

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

LPA No.146 of 2016 (O&M)

Date of Decision: 12.09.2018

State of Punjab & Ors.

...Appellants

VS.

Sukhjeet Kaur

... Respondent

LPA No.239 of 2016 (O&M)

State of Punjab & Ors.

...Appellants

VS.

Gurpreet Kaur

... Respondent

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Sandeep Vermani, Addl. AG Punjab

Mr. RK Arora, Advocate for the respondent(s)

SURYA KANT J. (Oral)

(1) This order shall dispose of LPA No.146 of 2016 & LPA No.239 of 2016 as the point in issue is common. For brevity, the facts are taken from LPA No.146 of 2016.

(2) State of Punjab has preferred this Letters Patent Appeal against the order dated 20.05.2015 whereby learned Single Judge has directed the appellants to grant 5% relaxation in the total marks to the respondent in the Teacher Eligibility Test, out of 150 marks, in terms of the decision of this Court dated 29.02.2012 passed in **CWP No.21387 of 2011 (Shabir Khan & Anr. vs. State of Punjab & Ors.)** (P6) and consequently, to treat her eligible and within merit amongst the Backward Class candidates for appointment to the post of Math Mistress.

(3) The facts may be noticed briefly.

(4) The respondent belongs to Lohar caste which has been recognized as Backward Class by Government of Punjab and a certificate to this effect has been issued in her favour by the prescribed authority (P1). She has done her M.Sc. Mathematics from Guru Nanak Dev University and possesses other requisite qualifications for the post of Math Mistress.

(5) State of Punjab has notified "GUIDELINES FOR PUNJAB STATE TEACHER ELIGIBILITY TEST (PSTET)". The Preface of these Guidelines says that:-

"The one of the essential qualifications for a person to be eligible for appointment as a teacher in any of the schools referred to in clause (n) of Section 2 of the RTE Act is that he/she should pass the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE."

[emphasis applied]

(6) The Teacher Eligibility Test is thus one of the mandatory eligibility condition for appointment as a Teacher in any of the schools in the State of Punjab.

(7) The Department of School Education, Government of Punjab held the PSTET on 12.06.2011. The advertisement prescribed minimum qualifications to appear in the PSTET for different categories of Teachers and the petitioner was eligible to appear for the posts of Master/Mistresses.

(8) The advertisement for PSTET further stipulated that:-

"QUALIFYING MARKS

A person who scores 60% or more in the PSTET exam will be considered as PSTET pass. School Management (Government, Local bodies, Government aided and unaided)

(a) May consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons etc., in accordance with their extant reservation policy;

(b) Should give weightage to the PSTET scores in the recruitment process; however, qualifying the PSTET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment.”

[emphasis by us]

(9) It appears that though the State Government granted 5% relaxation in qualifying marks in PSTET to SC/ST candidates but no such relaxation was given to Backward Class candidates. The issue as to whether OBC/BC candidates too were entitled to 5% relaxation in the PSTET as per the State's Reservation Policy was raised in a bunch of writ petitions before a learned Single Judge who allowed these writ petitions vide judgment dated 29.02.2012 rendered in **Shabir Khan & Anr.** case (supra) and held as follows:-

“14. In the result, and for reasons recorded above, this writ petition is allowed. The petitioners are held entitled to relaxation upto 5% as OBC candidates. The respondents are directed to grant the petitioners the benefit of the relaxation and issue a rectified result and notify it immediately within 15 days from the date of receipt of certified copy of this order. The interim

directions of this Court dated 18.11.2011 are made absolute and part of this order. The interim direction was to the following effect:

“Present: Mr. Rahul Sharma, Advocate for the petitioners.

Relies upon the Notification dated 29.07.2011 (Annexure P3) issued by the National Council for Teachers’ Education (NCTE).

Dasti as well.

It is directed that in case the petitioners’ claim is accepted, there shall be a general direction permitting the Other Backward Class category candidates to attend the Counselling.”

15. The respondents are directed to do the needful and treat similarly situated candidates of OBC category equally, so that they are not unnecessarily compelled to approach to this Court.”

(10) The above-cited decision was not challenged by the State of Punjab; it attained finality and the same was implemented by the Education Department.

(11) Meanwhile, the State of Punjab issued advertisement dated 07.05.2011 (P2) inviting applications for 3442 posts in Master cadre in different subjects including 248 posts in Mathematics. The respondent applied in response thereto and in her application form (P3), she sought benefit of reservation and unequivocally disclosed that she belonged to Backward Class category. The certificate was also attached. The appellant-Department, however, did not consider her in the Backward Class category on the plea that she did not claim any such reservation while appearing in PSTET.

(12) Learned Single Judge vide order under appeal has turned down the objection summarily and relying upon the earlier decision of this Court,

has accepted the claim of the respondent with a direction that she be offered

appointment, for she otherwise falls in merit amongst the Backward Class candidates.

(13) It further appears that though the order of learned Single Judge was complied with and the respondent was offered appointment but meanwhile, the Department decided to file this appeal in which operation of the judgment of the learned Single Judge was stayed and resultantly, the respondent has been relieved from service.

