

LPA-877-2024

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(122)

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

LPA-877-2024

Date of decision : 30.04.2024

Gurpreet Singh

.....Appellant

Versus

Chaudhary Charan Singh Haryana Agricultural University, Hisar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Sardavinder Goyal, Advocate, for the appellant.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. Consideration in the present appeal is to the order dated 15.02.2024 passed by the learned Single Judge in CWP-2599-2023, whereby the learned Single Judge rejected the claim of the writ petitioner (appellant herein) as such to quash the selection of the private respondent as Assistant Scientist Nematology, and the prayer to direct the respondent University to grant five marks to the writ petitioner for National Eligibility Test (in short, 'NET') qualification and prepare the merit list.

2. As per the undisputed facts, the private respondent secured 60.71 marks, whereas the writ petitioner secured 59.87 marks, and therefore was below in merit as such. The benefit of five marks now sought by the writ petitioner on account of NET qualification, increasing his marks to 64.87 which would take his merit higher than the private respondent, is being denied. The reason as such for denial is that there is lower benchmark for appearing in NET examination for reserved candidate to the extent of 40% marks against 50% marks for general category candidate. The writ petitioner got 47.56%

marks and thus had never cleared NET examination against the general category benchmark. In such circumstances, the learned Single Judge, placed reliance upon a decision of the Apex Court in **Government (NCT of Delhi) and others Vs. Pradeep Kumar and others, (2019) 10 SCC 120**, to come to the conclusion that having not secured normal pass marks for general category candidate, eligibility for general category vacancy is not secured and, therefore, the claim could not have been made by the writ petitioner. Thus, the writ petition has been dismissed.

3. Learned counsel for the appellant has vehemently placed reliance upon judgment of the Apex Court in **Vikas Sankhala and others Vs. Vikas Kumar Agarwal and others, AIR 2016 SC 5265**.

4. The said judgment was considered in **Pradeep Kumar's case** (supra), which is a three Judges Bench decision, and it was specifically observed that if the interpretation, as contended by learned counsel for the appellant, is accepted, then it would amount to applying a relaxed standard in selecting a reserved category candidate and such candidate will have to be counted against reserved vacancies. It was thus held that if the view taken in **Vikas Sankhala's case** (supra) is accepted, it would lead to dilution of merit in the unreserved category. We have already mentioned the merit placement as such of the private respondent, who is apparently higher in merit. The observations made in paragraphs 21.1, 24 and 26 of the judgment in **Pradeep Kumar's case** (supra) read as under :-

“21.1 In Vikas Sankhala, the Court considered the implication of the Circular dated 11.05.2011 issued by the Department of Personnel, government of Rajasthan, (A. Gr. II) bearing ref. no. No. F.7(1) DOP/A-II/99 that expressly allowed migration to the unreserved category irrespective of any concession availed by the candidate of the reserved

category if he/she had secured more marks than the last Unreserved category candidate who is selected. But here the OMs dated 01.07.1998 and 04.04.2018 issued by the Department of Personnel & Training would bear consideration. Contrary to the circular dated 11.05.2011 in Vikas Sankhala (supra), the two OMs referred by Ms Divan, issued specific instructions to the effect that when a relaxed standard is applied in selecting a reserved category candidate, in age limit, experience, qualification, additional chances in written examination etc., such candidates will be counted against reserved vacancies.

x x x

24. *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.*

x x x

26. *As earlier discussed, this case concerns qualifications obtained with concession in pass marks. Such concession would have a direct impact on standards of competence and merit in the recruitment of Special Education Teachers. The principles of reservation under the Constitution of India are intended to be confined to a specifically earmarked category and the unreserved category must be protected to avoid dilution of competence and merit. If Vikas Sankhala (supra) is interpreted shorn of*

its peculiar facts, as has been suggested by the respondents’ counsel, it would in our perception, considering that respondents secured the qualification under relaxed norms, would lead to dilution of merit in the unreserved category. The argument made to the contrary by the respondents is therefore rejected.”

In such circumstances, the observations by a three Judges’ Bench have a higher precedential value, more so when they have set aside the judgment of the High Court which had placed reliance upon Vikas Sankhala ‘s case (supra).

5. Learned counsel for the appellant has sought to distinguish the judgment in Pradeep Kumar’s case (supra) on the ground that in that case, the petitioner was from a different State.

6. We have to see the principle, which has been laid in the judgments and, therefore, we do not feel that there is any reasonable ground as such to take a different view.

7. The writ petitioner thus came into the zone of consideration for eligibility only on account of the fact that he had the benefit of the reserved category and otherwise he could not have come into the zone of consideration. In the absence of any malafide as such alleged, we do not feel that the learned Single Judge erred in any manner in rejecting the claim of the writ petitioner.

8. Resultantly, we do not find any merit in the present appeal and the same is dismissed *in limine*.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

April 30, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	Yes