

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

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1. CWP No.25344 of 2023
Date of Decision : 15.11.2023

*Sunil Kumar and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***2. CWP No.25414 of 2023****2023:PHHC:149087***Parmila Devi and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***3. CWP No.25347 of 2023****2023:PHHC:149088***Rajender Singh and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***4. CWP No.24827 of 2023 (O & M)****2023:PHHC:149443***Bajinder Singh**..... Petitioner**versus**Haryana Public Service Commission**..... Respondent***5. CWP No.25729 of 2023****2023:PHHC:149084***Manoj Kumar and others**..... Petitioners**versus**State of Haryana and others**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Jasbir Mor, Advocate,
Mr. Anurag Goyal, Advocate and
Mr. Sanchit Punia, Advocate
for the petitioners

Mr. Parveen Mehta, DAG, Haryana

Mr. Kanwal Goyal, Advocate, for respondent no.3/HPSC

TRIBHUVAN DAHIYA J. (ORAL):

All the above mentioned petitions give rise to common questions of law on similar facts, therefore, the same are being decided together.

2. These petitions have been filed seeking a writ of *mandamus* directing the third respondent/Haryana Public Service Commission (hereinafter referred to as ‘the Commission’) to call the petitioners for interview for the posts of Post Graduate Teachers/PGT-Fine Arts (Rest of Haryana cadre), advertised vide advertisement no.27/2023 dated 24.6.2023, Annexure P-1, by relaxing/waving off the condition of minimum qualifying thirty five per cent marks in the ‘Subject Knowledge Test’.

3. Learned counsel for the petitioners have contended that the Commission issued advertisement no.27 of 2023 for 580 posts of PGT in the subject of Fine Arts for Rest of Haryana cadre. The petitioners being eligible applied for the same. In all, 420 applications were received. Since the number of applicants were less than the number of posts advertised, the Commission dispensed with the requirement of the candidates appearing for screening test.

3.1. As per criteria, before being called for the interview, the candidates have to clear Subject Knowledge Test, wherein minimum cut-off marks are thirty five per cent. The number of candidates to be called

for interview is two times the number of posts advertised, provided they

have secured minimum thirty five per cent marks in the test.

3.2. The petitioners appeared for the Test. Its result was declared on 18.10.2023, Annexure P-6, wherein the petitioners roll numbers did not figure and they were not called for interview.

3.3. In these circumstances, the instant petitions have been filed seeking relaxation in the minimum cut-off marks for the test.

3.4. Learned counsel for the petitioners contend that it is apparent from the result notification that only 290 candidates appeared for the 580 posts which were advertised. A large number of posts are vacant, still the petitioners are being prevented from being participating in the further stage of selection only on account of the condition of minimum cut-off marks provided for the Test which is unreasonable and unjustifiable. The petitioners are fully qualified for the posts, and have cleared the Haryana Teacher Eligibility Test (HTET) also, therefore, their right to consideration cannot be denied.

4. Learned counsel for the Commission, on the contrary, contends that the writ petitions are not maintainable because the petitioners have already appeared in the Subject Knowledge Test, and on being declared unsuccessful they have approached this Court seeking relaxation which cannot be permitted. They are estopped from doing so after participating in the selection process. Further, it has been contended that there is no challenge to the clause in the advertisement requiring the candidates to secure minimum of thirty five per cent marks in the Test, nor is there any provision in the advertisement regarding relaxation in the minimum prescribed marks for the test. Therefore, the petitioners have no right to seek a direction for relaxing/waving off the minimum cut-off marks. Still

further, the Commission has been prescribing the criteria/minimum cut-off marks for the Test in almost every selection. There is no *mala fide* in prescribing this criteria, which is fair and reasonable. The Commission is within its jurisdiction to test suitability and subject knowledge of the candidates before recruiting them. In support of his submissions, he relied upon a judgment of the Supreme Court in *Dr. Thingujam Achouba Singh and others v. Dr. H. Nabachandra Singh and others*, 2020 (20) SCC 312.

5. Heard.

6. Undisputedly, the advertisement for the posts of PGT-Fine Arts for Rest of Haryana cadre was issued on 24.6.2023. The criteria for selection, including the requirement to clear the Subject Knowledge Test with minimum thirty five per cent marks, was prescribed thereunder. Still, the petitioners did not challenge the same, and participated in the selection process. It is only after remaining unsuccessful in the Test, and finding themselves out of the zone of consideration for the next stage of selection, i.e., interview, they have approached this court by filing the instant petitions. This conduct of theirs dis-entitles them from seeking relaxation of the criterion prescribing minimum cut-off marks. Besides, its validity and legality is not under challenge in the petition.

7. Further, there is no provision notified in the advertisement providing for any relaxation in the minimum cut-off marks of the Subject Knowledge Test, nor any rule, regulation or instruction could be pointed out by learned counsel for the petitioners which entitles the candidates to seek such relaxation in the event of number of applicants being less than the number of advertised posts.

8. Still further, it is well settled that a relaxation of criteria

prescribed for selection cannot be sought as a matter of right. It is for the Commission to determine the criteria of selection and provide for any relaxation thereof in a given situation, and not for the candidates to demand the same as an afterthought on failing to cross the benchmark. In similar circumstances it has been held in *Dr. Thingujam Achouba Singh* case (*supra*);

16. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.

9. In view thereof, there is no ground to entertain the petitions.

10. Dismissed.

11. Photocopy of this order be placed on the connected case files.

(TRIBHUVAN DAHIYA)
JUDGE

15.11.2023
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No