



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.1077 of 2015
Decided on: 10.09.2026

Manju Devi

.....Petitioner

Versus

State of Himachal Pradesh and others

....Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting? Yes.*

For the petitioner: Mr. Ankit Chandel, Advocate vice
Mr. A.K. Bansal, Advocate.

For the respondents: Mr. Gautam Sood, Deputy
Advocate General, for respondents
No.1, 2, 4 and 5-State.

None for respondent No.3-School
Management Committee [SMC].

Mr. Rajesh Verma, Advocate, for
respondent No.6.

Ranjan Sharma, Judge

Petitioner-Manju Devi has come up before this
Court, seeking the following relief:-

“14 (i) That the selection of respondent no.6
may kindly be quashed and set aside and
respondents may kindly be directed to
engage the petitioner.”

2. By way of instant petition, petitioner-Manju
Devi has assailed selection of Respondent No.6-Gitanjali
as Post-Graduate Teacher in Political Science through

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

School Management Committee ***[hereinafter referred to as 'SMC']*** in GSSS Gai Ghat made by Respondent-Department in August 2012, with the prayer to set aside the selection of Respondent No.6 and to engage the petitioner in her place.

FACTUAL MATRIX:

2(i). Case, as set, by Learned Counsel is that the petitioner is duly qualified for the post of Post-Graduate Teacher in Political Science under the State Government and a post of Post-Graduate Teacher was vacant in GSSS Gai Ghat in Tehsil Kasauli, Solan [H.P.]. It is averred that view of SMC Policy notified by the State Government on 17.07.2012 and as amended from time to time, including the amendment dated 16.08.2014 [*Annexure P-1 & Annexure P-2*], Respondent No.3 issued an Advertisement and called applications for filling-up of one post of Post-Graduate Teacher in Political Science in the said School. It is averred that eligible candidates were called for Interview by Selection Committee, consisting of Sub-Divisional Magistrate as Chairman on 31.10.2014 and in terms of the criteria prescribed in SMC Policy, the petitioner appeared for Interview before Selection Committee on 31.10.2014 but Respondent No.6-Gitanjali was selected and appointed on the said post.

2(ii). Claim of the petitioner is firstly, *the that* Selection Committee had selected and appointed the Respondent No.6, without giving any preference to her, despite the fact that she was a local eligible candidate *and secondly*, that Respondent No.6-Gitanjali was given excessive marks in Interview by Selection Committee by awarding 9.5 marks out of 10 marks, whereas, the petitioner-Manju Devi was awarded 2.33 marks out of 10 marks in Interview. With these submissions, the petitioner had assailed non-selection and resultant selection and appointment of Respondent No.6-Gitanjali, on the post of Post-Graduate Teacher in Political Science in GSSS Gai Ghat, with prayer to quash the appointment of Private Respondent and to engage the petitioner in the said School.

STAND OF STATE AUTHORITIES IN REPLY-AFFIDAVIT:

3. Upon issuance of Notice by this Court on 05.02.2015, the State-Authorities have filed the Reply-Affidavit dated 13.05.2015 of Director Higher Education, Himachal Pradesh.

3(i). Reply-Affidavit indicates that Interviews for vacant post of Post-Graduate Teacher [Political Science] were held in the Office of Sub-Divisional Magistrate,

Solan on 31.10.2014. It is averred that selection for the post, in question, was made on the basis of the criteria for allocation of marks in terms of SMC Policy/Scheme. Reply-Affidavit indicates that once the petitioner was a local resident of concerned Patwar Circle, she was awarded 10 marks whereas Private Respondent No.6, who belonged to another Patwar Circle. Reply-Affidavit further indicates that claim for preference cannot be granted ignoring the over-all merit of the candidates.