(14) Learned State counsel urges that as the respondent did not claim benefit of reservation as Backward Class candidate while appearing in PSTET, she was rightly treated as a 'General Category candidate' and since she did not score 60% or above marks in PSTET as a General Category candidate, she is not entitled for appointment. Reliance is placed upon a Division Bench decision of this Court dated 07.07.2015 rendered in **LPA No.1910 of 2014 (State of Punjab and Anr. vs. Shaveta Kamboj & Ors.)**, wherein it was held as follows:-

“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.”

[emphasis by us]

(15) We have heard learned counsel for the parties at a considerable length and having gone through the record, are satisfied that the order under appeal deserves to be upheld for the reasons briefly summarized hereinafter.

(16) As may be seen from the extracted Guidelines notified by State of Punjab for conducting PSTET, it is essential for a candidate aspiring for appointment as a teacher to qualify the PSTET like to possess academic qualifications. The PSTET has been introduced to give effect to the provisions of Right of Children to Free and Compulsory Education Act, 2009. PSTET *per se* is not a recruitment process. It is not held to fill up any post or for appointment to any service. It is held to earn eligibility. It is an open invitation to all the candidates to appear, compete and secure eligibility so that as and when the recruitment of Teachers takes place in future, they can be treated eligible for the advertised posts.

(17) It is for this reason alone that neither the posts are mentioned while inviting applications for appearing in PSTET nor there is any maximum cap for the candidates to qualify and obviously the result is also not based upon any reserved categories. The only clause in the public notice issued for conducting PSTET was that a candidate must score 60% or more marks to earn eligibility though there was a discretion given to the competent authority to

grant concession to the persons belonging to SC/ST, OBC, differently-abled persons etc., “in accordance with their extant reservation policy”.

(18) It is undeniable that the benefit of relaxation was extended to SC/ST candidates but no such benefit was given to OBC or other reserved category candidates, regardless of the fact that there is reservation in the posts/services for such categories also.

(19) That being the state of affairs, no occasion arose for the respondent to claim benefit of reservation as a Backward Class candidate at the time when she applied to appear in PSTET. It was not a recruitment process for a post or services within the meaning of Articles 14 and 16 of the Constitution.

(20) The occasion to claim benefit of reservation arose for the respondent only when a separate advertisement dated 07.05.2011 inviting applications for recruitment in Master Cadre including 248 posts of Math Master was issued. In response to that advertisement, the respondent admittedly claimed the benefit of reservation as a Backward Class candidate and appended the certificate of Backward Class category, besides certificate of PSTET etc.

(21) During the period when the selection process was going on, this Court in **Shabir Khan & Anr.** held that relaxation in PSTET was extendable to OBC candidates also. The judgment attained finality as it was not challenged and rather was implemented by the State of Punjab. The respondent therefore became entitled to the concession extended/granted in “qualifying marks” of PSTET to OBC candidates in compliance to the cited judgment read with the enabling provision(s) contained in the advertisement issued for PSTET.

(22) Having become entitled to 5% relaxation in PSTET marks out of total 150 marks, it is undeniable that the respondent also qualifies the PSTET. She admittedly comes within merit list of BC candidates as per her academic qualifications etc. In this view of the matter denial of benefit of relaxation to the respondent in the qualifying marks of PSTET would amount to subjecting her to hostile discrimination when such a benefit stands granted to all other OBC candidates in compliance to **Shabir Khan & Anr.** case (supra).

(23) The decision of the Coordinate Bench in **Shaveta Kamboj** relied upon by the appellants is totally distinguishable. There is nothing on record to suggest that the candidate in that case had applied as BC category in response to the advertisement whereby posts of Teachers/Masters were advertised. Unless a candidate applies in a particular reserved category for a post or service, he/she might not be entitled to claim the benefit of relaxation.

(24) In the instant case, the respondent admittedly applied for the post of Math Master as a Backward Class candidate and meanwhile, relaxation of 5% marks in PSTET having become available, she was surely entitled to the said benefit.

(25) For the reasons afore-stated, the appeal must fail on merits and is ordered accordingly. The appointment of the respondent is ordered to be restored forthwith.

(26) Dismissed.

(27) Having held so, we may also deal with the application for condonation of delay of 333 days in filing the accompanying appeal i.e. CM No.475-LPA of 2016 in LPA No.239 of 2016. The only plea taken is that the legal opinion of the office of Advocate General, Punjab as well as LR, Punjab was sought and due to movement of files, the delay had occurred.

(28) We do not find any satisfactory explanation, for the authorities having accepted the decision in **CWP No.21387 of 2011 (Shabir Khan & Anr. vs. State of Punjab & Ors.)** dated 29.02.2012 (P6), where arose the occasion for them to seek opinion from one or the other agency to decide whether or not the order of learned Single Judge be assailed? The application is devoid of merit and is accordingly dismissed.

(Surya Kant)
Judge

12.09.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes