

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.1936 of 2019

ORDER

This writ petition is filed seeking the following relief:

“to grant appropriate relief more in the nature of Writ of Mandamus under Article 226 of the Constitution of India against the respondents more particularly, the 1st respondent herein in deleting three questions from the question paper with regard to qualifying examination conducted for the post of PET (Urdu Medium) in pursuance of Notification No.56/2017, dated 21/10/2017 as well as treating the petitioner as not qualified in the qualifying examination on the ground that the petitioner got only 29.592% marks instead of treating the 29.592% marks as 30% marks and also not considering the case of the petitioner even for granting relaxation for appointment to the post of PET (Urdu Medium) in considering the representation dated 08/10/2018 as arbitrary, illegal, *mala fide*, discriminatory, unconstitutional, violative of Articles 14, 16 and 21 of the Constitution of India, apart from violative of principles of natural justice and consequential directions directing the respondents to forthwith consider the petitioner as PET (Urdu Medium) in Mahaboobnagar District against the vacancy earmarked for SC(Women) treating the petitioner as eligible and qualified in the qualifying examination by treating 29.592% of marks as 30% of marks or adding three deleted questions and calculating 100 marks instead of 95.5 marks or by granting relaxation if necessary in considering the representation of the petitioner dated 08/10/2018 for appointment to the post of PET (Urdu Medium) and pass such other order or orders.”

Heard Sri P.V.Krishnaiah, learned counsel for the petitioner, learned Government Pleader for Education

appearing for respondents 2 to 4 and Sri D.Balakishan Rao, learned Standing Counsel appearing for the 1st respondent.

It is the case of the petitioner that she belongs to SC community. Pursuant to the notification dated 21.10.2017 issued by the 1st respondent, she has applied for the post of Physical Education Teacher (Urdu Medium). After undergoing regular selection process, she was declared to have secured 29.592% marks. But the respondents are not treating the fraction of 29.592% marks as equivalent to 30% and are not considering the case of the petitioner.

Learned counsel appearing for the petitioner contended that as per the notification issued by the respondents, the respondents have got every power to relax the minimum qualifying marks in respect of SC candidates when no SC candidates are available. The respondents are not considering the case of the petitioner on the ground that she has not secured 30% marks. It is further contended that Clause 1 of Para VIII of notification prescribes the minimum qualifying marks for selection of OCs as 40%, BCs as 35%, SCs & STs as 30% and the minimum qualifying marks are relaxable in the case of SC/ST/BC at the discretion of the Commission. It is further contended that even though there is a vacancy which could not be filled up for want of suitable SC woman

candidate, the respondents are not relaxing the minimum qualifying marks. The petitioner has secured 29.592% marks, whereas the qualifying marks are 30%, therefore, in all fairness, the respondents ought to have taken into consideration 29.592% marks as that of 30% and qualified the petitioner by exercising powers under Clause 1 of Para VIII of the notification. It is further contended that the respondents have deleted three questions, for which, the petitioner has written correct answers. Therefore, it is prayed that appropriate orders be passed in the writ petition directing the respondents to round off the fraction of marks secured by the petitioner to the next equal number of 30% treating that she got qualified in the selection and consider her case for appointment to the post of PET (Urdu Medium) in the existing vacancy which could not be filled up for want of SC woman candidate.

Learned Standing Counsel appearing for the respondents contended that the respondents cannot relax the minimum qualifying marks as set out in the notification. In support of his contention, he placed reliance on the judgment of the Apex Court in *Orissa Public Service Commission & another vs. Rupashree Chowdhary & another* (Civil Appeal No.6201 of 2011) and contended that the Apex Court has found

fault with the rounding off of the aggregate marks, and hence, the case of the petitioner cannot be considered for rounding off the fraction of 29.592% to 30%. There are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the case of the petitioner has to be considered on two grounds; (1) The respondents could not fill up the post meant for SC (women) as there are no qualified candidates in that category; (2) The petitioner has secured 29.592% marks, whereas the qualifying marks are 30%. In the notification, it is clearly stated that the respondents have every power to relax the minimum qualifying marks in respect of SC/ST/BC. In the case on hand, as there are no qualified candidates in SC (Women) category, the respondents ought to have exercised their powers by relaxing the minimum qualifying marks secured by the petitioner from 29.592% to that of 30% by rounding off the fraction. The judgment relied on by the learned Standing Counsel cannot be applicable to the case on hand. The Apex Court has held that the Commission shall call for interview, the candidates who have secured not less than 45% marks in aggregate and a minimum of 33% marks in each paper in the main written examination and in that

context, the Apex Court held that the percentage of marks cannot be rounded off. In the case on hand, the Public Service Commission has got power to relax the minimum qualifying marks in respect of SCs, STs and BCs. As the Public Service Commission is vested with such power, it ought to have exercised its power and relaxed the minimum qualifying marks. More so, when there are no qualified and eligible candidates, the Public Service Commission can consider the case of the petitioner by rounding off the qualifying marks from 29.592% to 30%, so that she becomes qualified for appointment to the post of PET.

Accordingly, the Writ Petition is allowed and the respondents are directed to consider the case of the petitioner for appointment to the post of PET (Urdu Medium) by rounding off the fraction of marks from 29.592% to 30%. No costs.

Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date:06.01.2020
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