IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3862 of 2019 a/w CWPOA Nos. 5301 and 5329 of 2020

Date of decision : 24.04.2026.

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1. **CWP No. 3862 of 2019**

Sansar Chand ...Petitioner.

Versus

State of H.P. & others ...Respondents.

2. **CWPOA No. 5301 of 2020**

Krishan Chand ...Petitioner

Versus

State of H.P. & others ....Respondents.

3. **CWPOA No. 5329 of 2020**

Parkash Chand ...Petitioner

Versus

State of H.P. & others ...Respondents.

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the petitioners : Mr. Ramesh Chand Sharma, Advocate in all the petitions.

For the respondents : Ms. Swati Draik, Deputy Advocate General, for respondents No. 1 and 2 in all the petitions.

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

Mr. Sanjeev Kumar Motta, Advocate, for respondent No.3 in all the petitions.

Bipin Chander Negi, Judge:

All the three petitions are being taken up together as they arise out of the same recruitment process. The recruitment process in the case at hand was initiated vide Advertisement No.32-3/2016. Vide the said advertisement, online applications were invited for direct recruitment. The recruitment in the case at hand pertains to 6 posts (5 for General UR and 1 for General BPL), advertised in the Home Guard Department qua the post of Civil Defence Instructor/ Chief Instructor/Platoon Commander/Administrative Officer/ Assistant Store Officer on contract basis. The opening date for submission of online recruitment application was 18.10.2016. The closing date for recruitment was 17.11.2016 till 11.59 PM. The advertisement has been placed on record as Annexure P-1.

2. The Post Code of the advertised vacancy in terms of the advertisement was 535. The essential qualifications for the same read as under:-

> "*Should have passed at least Ten Plus Two (10+2) Examination from a recognized University/Board of School Education or its equivalent.*
>
> *AND*

SHOULD BE HOLDING Honorary Rank of Platoon Commander or above in the Home Guards Organization & with continued service as such for the last three years.

OR

Should be a serving Havildar Instructor/Quarter master Havildar in the Home Guards Department for at least three years.

OR

Should be a released/Retired Officer of the Indian Army, who has held the rank of Naib Subedar or above with at least 3 years service as such."

3. As per advertisement, the date for determination of eligibility qua the essential qualification was the closing date for submission of online recruitment applications. However, in terms of the advertisement the age of the applicant was to be within the age of 18 to 45 as on 01.01.2016. The upper age limit in the case of reserved category was relaxable by five years.

4. On the very first page of the advertisement, five notes have been mentioned. Note (i) reads as follows:-

"The candidates must read the instructions carefully, which are available on the website of the HPSSC, i.e. http:/hpsssb.hp.gov.in/ before filling up Online Recruitment Application Forms (ORA) for the post(s) concerned."

5. Instructions mentioned in Note (i) have been placed along with the reply of respondent No.3 as Annexure R-3/A in ***Parkash Chand's*** case (*CWPOA No. 5329 of 2020 (OA No. 5861 of 2018*). The instructions relevant for the purpose of adjudication of the present lis are being detailed herein below:-

> *"3. The candidate should enter his/her particulars i.e. Name, father's Name, Mother's Name & Date of Birth as per his/her Matric certificate and uploaded scanned photograph and scanned signature. The size of scanned photograph should be less than 50 kb and size of scanned signature should be less than 30 kb. The candidates are advised to provide their Aadhar Number (if available) while filling the ORA. The details of candidate alongwith photograph would be automatically fetched from Aadhar data. Therefore, candidates are not required to upload scanned photograph in such case.*
>
> *4. The candidates must ensure their eligibility in respect of category, experience, age and essential qualifications(s) etc. as mentioned against each post in the advertisement to avoid rejection at later stage."*

6. In so far as the posts advertised in the case at hand, the mode of selection thereof had been prescribed in the advertisement in the following terms:-

> *"1. Objective type screening test (MCQ) consisting of syllabus of subject/field concerned, General*

Knowledge including General Knowledge of Himachal Pradesh, current Affairs, Every day Science, Logic, social Science, General English & General Hindi of Matric standard.

2. Interview of those who qualify objective type screening test."

7. In pursuance to the aforesaid advertisement, objective type screening test, as provided in the advertisement was held on 27.03.2018. The details of the result of the objective type screening test declared on 25.05.2018 have been appended along with as Annexure P-2 in (CWP No. 3862 of 2019).

8. In the advertisement (Annexure P-1), it has been categorically mentioned that "The printed copy of the online application form along with necessary original certificates and self-attested photocopies must be brought at the time of personal interview."

