IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWPOA No.544 of 2019

Decided on: 10th September, 2020

Pradeep Kumar

....Petitioner.

Versus

State of HP and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

[1] *Whether approved for reporting? No*

For the petitioner:	Mr. Prem P. Chauhan, Advocate.
For the respondents:	Mr. Sumesh Raj, Mr. Dinesh Thakur and Mr. Sanjeev Sood, Additional Advocates General, for respondents No.1 to 5.
	Respondent No.6 ex-parte.
	Mr. Parveen Chandel, Advocate, for respondent No.7.
	(Through Video Conferencing)

Ajay Mohan Goel, Judge *(oral)*

By way of this petition, the petitioner has prayed for the following reliefs: -

> *7(a) "Quash the impugned selection and appointment order, if any issued during the pendency of this OA, whereby the respondent department has selected the respondent No.7, being issued arbitrarily, malafide and illegally by the*

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

respondents.

(b) Direct the respondents to select and appoint the applicant against the post of Elementary Assistant Teacher on the basis of merit from the date of illegal selection of the respondent No.7, with all the consequential benefits.

(c) Direct the respondents to produce all the relevant documents alongwith their reply for perusal by this Hon'ble Tribunal.

(d) Allow the cost of this OA.

(e) Pass such other order or directions as deemed fit and proper in favour of the applicant."

2. The case of the petitioner is that he applied for the post of Primary Assistant Teacher in Government Primary School Chowki Mrigwal, Elementary Education Block, Sataun, under Gram Panchayat Barwas. As per petitioner, though, he was having better academic qualification as compared to the selected candidate (private respondent No.7), yet, the selected candidate was offered appointment, which was totally illegal, as the certificate submitted by the petitioner to the effect that no person from his family was employed, was interpolated by the Pradhan at the back of the petitioner to his disadvantage. It was further the contention of the petitioner that as the selected candidate was belonging

to the village of Pradhan, undue pressure upon the entire Selection Committee, was exerted, to give benefit to private respondent No.7.

3. Mr. Prem P. Chauhan, learned counsel for the petitioner has, in addition, argued that as the petitioner had appeared in his 10+2 examination from Central Board of School Education, the respondent Department has erred in calculating his percentage of marks as obtained in 10+2 by taking into consideration all the subjects mentioned in the marks sheet, as by doing so, it has been ignored in terms of judgment of the Hon'ble Supreme Court in ***Kusum Lata Versus State of Haryana and others, (2002) 6 Supreme Court Cases 343,*** as the additional subjects opted by the petitioner were optional, the marks of best five subjects ought to have been taken for consideration while calculating the percentage gained by the petitioner in his 10+2 examination.

4. The petition has been resisted by the respondents, inter alia, on the ground that contention of the petitioner that his certificate was interpolated, was incorrect, as 10 marks, in fact, were given to him for belonging to unemployed family and no marks under this head were given to the selected candidate. It is further the stand of the State that in the

actual proforma of marks as were gained by the petitioner and the selected candidate, the marks scored by the petitioner were “61.9” and whereas, those scored by private respondent No.7 were “62.9”. Thus, as per the respondents-State as private respondent No.7 was found to be more meritorious, this petition is without any merit and the same deserves dismissal.

5. I have heard the learned counsel for the parties and gone through the pleadings as well documents appended therewith.

6. In para-3 of the reply filed by respondents No.1 to 5-State to the petition, the abstract proforma of marks as was given by the Selection Committee in favour of the petitioner as well as private respondent No.7, stand quoted, which have not been disputed by the parties. Same is reproduced as under:-

Applicant (now petitioner)

+2 marks (actual %age	B.A.	PG	Certificate/Diploma one year course	Widow/Destitute women	Unemployed Family	Personal Interview	Total
33.9	10	--	---	---	10	8	61.9

Respondent No.7

+2 marks (actual %age	B.A.	PG	Certificate/Diploma one year course	Widow/Destitute women	Unemployed Family	Personal Interview	Total
29.9	10	5	5	---	---	13	62.9

7. The contention of the petitioner with regard to the marks not being allotted to him for belonging unemployed family is not borne out from the record. Similarly, his allegation that undue pressure was put by the Pradhan on the Selection Committee is also not borne out from the record. The abstract proforma of marks demonstrates that whereas total number of marks given to the petitioner by the Selection Committee were "61.9", whereas the marks given to private respondent No.7 by the Selection Committee were "62.9".

8. Hon'ble Supreme Court of India in ***Kusum Lata Versus State of Haryana and others, (2002)6 Supreme Court Cases 343*** (supra), while dealing with the issue of eligibility for admission on the strength of marks obtained by a candidate in 10+2 examination has been pleased to hold that as per scheme of the Central Board of School Education, the marks obtained in the additional subjects are not to be taken into consideration in the passing of the examination.

9. Coming to the facts of this case, the selection which stands assailed by way of this petition took place in the year 2007. In other words, private respondent No.7 is serving against the post in issue for more than last thirteen years. It is not the case of the petitioner that private respondent No.7 was not qualified for being appointed against the post in issue.

10. Now, the issue with regard to as to how marks of 10+2 examination were calculated, in my considered view, at this stage, has to be looked into from the perspective of the employer at the relevant stage because it is not the case of the petitioner that he had brought into the notice of the employer as to how his marks of 10+2 examination have to be calculated. In this background, but obvious, employer in its wisdom took into consideration the sum total of marks, which the petitioner had scored in 10+2 examination and percentage of marks was arrived at on that count.

11. Besides this, as I have already observed hereinabove, even otherwise, as private respondent No.7 stood appointed to the post in issue in the year 2007, it will be highly unjust to undone something which has taken place more than a decade's time back as the selected candidate was

indeed found to be more meritorious.

In view of the above observations, this petition is dismissed, being devoid of merit. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

September 10, 2020
(Bhardwaj)