

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

260

CWP-2599-2023
Date of Decision: 15.02.2024

Gurpreet Singh ...Petitioner(s)

Versus

Chaudhary Charan Singh Haryana Agricultural University, Hisar and
another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Rakesh Nagpal, Advocate for the petitioner

Ms. Divya Arora, Advocate for
Mr. Pankaj Nanhera, Advocate for respondent no.1

Mr. Naveen S. Bhardwaj, Advocate for respondent no.2

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the result/office order dated 26.09.2022, Annexure P-7, to the extent second respondent has been selected as Assistant Scientist Nematology; and a writ of *mandamus* directing the first respondent/University to grant five marks to the petitioner for National Eligibility Test (for short ‘NET’) qualification as per the criteria for selection, and prepare the merit list accordingly to appoint the petitioner on the post.

2. Facts of the case in brief are, the University issued advertisement no.2 of 2022 dated 09.03.2022, Annexure P-5, inviting applications for two

posts of Assistant Scientist Nematology in general category. The petitioner, who possessed, Ph.D. in Nematology with NET, applied for the same on 08.05.2022. Although belonging to Scheduled Caste (SC) category, he applied for the open/general category posts. He was found eligible and interviewed on 26.09.2022. The selection result was declared the same day, whereby both the posts were filled by appointing Mr. Chaitra Ganapati Bhat, who secured seventy five point two eight per cent marks, and the second respondent, who secured sixty point seven one per cent marks. The petitioner could not be selected since he could secure only fifty nine point eight seven per cent marks.

3. Learned counsel for the petitioner has claimed that as per the criteria for selection, candidates are entitled to five marks for NET qualification, ten marks for Ph.D. without NET qualification, and fifteen marks for Ph.D. with NET. The petitioner is Ph.D. holder and has qualified NET as well, but has been given only ten marks by considering his NET qualification invalid for award of marks in violation of the criteria. Although he has qualified NET as SC category candidate, he cannot be denied award of five marks for the same on the ground of being an applicant for general category post. There is no stipulation in the advertisement or in the criteria that no marks will be given for NET certificate obtained by reserved category candidates. Accordingly, the petitioner becomes entitled to five marks on the basis of NET qualification, which raises his score to sixty four point eight seven per cent, higher than that of the second respondent/selected candidate.

4. Learned counsel for the second respondent, on the contrary, contends that the petitioner is not entitled to award of five marks for his NET qualification, since the test was qualified by him as a SC category candidate

by securing forty seven point five six per cent marks; minimum percentage of marks prescribed for qualifying the test for SC/ST/Divyang category candidates was forty per cent as against fifty per cent for the general category candidates. This is apparent from the NET certificate dated 31.01.2020, Annexure P-4. Therefore, no benefit of marks under the criteria for selection can be given to the petitioner for his NET certificate which was not awarded to him as a general category candidate. Learned counsel has relied upon the Supreme Court judgment in *Government (NCT of Delhi) and others v. Pradeep Kumar and others*, (2019) 10 SCC 120, in this regard.

5. Heard.

6. Undisputed position on record is that the petitioner as well as the second respondent competed against the general category post. As per the criteria for selection, the candidates are entitled to five marks on the basis of NET qualification. It reads as under:

NET	:	5.0 marks
Ph.D. without NET	:	10.0 marks
Ph.D. with NET	:	15.0 marks

The petitioner belongs to SC category and has cleared NET examination in that category on a lower benchmark of forty per cent by securing forty seven point five six per cent marks, as against higher bench mark of fifty per cent for general category candidates. The question is, *whether the petitioner is entitled to five marks for selection against a general category post for the NET certificate awarded to him as SC category candidate on a lower benchmark.*

7. The petitioner has obtained NET qualification with relaxed norms, meant for the SC category candidates. He wants it to be considered valid for award of marks in the selection meant for open/general category post, where he is competing as a general/open category candidate, though belonging to SC category. The principle of allowing a reserved category candidate to compete for open/general category posts is that the posts are meant for all the candidates *dehors* the reservation, and they can compete irrespective of the categories they belong to. The principle of equality demands that all such candidates need to be subjected to one and the same competition to earn a merit position. Accordingly, candidates like the petitioner must compete for the open posts on equal footing leaving behind their entitlements as reserved category candidates. Giving the benefit of NET certificate awarded on relaxed norms, which are not available to other candidates competing against the post, amounts to extending the benefit of reserved category relaxation to the competition against unreserved posts. This cannot be permitted being anathema to the principle of open competition, and will be discriminatory *vis-a-vis* other candidates also.

8. The Supreme Court in *Pradeep Kumar* case (*supra*), in somewhat similar circumstances, held that reserved/OBC category candidates obtaining CTET eligibility qualification on lesser marks, cannot be considered eligible for general category vacancies. The relevant paragraphs of the judgment read as under:

20. It is important to keep in mind that the respondents are competing for general category vacancies. All others in this group have obtained their CTET eligibility qualification, securing the normal

pass marks without availing any relaxation of pass norms. On the other hand, the respondents despite their lesser marks in the CTET examination, could qualify only because they availed the relaxation benefits as OBC category examinees. Their eligibility qualification is secured under relaxed norms meant for OBC category and therefore we do not think it is proper to consider them to be eligible for the general category vacancies and contention to the contrary is unacceptable.

21. The respondents with their CTET qualification under relaxed norms would be eligible for OBC category posts provided their OBC status is certified and recognised by the Delhi Government. But such not being the case, they are ineligible for the reserved category vacancies. To allow them to migrate and compete for the open category vacancies would not be permissible simply because they have secured the CTET qualification with relaxation of pass marks meant for those belonging to the OBC category. As the respondents have not secured the normal pass marks for general category, their eligibility for the general category vacancies is not secured. Therefore, their performance in the selection examination would be of no relevance, in the present process.

9. Accordingly, the stipulation in the criteria to award marks for a candidate's NET qualification, has to be read in the light of law on the issue. It will, therefore, entitle a candidate to marks only for the examination cleared by him/her in the category for which the post has been advertised.

10. In view thereof, no exception can be taken to the University decision not to award marks to the petitioner for NET qualification obtained as SC category candidate on relaxed norms.

11. Petition stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

15.02.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>