

**CWP-11139-2020 (O&M)
Date of Decision : 17.03.2021**

Dharamveer Yadav

.....Petitioner

Vs.

Union of India and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rohit Seth, Advocate
for the petitioner.

Mr. Suman Jain, Advocate
For respondents Nos. 2 and 3.

ARUN MONGA, J. (ORAL)

1. Petitioner herein, *inter alia*, seeks issuance of writ in the nature of *certiorari* for quashing an order dated 23.06.2020, whereby his claim for appointment on the post of Trained Graduate Teacher(TGT) against an OBC vacancy has been negated.

2. Petitioner contends that as per advertisement, five posts of TGT were reserved in OBC category under which the petitioner also applied and secured 89.5 marks in the written test and was slated at Sr. No.8 in the merit list qua the OBC category. Owing to two candidates above him having been disqualified, the petitioner serial number came at No.6 as against five vacancies. The candidate at Sr. No.1 though joined on his post, but resigned within 15 days of joining the post, resultantly all the serial numbers moved up making the petitioner from Sr.No.6 to Sr.No.5. It was in this background that the petitioner staked his claim on the post being No.5 in the merit list and well within advertised limits.

3. However, the petitioner's case was rejected relying on policy dated 27.07.1998(Annexure R-2/1) which envisages as below:-

“3. Therefore, it is requested that it may be ensured that no recruitment to any post/ vacancy is made over and above the advertised/ published posts/ vacancies or notified to the Employment Exchange and the waiting list may be used only for making appointment against the unfilled posts/ vacancies, if anyone from selected candidates does not join. The posts/ vacancies which become available after initiation of the process of selection will not be utilized for the purpose of making appointment from the waiting list.”

4. Learned counsel for respondents No.2 and 2 strenuously argues that in view of the aforesaid instructions, it is amply clear that candidates who are placed in the waiting list can be offered appointment only against the unfilled post/ vacancy, if any selected candidate does not join and not where the candidate once selected has joined and later resigned. He argues that once vacancy has been caused by resignation, it is to be treated as filled-up vacancy and not unfilled vacancy and the same has to be counted prospectively by way of fresh recruitment and candidates from previous selection list cannot be given benefit of their merit.

5. The aforesaid stand of respondents No.2 and 3 flies on the face of instructions dated 13.06.2020 (Annexure P-7 colly.) issued by the Ministry of Personnel, Public Grievance & Pensions, Department of Personnel and Training, Government of India, which are later in time and would, therefore, *inter alia*, hold the field as against earlier policy instructions(Annexure R-2/1) relied by learned counsel for respondents No.2 and 3. The relevant of later instructions/ office memo reads as below:-

“2. The Fifth Central Pay Commission, in para 17.11 of its Report, has recommended that with a view to reduce delay in filling up the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh panel is not available by then. Such a vacancy should not be treated as a fresh vacancy. This recommendation has been

examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.”

6. Having perused the later instructions vis-à-vis old one, I have no doubt in mind that later instructions prevail over the previous instructions unless it had specifically been stated that earlier instructions shall continue to hold field. Being not so, the petitioner is entitled to the benefit of instructions dated 13.06.2020(Annexure P-7). It is otherwise not disputed that vacancy was caused within 15 days of the joining of the previous appointee and the waiting list was still valid as per aforesaid instructions. In the premise, petitioner ought to have been accommodated.

7. As regards the vacancy, this Court vide order dated 04.08.2020 had passed an interim order directing the respondents to keep one post vacant in OBC category and, therefore, vacancy is available as on today.

8. As an upshot, the writ petition is allowed. Respondents are directed to consider the candidature of the petitioner in accordance with aforesaid instructions(Annexure P-7) and accord him the benefit of his merit, provided otherwise he meets rest of the parameters.

9. Let the needful be done within a period of 60 days of receipt of certified copy of this order.

MARCH 17, 2021

Jiten

(ARUN MONGA)

JUDGE

Whether speaking/non-speaking:

Whether reportable: Yes/No