IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.4011 of 2020 &
CWPOA No.6528 of 2019
Decided on: 24.04.2026

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1. CWPOA No.4011 of 2020

Yash Pal ...Petitioner

Versus

State of HP and another ...Respondents

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2. CWPOA No.6528 of 2019

Pradeep Kumar Thakur and others ...Petitioners

Versus

State of HP & another ...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioner(s): Mr. Adarsh Kumar Vashista, Advocate, in both the petitions.

For the respondents: Mr. Vishwa Deep Sharma, Additional Advocate General, for the respondents-State, in both the petitions.

Mr. Pushpender Kumar, Advocate, vice Mr. K.B. Khajuria, Advocate, for respondent Nos.3 to 5 in CWPOA No.6528 of 2019.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition(s), the

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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petitioner(s) have prayed for the following substantive relief(s):-

> " **In CWPOA No.4011 of 2020**
>
> *(i) That the Respondents may kindly be directed to consider the Applicant for promotion against the posts of TGT(Arts) against 15% quota on the basis of tentative panel of TET pass in service JBTs prepared and circulated by the Respondent No.2 on 17.08.2016 Annexure A-7.*
>
> *(ii) In the alternative the tentative panel of TET pass in service JBT circulate by Respondents as on 05.06.2017 Annexure A-10 may kindly be quashed and set aside.*
>
> **In CWPOA No.6528 of 2019**
>
> *(i) That the Respondents may kindly be directed to consider the Applicants for promotion against the posts of TGT(Arts) against 15% quota on the basis of tentative panel of TET pass in service JBTs prepared and circulated by the Respondent No.2 on 17.08.2016 Annexure A-4.*
>
> *(ii) In the alternative the tentative panel of TET pass in service JBT circulated by Respondents shall be 05.06.2017 Annexure A-7 may kindly be quashed and set aside and the same may be directed to be re-drawn by recokning the seniority from the date of acquisition of eligibility."*

2. For the purpose of adjudicating the claim in petition(s), the facts of CWPOA No.6528 of 2019 are taken.

3. The precise grouse of the petitioners as averred in the writ petition is that they are working as Junior Basic Teachers (for short "JBT") with the respondents-State and all of them are qualified Bachelor of Arts (for short "B.A.")

along with Bachelor of Education (for short “B.Ed.”) from duly recognized universities and institutions. As per the Recruitment and Promotion Rules, called as the Himachal Pradesh, Elementary Education Department, Trained Graduate Teacher, Class-III (Non-Gazetted), Recruitment and Promotion Rules, 2009 (for short “R&P Rules, 2009”), the post of Trained Graduate Teachers, Arts (for short “TGT Arts”), can be filled up 25% by promotion (15% from JBT & 10% from C&V) and 75% by direct recruitment on regular basis or recruitment on contract basis. A person who is having B.A./B.Com. with at least 50% marks and one year B.Ed. or other qualifications as prescribed and had passed Teacher Eligibility Test (for short “TET”) conducted by the HP Subordinate Services Selection Board, in accordance with guidelines framed by NCTE for the purpose, is eligible to be appointed against the post of TGT Arts. However, a person who is appointed as JBT can be considered against 15% quota meant for promotion with essential qualification of atleast five years regular service or regular combined with continuous adhoc service rendered, if any, in the grade. The petitioners have averred that since they were having the aforementioned essential qualifications, the respondents-

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State had prepared a tentative panel of TET pass in-service JBTs to be considered for promotion to the post of TGT (Arts) against 15% quota as on 31.07.2016. Vide communication dated 17.08.2016 (Annexure A-4), all the Deputy Directors of Elementary Education, Himachal Pradesh were directed to bring to the notice of all the eligible candidates the tentative penal and objections were sought till 31.08.2016 and thereafter no objections will be entertained. The tentative panel was also uploaded on the departmental website. The petitioners have pleaded that out of the said panel only 159 posts of TGTs were filled up and the candidates figuring after 159 were not promoted and the respondents initiated the fresh process, when it had called the names of TGT panel amongst TET pass in-service JBTs possessing B.A./B.Com. & B.Ed. as per the existing R&P Rules for promotion as TGT (Arts) in the year 2017 (Annexure A-6).

4. The respondents-State after calling the names from all the Deputy Directors of Elementary Education, Himachal Pradesh, prepared a tentative panel of TET pass in-service JBTs to be considered for promotion to the post of TGT (Arts) against the 15% quota as on 31.05.2017 vide

communication dated 05.06.2017 (Annexure A-7), when the persons, who had not qualified the TET, when the first panel was prepared on 17.08.2016 have also been included. Once the petitioners were already in the tentative panel prepared by the respondents-State as on 17.08.2016, which had not expired and the currency of the said panel was for one year, the respondents-State could not have devised the method to invite the names of the persons, who had subsequently passed the TET and thus the action on the part of the respondents-State is highly illegal, unjust, unreasonable and arbitrary and hence, the tentative panel prepared on 05.06.2017 (Annexure A-7) is liable to be quashed. The rights of the petitioners had been infringed by introducing the names of the persons, who had passed the TET subsequent to the petitioners and they have been placed over and above them, as no one can be conferred seniority prior to the date of acquisition of eligibility.

