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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5465-2016 (O&M)

Date of Decision: 20.07.2023

DINESH KUMAR

.....Petitioner

V/s.

**STATE OF PUNJAB THROUGH SECRETARY EDUCATION, GOVT.
OF PUNJAB, CHANDIGARH AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Hitesh Pandit, Advocate, for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

Mr. Kamaldeep Singh Sidhu, Advocate,
for respondents No.4 and 5.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a Writ in the nature of *mandamus* for directing respondents to declare the result of the petitioner after adding his interview marks.

2. The brief background of this case is that the petitioner belongs to the SC (Ravidasia and others) category and also a sports person. He applied for the post of Post Graduate Teacher in the subject of Political Science for which advertisement was issued and he participated in the regular selection process in which the petitioner was placed in the General category on the basis of the marks obtained by him. He was called for the interview but his interview result was not declared and therefore, he preferred the present Writ Petition praying for declaration of his final result and placing him accordingly in the merit and giving him appointment.

3. Learned counsel for the petitioner submits that as per the reply which has been filed by the respondents, it is apparent that the petitioner has been denied consideration for appointment on a completely wrong premise. It is submitted that the petitioner, who is also a sports person, cannot be deprived of his category and as per the reply filed by the respondents, the petitioner has scored 7 marks in the interview out of 10 which was conducted on 12.09.2014.

4. The respondents have stated that there was no category of Scheduled Caste (R&O) Sportsperson under the advertisement dt.27.11.2013 and therefore, petitioner's candidature was not considered for the post of PGT (Political Science) Lecturer.

5. It is no more *res integra* that reservations are provided vertical as well as horizontal. The horizontal reservations cut across vertical reservation. Thus, if a person is having benefit of vertical reservation and also required to be given the benefit of horizontal reservation, he may fall independently according to his merit in the vertical placement of his own category. Independent of whether he gets the benefit of the horizontal reservation.

6. There may be cases where a candidate may have a dual benefit namely; vertical reservation benefit as well as the horizontal reservation benefit. While the respondents' contention may be accepted to the extent that there was no post available for SC (R&O) Sportsperson, and that there was no reservation provided for Sports category which is a horizontal reservation, candidate like the petitioner, who is entitled for benefit of vertical reservation of SC (R&O), cannot be deprived of his consideration for appointment.

7. The action of the respondents in not declaring the final result of the petitioner on the aforesaid basis is found to be wholly unjustified.

8. This Court has also considered the overall merit of the petitioner and it is noticed that the petitioner has scored 57.4492 marks for academic qualification and has scored 7 marks in interview out of 10. Thus, his overall marks reaches to 64.4492.

9. The final result declared for the selection of PGT (Political Science) reflects that the last candidate in the general category has been awarded the total marks of 63.9599. Thus, the petitioner would be higher in merit to the candidate who has been placed at Sr. No.6 in the merit of General category as the petitioner has scored 64.4492 marks.

10. In “R.K. Sabherwal Vs. State of Punjab”; (1995) 2 SCC 745, the Constitution Bench of the Hon’ble Supreme Court has held that *if a person from reserved category scores marks over and above than the open category candidate, he would be placed in the open category and the seat of reserved category shall be offered to the next candidate from the said reserved class.*

11. The same law has been reiterated time and again, the latest judgement on this aspect has been passed by the Hon’ble Supreme Court in the case of “Saurav Yadav and Others Vs. State of Uttar Pradesh”; 2021(4) SCC 542 wherein the Supreme Court has laid down the manner and method in which the select list is to be prepared. It has been specifically mentioned that firstly all the open category seats shall be filled then the individual category of any candidate and it is thereafter reserved category seats shall be filled.

12. Thus, the petitioner with overall total marks of 64.4492 would have to be placed at No. 5-A in the select list of the general category over and above the person at No.6 namely; Jagbir Kaur.

13. It is not the case of the respondents that the petitioner has taken any additional advantage of being belonged to the SC (R&O) category, thus, his merit was required to be placed in the general category. The result prepared by the respondents is, therefore, wrongful.

14. This Court finds that the persons, who were placed in the result under reference, have all been appointed and it would be too late in the day to cancel any of the selection already made. However, it is not the case where the respondents do not have available posts though may be created in future. In order to do complete justice, it is directed that the petitioner shall be given appointment from that day the other candidates have been appointed as PGT (Political Science) by the respondents and also place the petitioner according to his merit. He would also be granted notional benefits and seniority, and his pay fixation shall be done accordingly with actual benefits from the date the present order has been passed by this Court.

15. The exercise shall be conducted and concluded within a period of 3 months.

16. The Writ Petition stands allowed.

17. No costs.

July 20, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>