3(ii). Reply-Affidavit further indicates that the Selection Committee interviewed the candidates as per the criteria prescribed in SMC Policy and the Private Respondent No.6-Gitanjali, who figured at Serial No. 15 of Merit List [Annexure R-1] was selected, in view of her over-all higher merit of 30.52 marks after taking into account the sub-head of marks for Graduation, B.Ed., Post-Graduation, including Interview, whereas, the petitioner-Manju Devi, was awarded 30.33 marks awarded under all sub-heads including the fact that she belonged to the local Patwar Circle and other parameters was awarded 30.33 marks and therefore, in view of the lower over-all merit of petitioner, the Private Respondent No.6 was selected as per prescribed criteria. Paras 10 and 11 of Reply-Affidavit indicates that Selection Committee/

Interview Committee had judged relative merit of candidates and based on over-all performance educationally and during Interview, the marks were awarded, which led to the selection of Private Respondent No.6-Gitanjali, being higher in over-all merit. In the above backdrop, the claim of the petitioner was opposed by Official Respondents.

STAND OF SELECTED CANDIDATE-PRIVATE RESPONDENT NO.6 IN REPLY-AFFIDAVIT:

3(iii). Private Respondent No.6 had filed a separate reply, which by and large is a replica of reply of the State Authorities.

NO REPLY BY RESPONDENT NO.3:

3(iv). Respondent No.3-SMC GSSS Gai Ghat, chose not to file any Reply, probably, *for the reason*, that selection was held for the said School, by a duly constituted Selection Committee as per SMC Policy, notified on 17.07.2012 and as amended from time to time, including Notification dated 16.08.2014 [Annexure P-1 & Annexure P-2].

REBUTTAL BY PETITIONER:

3(v). Petitioner has filed Short Rejoinder reiterating the averments and the claim made in the writ petition with similar relief, as prayed, in the writ petition.

4. Heard, Mr. Ankit Chandel, Learned Vice Counsel appearing for the petitioner; Mr. Gautam Sood, Learned Deputy Advocate General, for Respondents-State; and Mr. Rajesh Verma, Learned Counsel, for Private Respondent No.6.

ANALYSIS:

5. Taking into account the entirety of facts and circumstances and material on record, this Court is of the considered view, that selection of Respondent No.6-Gitanjali and resultant non-selection of the petitioner, for the post of Post-Graduate Teacher [Political Science] in GSSS Gai Ghat, under SMC Policy, does not suffer from any infirmity or illegality or perversity, *for the following reasons:-*

CLAIM SEEKING RE-ASSESSMENT OF MARKS AWARDED IN INRVIEW UN-TENABLE:

6. First contention of Learned Counsel for the petitioner is that a total of 23 candidates, including the petitioner and Private Respondent No.6 appeared in selection for the post of Post-Graduate Teacher [Political Science] in GSSS Gai Ghat, under SMC Policy on 31.10.2014, but Selection Committee awarded 9.5 marks out of 10 marks to Private Respondent No.6, whereas, the petitioner was awarded only 2.33 marks out of 10 marks in Interview and

therefore, awarding lesser marks to the petitioner vis-à-vis higher marks awarded to Private Respondent No.6 in the Interview was arbitrary, unfair, illegal and unconstitutional.

Above contention is misplaced, *for the reason*, that the judicial re-assessment of comparative merit or award of marks in viva-voce or Interview is not permissible. Claim for re-assessment or re-determination of marks awarded during Interview by way of judicial intervention is not tenable, in view of the mandate of the Hon'ble Supreme Court in ***Durga Devi and another Versus State of Himachal Pradesh and others, 1997 (4) SCC 575***, reads as under:-

- "2. The appellants were appointed as Voluntary Teachers on tenure basis under the Voluntary Teachers Primary Scheme 1991. Respondent No.4 challenged their appointment inter alia on the ground that he was academically more meritorious than the appellants and therefore the selection Committee was not justified in preferring the appellants to him. The State Administrative Tribunal Allowed the application filed by Respondent No.4 and quashed the selection of the appellants by itself judging the comparative merits of the candidates. The appellants have put that

order of the state Administrative Tribunal dated 10-12-1992 in issue.

4. In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the **Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post** as if the Tribunal was Sitting as an appellate authority over the selection Committee. The selection of the candidates was not quashed on any other ground. **The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the selection committee.** The observation of this Court in *Dalapt Abasaheb Solunke's case* (supra) are squarely attracted to the facts of the present case. The order of the Tribunal Under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10-12-1992 is quashed and the matter is remitted to the Tribunal for a fresh disposal on other points in accordance with the law after hearing the parties.”