5. The respondents-State filed reply to the petition and averred that the post of JBT is District cadre post, whereas the post of TGT is State cadre post and as per the R&P Rules of Trained Graduate Teacher, 15% posts of TGT are filled up by way of promotion from JBT cadre. In the

month of August, 2016, the respondents-State had 169 posts meant for JBT cadre and, therefore, the respondent-Department prepared tentative promotion panel on 17.08.2016, which was uploaded on the departmental website of the Directorate of Elementary Education, H.P, for inviting objections. After clearing the objections, the respondent-Department convened DPC on 03.10.2016 and on the recommendations of the DPC, promoted 159 TET pass in-service JBTs to the post of TGT (Arts) on 26.10.2016. To fill up 15% promotion quota of JBT to the post of TGT (Arts) arisen after 01.11.2016, all the Deputy Directors of Elementary Education, Himachal Pradesh were directed on 02.05.2017 to send/supply the promotion cases of TET pass in-service JBTs, who possess the requisite qualification of TGT, due to the reason that the Himachal Pradesh Board of School Education, Dharamshala, had declared the result of TET on 07.11.2016, which is conducted by the Board every year as per the guidelines issued by the NCTE. The respondents-State had only 117 posts which are meant for JBT cadre against 15% quota and, therefore, to fill up these posts, the respondents-State had prepared a tentative promotion panel of 264 in-service JBTs, whose promotion

cases have been received in the Directorate up to 31.05.2017. In this tentative panel, appointees as JBT up to the year 2002 (Gen. & SC) and 2007 ST category had been included as they were senior to the petitioners. The tentative panel had been uploaded on the departmental website on 05.06.2017 for inviting objections. It is further submitted that in-service JBTs (without TET) filed Original Applications, wherein interim orders were passed by the learned Tribunal to consider them in the DPC and kept their result in sealed cover. In compliance with the orders of the Tribunal, their cases were considered in the DPC held on 03.10.2015 and their results have been kept in sealed cover. Thereafter, vide interim order dated 21.12.2016, these posts were released for being filled up as per the existing R&P Rules and those in-service JBTs who have passed TET on 07.11.2016 and senior to the petitioners were considered in tentative promotion panel so prepared by the respondents-State on 05.06.2017. As per the R&P Rules in vogue of TGT category dated 31.05.2012, a candidate should be graduate with 50% marks, B.Ed. and should be TET pass on the date of DPC. There is no such provision provided in R&P Rules to promote the eligible JBTs

to the post of TGT (Arts/Medical/Non-Medical) on the basis of passing of TET exam by ignoring the seniority. The petitioners are intending that as they have qualified the TET earlier, they may be promoted to the post of TGT (Arts), even ignoring the rightful claim of the seniors to them who have passed the TET later than the petitioners, which is not tenable. The eligible candidates on the date of DPC are considered for promotion irrespective of the fact that when a particular candidate has qualified the Graduation/B.Ed./TET, mandatory qualification for becoming a TGT.

6. Private respondents have not filed reply, but the learned counsel representing them stated that reply filed by the respondents-State may be read as reply on their behalf.

7. I have heard the learned counsel for the parties and also perused the record carefully.

8. Before adverting to the merits of the case, it would be relevant to reproduce the relevant paras of the " Himachal Pradesh, Elementary Education Department, Trained Graduate Teacher, Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2009:-

> ***"TRAINED GRADUATE TEACHER (ARTS):-***
> *I) B.A./B.Com with at least 50% marks and 1-year Bachelor in Education (B.Ed.)*

OR

B.A./B.Com with at least 45% marks and 1-year Bachelor in Education (B.Ed.) in accordance with NCTE (Recognition norms and procedure) regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.).

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A.Ed.

OR

B.A/B.Com with at least 50% marks and 1-year Bachelor in Education (B.Ed.) (Special Education)

AND

ii) ***Pass in Teacher Eligibility Test (TET), to be conducted by HP Subordinate Services Selection Board in accordance with the guidelines framed by the NCTE for the purpose****.*

DESIRABLE QUALIFICATIONS:-

Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh.

b) For the existing provisions against Col. No. 10, the following shall be submitted, namely:-

(i) 25% by promotion (15% from JBT & 10% C & V)

(ii)75% by direct recruitment on regular basis or recruitment on contract basis as the case may be in the following manners:-

a) 37.5% through HPSSB, Hamirpur

b) 37.5% by batch-wise basis.

(c) For the existing provisions against Çol. No. 11, the following shall be substituted, namely:-

"i) ***15% by promotion from amongst the in service JBTs possessing the essential qualification as prescribed in Col. No.7 above with atleast five years regular service or regular combined with continuous adhoc service rendered, if any, in the grade.***

ii) 10% by promotion from amongst the in service C&Vs possessing the essential qualification as prescribed in Col. No.7 above with atleast five years regular service or regular combined with continuous adhoc service rendered, if any, in the grade."

9. A bare perusal of the R&P Rules clearly reveals that the person who has the qualification of B.A./B.Com.

with atleast 50% marks and one year B.Ed. or other qualifications prescribed and passed TET, is eligible to be considered for promotion the post of TGT (Arts) by way of promotion under 15% quota fixed for JBTs possessing the essential qualifications of atleast five years regular service or regular combined with continuous adhoc service rendered as JBT, if any, in the grade.

10. As per these rules, it is not the date of acquiring the qualification of TET, which makes the person eligible in addition the qualification of B.A./B.Com. with atleast 50% marks and one year B.Ed. or other qualifications. In the present case as per the reply filed by the respondents-State, the DPC to fill up the posts under the ibid rules was convened on 03.10.2016 and on the recommendations of the DPC, 159 TET passed in-service JBTs were promoted to the post of TGT (Arts) on 26.10.2016. It is also evident from the reply that for the vacancies which had arisen after 01.11.2016, the respondents-State had taken fresh steps to prepare the panel in view of the fact that the result of TET was declared on 07.11.2016 and all the Deputy Directors of the Elementary Education, Himachal Pradesh were directed to send the names of all JBTs, who were possessing the

requisite qualification of TET in the examination which was conducted on 07.11.2016. As per the information received by the respondents-State, the tentative panel of the eligible candidates was prepared and the same was uploaded on the Departmental website on 05.06.2017 (Annexure A-7) for inviting objections up to 20.06.2017, to fill up 117 posts which were meant for JBT cadre against the 15% quota.

11. The arguments raised by the learned counsel that once the panel was prepared on 17.08.2016, which was for one year, the respondents could not have devised the method to invite fresh names from all the Deputy Directors of Elementary Education, Himachal Pradesh cannot be accepted for the reason that it is for the employer to see whether the appointment has to be made on the basis of the panel already prepared or to convene the fresh DPC for the posts to be filled up either by way of direct recruitment or by way of direct promotion, especially when the vacancies had arisen after preparing the panel and further more eligible candidates had become eligible. The respondents-State in its wisdom had considered the candidates, who had passed the TET examination on 07.11.2016 that too, to the vacancies which had arisen after

01.11.2016 and they were senior to the petitioners as JBTs. The panel already prepared as on 17.08.2016 could not have been considered for the vacancies which had arisen after the panel as stated hereinabove i.e. precisely on 01.11.2016.

12. Learned counsel for the petitioners has placed reliance upon the judgments passed by the Hon'ble Supreme Court in ***State of Bihar and others vs. Amrendra Kumar Mishra,*** **(2006) 12 SCC 561,** and ***State of Rajasthan and others vs. Jagdish Chopra,*** **(2007) 8 SCC 161** to contend that since the panel prepared was having life of one year, therefore, the action on the part of the respondents-State to prepare a fresh panel is illegal, arbitrary as well as discriminatory. However, if the aforementioned judgments are perused, the Hon'ble Supreme Court has only come to the conclusion that the life of the panel would be for a year. The Hon'ble Court has not returned the findings that the future vacancies have also to be filled up from the panel prepared and the employer cannot devise method to call fresh application for the future vacancies. Admittedly, in the present case, more candidates had become eligible after declaration of the result of TET on

07.11.2016, who were senior to the petitioners as JBTs and thus, the respondents-State with a view to consider the candidature of even those persons, who had passed their TET as per the exam conducted by the statutory body, invited the names from all the Deputy Directors of Elementary Education, Himachal Pradesh, since the JBTs were to be considered for promotion to the post of TGT (Arts). Not only this, the petitioners could have raised a grievance only in case the posts, which were existing prior to preparing the panel as on 17.08.2016, were not filled up and their candidatures were not being considered. The petitioners have not disputed that the fresh panel was prepared on the basis of the vacancies which had arisen after 01.11.2016 i.e. admittedly after preparation of the tentative panel dated 17.08.2016. Thus, the claim of the petitioners seeking appointment on the basis of the tentative panel already prepared, wherein their names were also included is totally unjustified and unreasonable. It is settled law that a person has a right for consideration only. Once other persons had become eligible and their candidatures were also considered, keeping in view the fact that the vacancies had arisen after 01.11.2016, no illegality

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can be found with the said action of the respondents-State.

13. Consequently, I do not find any merit in the petitions and the same are accordingly dismissed. However, no orders as to cost. Pending application(s), if any, also stand disposed of.

24th April, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**