

220

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27217-2018 (O/M)

Date of decision : 08.02.2024

Neeru

..... Petitioner (s)

Versus

State of Haryana and another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Nikhil Lather, Advocate for
Mr. Anurag Goyal, Advocate
for the petitioner.

Ms. Shruti Goyal, DAG Haryana.

-.-

-.-

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of instant writ petition under Articles 226/227 of Constitution of India seeks issuance of a writ in the nature of certiorari for quashing of the impugned Note under Cat. No. 1 (TGT Punjabi) in the Advertisement dated 16/17.03.2016 being illegal, arbitrary, unconstitutional and ultra vires to the statutory rules.

2. Result of the petitioner was called for, which was produced in the Court today itself and it is noticed therein that she (petitioner) has scored marks less than the cut-off for Scheduled Caste (SC) category. The grand total of the marks of the petitioner comes to 100, having written marks as 80 and interview marks as 20, whereas for SC category, the cut-off marks

was 105 and for SC Waiting was 101. There are three candidates in SC Waiting, who have marks above than the petitioner. In this situation, this Court also examined the case on merits.

3. Learned counsel for the petitioner has submitted that last closing date for examining the qualification/eligibility condition for the post was fixed as 29.04.2016, but for Haryana Teacher Eligibility Test (hereinafter referred to as 'HTET'), the candidates were given relaxation to acquire the said qualification before the date of interview. It is the submission that such relaxation, in view of the condition in note, de-hors the rules as the power for relaxation was only with the State Government and not with the recruiting agency i.e respondent No. 2-Haryana Staff Selection Commission (hereinafter referred to as 'the Commission'). It is further submitted that the petitioner had passed HTET exam in the year 2014 and it was only for the purpose to give benefit to the candidates, who had participated in HTET exam whose result was not declared upto the last date of interview. Such relaxation in condition gives the additional benefit to the candidates, who were otherwise not qualified to participate in the selection process.

4. Per contra, learned counsel appearing for respondents has pointed out that the Department of Elementary Education, Haryana sent a requisition to the Commission for selection and recommendation of eligible candidates for the post of TGT Punjabi and 189 posts were advertised. Since HTET exam could not be conducted, therefore, result could not be declared in the year 2016 before the cut-off date and as it was a requisite qualification, every candidate was given the benefit to pass the HTET exam

till the date of interview. It is submitted that cut-off date for interview and qualification to be acquired for HTET exam was common for all. Candidates' selection has been done purely on merit.

5. Learned counsel for the petitioner has also submitted that additional benefit has been given to the candidates, who participated in the selection process to bring in additional benefit.

6. We have considered the submissions and perused the available record.

7. This Court finds that the petitioner participated in the selection process and when she was not called for interview, she approached this Court challenging the condition note in the advertisement. The principle of *mutatis mutandis* shall apply and the writ petition would not be maintainable on the said count. Once, the petitioner accepts the terms of the advertisement and does not challenge the same before participating in the selection process, she is debarred from challenging before the Court as it affects not only her but all other candidates, who have participated in the selection process.

8. Secondly, this Court also finds that there can be two different cut-off dates laid down by the selecting agency considering the circumstances, which may be available at that relevant time.

9. It is ought to be noticed that HTET exam was not conducted in the year 2016 and same was conducted in the year 2017 and, therefore, with a view to give better participation in the selection process, the benefit was given to the candidates to pass HTET exam till the date of interview.

10. This Court also finds that no-one has been impleaded as a party

to represent the alleged selected candidates. Selections have already been made and any order passed by this Court shall prejudice the persons, who have already been selected. Law in this regard has already been settled by the Apex Court in the case of Parbodh Verma and others Versus State of Uttar Pradesh, 1984 (4) SCC 251 wherein the Court has held as under :-

“ The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were virtually concerned, namely, the reserve pool teachers, were not made parties – not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners

refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

11. The said aspect has also been reiterated by Hon'ble Supreme Court in the case of Arun Tewari Versus Zila Mansavi Shikshak Sangh, 1998 (1) SCT 533.

12. The writ petition without impleading the necessary parties would not be maintainable.

13. Keeping in view the above, no relief can be granted to the petitioner and the same is dismissed being devoid of merits.

14. Result produced by learned State counsel in Court today itself has been returned back to her in a sealed cover.

(SANJEEV PRAKASH SHARMA)
JUDGE

(HARSH BUNGER)
JUDGE

08.02.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No