxation upto 5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories, such as SC/ST/OBC/PH. As per advertisement dated 20.11.2015, the only qualification prescribed was passing of PSTET-2 under RTE Act in addition to the Bachelor's degree and B.Ed from the recognized university and there was no such condition regarding minimum cut off marks of passing the PSTET-2 examination for a particular category. Since, the petitioners have passed the PSTET-2 under OBC category and as per the above said notification 5% relaxation is to be given to SC/ST/OBC and physically handicapped categories, therefore, the respondents cannot deny the claim of the petitioners.

Keeping in view the above, the present petitions are allowed. The respondents are directed to consider the claim of the petitioners under their respective category as mentioned in their application form/admit card and issue appointment letters to the petitioners after

fixing their seniority as per the seniority list within a period of three months from the date of receipt of certified copy of the order.

25.04.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No