9. From a perusal of the record produced, it is evident that total 363 applications had been filed in response to the advertisement notice, out of which 258 applications were provisionally admitted and 81 candidates appeared in the Written Objective Screening Test, which was held on 27.03.2018. Total 18 candidates had been declared as qualified

and shortlisted for further process of evaluation (photocopy of press note dated 25.05.2018 has been placed on record).

10. Subsequent thereto, all 18 shortlisted candidates were called for 15 marks evaluation, on prescribed parameters, as personal interviews for Class-III category had been dispensed by the State Government vide notification dated 31.05.2017 (refer to reply filed by respondent No.3 in CWPOA No. 5301 of 2020, para 4 (g) at page-42 of the paper book). Out of 18 candidates, only 10 candidates had appeared for the 15 marks evaluation and from amongst the 10 candidates, 3 candidates were selected/recommended for appointment and balance were not found eligible as per essential qualification prescribed under the Recruitment & Promotion Rules.

11. With respect to the recruitment process for the advertised posts in the case at hand, the final result was declared on 17.07.2018. From the perusal of the reply filed by respondent No.3, it is evident that the cut off marks for General (UR) category was 44.00 and that of General (BPL) category was 35.50 (page 42, para 4 (g) of CWPOA No. 5301 of 2020 i.e Krishan Chand).

12. In so far as CWPOA No. 5301 of 2020 (Krishan Chand) is concerned, admittedly, he is a BPL candidate, who in

terms of Annexure P-2 (at page-26 of the paper book of CWP No. 3862 of 2019) had secured 41.00 marks. In response filed, specifically in CWPOA No. 5301 of 2020 (para 4 (d) of the paper book), it has been mentioned that Krishan Chand had applied for the SC (BPL) and therefore, his case could not be considered against the post advertised for General BPL. In so far as Parkash Chand and Sansar Chand are concerned, Sansar had secured 39.00 marks whereas Prakash Chand had secured 38.50 marks. (See Annexure P-2 placed on record at page-26 of CWP No. 3862 of 2019).

13. In the facts and attending circumstances, first and foremost contention raised by the learned counsel for the petitioners is that while calling the candidates for evaluation for 15 marks after the objective type screening test, held on 23.06.2018, ineligible candidates had been called, thereby marring the prospects of the present petitioners. Other than the aforesaid, attention of this Court has been invited to Note (iv) of the advertisement. The same reads as under:-

> *"(iv) The recommendations of the commission will be valid till the appointments are offered to the candidates by the appointing Authority or for a period of one year from the date of recommendations which-ever is earliest. Further, the recommendations shall be made by the Commission from the existing panel*

as and when the requisitions in respect of the additional vacancies are received from different departments for similar posts with common Recruitment and Promotion Rules till the waiting panel in operation is exhausted or six months, whichever is earlier."

As has already been stated (supra), in terms of Annexure A-1, advertisement issued for the recruitment process in the case at hand, candidates were required to read the instructions available on the website before filling up the online recruitment application form. The relevant extract of the instructions have been reproduced (supra) i.e. R-3/A filed with the reply of respondent No.3 in CWPOA No. 5329 of 2020 (Parkash Chand). From a perusal of the same, it is evident that while filling in the online applications all that the candidates were required to enter were his/her particulars i.e. Name, father's Name, Mother's Name & Date of Birth as per his/her Matric certificate and uploaded scanned photograph and scanned signature. Other than the aforesaid, in terms of the instructions, candidates were to ensure their eligibility in terms of category, experience or essential qualification, as mentioned in the advertisement for the post applied for in order to avoid rejection at a later stage. Besides the aforesaid, the candidates

were advised to provide their Aadhar numbers in terms of the advertisement. The last date of submission of online recruitment application was 17.11.2016. As has already been stated supra essential eligibility of a candidate was to be ascertained on the last date of submission of online recruitment application. However, age was to be determined as on 01.01.2016. Other than the aforesaid, from the advertisement, it is clear that printed copy of the online application along with necessary original certificates and self-attested copies were to be brought at the time of personal interview, which in the case at hand been substituted by 15 marks evaluation on the prescribed parameters, as personal interview for Class-III posts had been dispensed with by the State Government w.e.f. 31.05.2017, (para 6 (g) at page-42 of CWPOA No. 5301 of 2020 i.e Krishan Chand).

14. In the aforesaid factual matrix, respondent No.3 cannot be blamed for having called ineligible candidates for 15 marks evaluation post declaring the result of the objective type screening test.

