

CWP-22498-2022

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

CWP-22498-2022

Date of decision: 11.01.2023

Ravish

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

Ms. Harpriya Khaneka, Advocate,
for respondent No.3-HPSC.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the letter/orders dated 17.09.2022 (Annexure P-5), dated 26.09.2022 (Annexure P-8) and the action of the respondents, rejecting the application form of the petitioner for the post of Lecturer in Applied Science (Maths), on the ground that the petitioner had passed written test, as a General Category candidate whereas he has passed National Eligibility Test (NET) as a General(EWS) Category candidate.

Learned counsel for the petitioner submits that respondent No.3-HPSC advertised 22 posts of Lecturer in Applies Science (Maths) (Group-B) in Technical Education Department, Haryana, vide advertisement No.11/2021; that the petitioner being eligible applied for the said post under the General Category; that the respondent had issued admit card to the petitioner; that the petitioner had taken the written test

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conducted by the respondent(s), and that in the result declared on 16.08.2022, the petitioner was shown passed in the written test as a General Category candidate and it was also mentioned that the petitioner would be called for interview. However, vide letter dated 17.09.2022 received through email, the application of the petitioner was rejected by respondent No.3 on the ground that he had passed the written test for the above-mentioned post as a General Category candidate, but passed NET as a General (EWS) Category candidate, and that the petitioner had been asked to raise objection, if any, against his rejection within three days. The petitioner moved a representation dated 19.09.2022 before respondent No.3 with an objection that he being NET qualified could compete for the said post under the General Category and moreover, there was no rider in the advertisement that a candidate who has cleared the NET as a General (EWS) Category candidate, was not eligible to compete for the post meant for the General Category. However in spite thereof, the candidature of the petitioner has wrongly been rejected. In support of his contentions, learned counsel relies upon the judgments rendered by a Coordinate Bench in 'Sukhwinder Singh Vs. Punjab State Power Corporation Ltd. and others', CWP-1888-2014, decided on 02.12.2015, and by the Himachal Pradesh High Court in 'Banita Vs. State of H.P. and Another', CWP-2350-2019, decided on 09.01.2020.

On the other hand, learned counsel for respondent No.3 submits that out of 22 posts of Lecturer in Applied Science (Maths) 02 posts were reserved for the candidates under the EWS Category, and that the petitioner had cleared the NET as a EWS Category Candidate and,

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therefore, he should have submitted his application form under the aforesaid category and competed for the posts reserved for the said category. Learned counsel further submits that General Category and EWS Category are two separate categories and generally, the merit for EWS Category is lower than that of the General Category. Learned counsel further submits that the petitioner has cleared NET as a EWS Category candidate and, therefore, his candidature under the General Category has rightly been rejected.

I have heard the learned counsel for the parties.

Indisputably, the petitioner has passed NET as a General (EWS) Category candidate. A perusal of the result (Annexure P-4) would show that the petitioner also passed the written test for the post of Lecturer in Applied Science (Maths) under the General Category and that he was to appear in the Viva-Voce for which he was to be informed separately. However vide letter dated 17.09.2022 received through email, the application of the petitioner was rejected by respondent No.3 on the ground that he had passed the written test for the above-mentioned post under the General Category, but passed NET as a General (EWS) Category candidate.

Vide order dated 28.09.2022 passed by a Coordinate Bench, the respondents had been directed to provisionally interview the petitioner, but not to declare his result without there being an express order.

In response thereof, it is stated by learned counsel for respondent No.3 that the petitioner has scored above the cut-off marks in the exam/selection process.

A perusal of the advertisements makes it clear that essential

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qualification clause for the post of Lecturer in Applied Science (Math) would show that a candidate should have cleared First Class Master of Science (Math) Degree with NET/Ph.D in subject of Math from a recognized university/institution. There is no rider in the advertisement that a candidate who has cleared the NET under the General (EWS) Category, is not eligible to compete for the post meant for the General Category. The petitioner is fulfilling the academic criteria contained in the advertisement for applying to the post under the General Category, he could not have been denied appointment for the post of Lecturer in Applied Science (Maths), meant for the open category on the ground that he has cleared NET as a General (EWS) Category Candidate.

The Himachal Pradesh High Court in Banita (supra) has held as under:

“10. A perusal of the advertisement demonstrates that Essential Qualifications Clause therein simply mentions that a candidate besides fulfilling the educational qualifications contained therein, should have cleared the eligibility test (NET) for Assistant Professor conducted by the UGC, CSIR or similar test. There is no rider in the advertisement that a candidate who has cleared the NET test as a Scheduled Caste category candidate or Scheduled Tribe Category candidate, was not eligible to compete for the post meant for open category. Once the petitioner was fulfilling the academic criteria contained in the advertisement for applying to the post under the open category, she could not have been denied appointment for the post of Assistant Professor meant for open category on the ground that she had cleared National Eligibility Test (NET) as a Scheduled Caste category candidate. I reiterate

that the advertisement only refers to the passing of NET test as the minimum eligibility condition for recruitment and appointment to the post of Assistant Professor. There is nothing contained in the advertisement from which it could be inferred that a candidate who had cleared NET test as Scheduled Caste category candidate was eligible to apply only for the posts reserved for Scheduled Caste category.

11. The entire controversy can be perceived from another perspective also. It is settled law of the land that whereas a candidate belonging to Scheduled Caste or Scheduled Tribe category has an exclusive right to compete for the post reserved for those particular categories, however, in case such a candidate otherwise on the strength of merit is found eligible for appointment against the open category post, then such candidate has to be offered appointment against open category post and the reserved seats are to be offered to other candidates who may be less meritorious but belongs to the reserved category. Applying that test in the present case, had the petitioner applied for the post in issue as a Scheduled Caste category candidate, then on her being successful in the selection process, she ought to have been offered appointment against the post meant for open category because it is not in dispute that the last candidate who has been offered appointment under general category was less meritorious than the present petitioner and petitioner had not availed any concession available to a Scheduled Caste category candidate in terms of the advertisement. On this count, denial of appointment to the petitioner by the respondent-Department on the ground that she had passed NET test as a Scheduled Caste category candidate and not as an open category candidate, is in fact arbitrary and not sustainable in law.

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No other point has been argued.

In view of what has been discussed herein above, the present petition is allowed. The impugned letter/orders dated 17.09.2022 (Annexure P-5), dated 26.09.2022 (Annexure P-8) are set aside. The act of respondent No.3 qua rejecting the candidature of the petitioner on the ground that he was not eligible for the post belonging to General Category as she had passed NET examination as a EWS Category candidate, is held to be bad in law. Considering the fact that the petitioner has scored above the cut-off marks in the exam/selection process, as stated by learned counsel for respondent No.3 during the course of hearing, respondents are directed to offer appointment to the petitioner against the post of Lecturer in Applied Science (Maths), under the General Category, as from the date when the persons junior to him were offered appointment. Needful shall be done within a period of two months from the date of receipt of copy of this order. Ensuring benefits shall also accrue upon the petitioner.

11.01.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No