15. Reference made to Note (iv), appended in the advertisement, is of no avail to the present petitioners, as in the case at hand, for the 6 posts advertised, only 3 candidates have

been found eligible. Hence, there arose no occasion for creating a panel of duly selected candidates over and above the advertised posts. Further, in terms of Note (iv), even if a panel had been made then the same was to remain in vogue at the most for six months. Qua the recruitment process for the advertised posts in the case at hand, the result was declared on 17.07.2018. The petition CWP No. 3862 of 2019 was filed on 25.11.2019, CWPOA No. 5301 of 2020 was filed on 16.09.2018 and CWPOA No. 5329 of 2020 was filed on 26.09.2018.

16. On the basis of rejoinder filed in CWP No. 3862 of 2019, a new plea is sought to be raised on behalf of the petitioner. Reliance is placed on rules of business and procedure of Subordinate Service Selection Board dated 28.01.2004. Attention of this Court has been invited to Clause 15.4 of the same and on the basis of the said clause, it is argued that the consideration zone in the case at hand should have comprised of all those candidates who had secured 45% marks of the total marks prescribed. It is contended that in the case at hand the objective type screening test comprised of 85 marks and 45% of which comes to 38.5%.

17. The argument is misconceived, as what has been contemplated in the advertisement in terms of the mode of

selection is an objective type screening test and not an evaluation of answer sheet to draw a merit list as is provided in Clause 15.4 of rules of business and procedure of the Subordinate Service Selection board. Hence what has been held in the case at hand by respondent no. 3 is an objective type screening test which is dealt with in Clause 15.5 of rules of business and procedure of the Subordinate Service Selection Board (Notification dated 28.01.2004).

18. In so far as petitioner in CWPOA No. 5301 of 2020 (Krishan Chand) is concerned, admittedly, he belongs to SC (BPL) category and the advertisement in the case at hand had been made for filling up 6 posts. Out of which 5 were to be filled from general category and one from the category of General (BPL). Admittedly, as has been detailed in reply (at page-42, para 6 (g) of CWPOA No. 5301 of 2020 i.e Krishan Chand), the cut off marks prescribed for General (BPL) in the recruitment process is 35.5 marks. From a perusal of the marks obtained in the objective screening test Annexure A-2 (page-26), it is evident that petitioner Krishan Chand had obtained 41 marks. Despite being eligible in General (BPL) category, his case was not considered by the respondents. The reason as to why the case of Krishan Chand was not considered against the General

(BPL) category is evident from the response filed by respondent No.3 (para 6 (d) page-41) of CWPOA No. 5301 of 2020. The relevant extract is reproduced here under:-

> *"As replied supra, the applicant is of SC (BPL) category and the post reserved was of General (BPL) category which falls in horizontal reservation and as such, he is not eligible for this post but had to compete only for the post of General (UR) category."*

The application form of Krishan Chand has been placed on record as Annexure R-3/A. Admittedly therein Krishan Chand has specified that he belongs to the scheduled caste category. As has already been stated supra at the time of filling in of the form category was not required to be specified. The form was not rejected by stating that there exists no post for the scheduled caste category in the advertisement. Krishan Chand was permitted to participate in the objective type screening test. A reserved category candidate is entitled to compete for all posts, however a general category candidate can only compete in general category posts. Since in the case at hand, no post was advertised for the reserved category, therefore, the candidate of scheduled caste was required to be considered in general category. Right to be considered is a fundamental right enshrined under Article 14 of the

Constitution of India. Besides the aforesaid in the case of Krishan Chand it is nobody's case that the candidate after having applied for a particular advertised post and after being un-successful in being appointed to the same was thereafter seeking consideration against another category post. In view of the aforesaid the reason cited for rejection of the candidature of Krishan Chand i.e no post of SC (BPL) had been advertised is liable to be rejected. Hence, the candidature of Krishan Chand is required to be considered against the post of General (BPL).

19. In light of the aforesaid a feeble argument is sought to be raised by the respondents to the effect that as on date there exists no vacancy where against the candidature of Krishan Chand can be considered. It is settled position of law that the rights of the parties are to be determined as on the date of filing of the petition. ***AIR 1976 SC 49,*** titled ***Rameshwar & Ors.*** v. ***Jot Ram & Ors.*** In view thereof, there is no merit in the contention so raised.

20. No other contention has been raised for consideration by the court.

21. In view of the above, CWPOA No. 5301 of 2020 (Krishan Chand) is allowed. Since Krishan Chand is the sole candidate to be considered against the post of General (BPL),

hence, evaluation of prescribed parameters be done within a month and consequential benefits be granted in favour of Krishan Chand. For the reasons stated supra, CWP No. 3862 of 2019 and CWPOA No. 5329 of 2020 are dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

(Bipin Chander Negi)
Judge

24th April, 2026.
(vs/kck)