6(i). Claim of the petitioner seeking comparative re-assessment of merit, including marks awarded in

Interview, cannot sustain, *for the reason*, that once the selection was made by a duly constituted Selection Committee in terms of SMC criteria prescribed under SMC Policy notified on 17.07.2012 and as amended on 16.08.2014 [Annexure P-1 & Annexure P-2], then the selection made by a duly constituted Selection Committee headed by Sub-Divisional Magistrate of a Sub-Division as Chairman and President of concerned SMC as Member and Head of the Institution/Secretary of SMC as 3rd Member, cannot be interfered with or tinkered with when, nothing cogent and concrete has been placed on record to establish malafides or violation of any Statutory Rules or violation of SMC Policy, as referred to above. In the absence of any proof of violation of malafides, violation of Statutory Rules or SMC Guidelines, the claim of the petitioner for re-assessment or re-determination of comparative merit, including the marks awarded in Interview, is not tenable, in view of the principle outlined by the Hon'ble Supreme Court in ***Dalpat Abasahed Solunke and others Versus Dr. B.S. Mahajan and others, 1990 (1) SCC 305***, reads as under:-

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on

the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. **The decision of the Selection Committee can be interfered with only on limited grounds,** such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the **ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction."**

**AWARD OF MARKS IN INTERVIEW DOES NOT
LEAD TO UNFAIR TREATMENT:**

6(i-a). Claim of the petitioner that she was awarded 2.33 marks out of 10 marks in Interview, whereas, Private Respondent No.6 awarded 9.5 marks out of 10 marks, cannot be permitted to be invoked in writ jurisdiction. Once the Selection Committee as per prescribed criteria under SMC Policy has resorted to selection including awarding of marks to the candidates under all parameters [Graduation, B.Ed., Post-Graduation, Ph.D., marks for concerned Patwar Circle and Interview], then, merely because petitioner was awarded lesser marks in Vivo-Voce/Interview shall not give a locus to the petitioner to seek reassessment of relative merits of candidates, including the marks awarded in viva-voce by Expert Committee. This Court cannot assume the function or role of an Expert Committee/Selection Committee. The attack allegedly made by the petitioner seeking re-assessment of merit, in relation to lesser marks awarded to her in Interview cannot be countenanced and accepted by this Court, in absence of any whisper in the petition, supported by cogent material, pointing out malafides against the Selection Committee or its Members or bias or violation of any Statutory Rules or violation of SMC Policy,

in question. Similar claim by a candidate who was seeking re-assessment of marks in Interview/ Viva-Voce was negated by the Hon'ble Supreme Court in ***Madan Lal and others Versus State of Jammu & Kashmir and others***, **1995 (3) SCC 486**, reads as under:-

“3. According to the petitioners in the written test they fared well and therefore they were called for oral interview. According to them they also fared well in the viva voce test but they were kept guessing as to the result of this test. They came to know that concerned respondent nos. 618 and some others who had appeared at the test were given confidential information to appear before Medical Board for medical test while no such intimation was sent to the petitioners. 'Mat gave them a cause for apprehension that they may have been illegally left out of selection for the said posts and that is why the present petition is filed.....

18. This contention is equally devoid of any merit. The submission of the learned senior counsel for the petitioners is that a mere look at annexure-C will show that the merit list of open category candidates recommended for appointment comprises of majority of candidates belonging to one community only and therefore the committee has shown special liking for such candidates who are preferred by inflating their marks in the oral interview.

To say the least, it is a mere conjecture on the part of the petitioners. The very first candidate in the order of merits is roll no.100 who does not belong to the other community. He is one Sh. Vinod Chatterji. Similarly, there are also other candidates in the said merit list of 16 candidates who do not belong to the other community. **Once the interview process is found to be proper and justified and not being vitiated by any mala fides, the result of the viva voce test may project a picture in which more candidates from one community may get selected on merits but that is neither here nor there. The validity of viva voce test cannot be judged simply on the basis of the result thereof unless there is anything to show that the entire selection process was vitiated on account of mala fides or bias or that the interview committee, members had acted with an ulterior motive from the very beginning and the whole selection process was a camouflage. No such allegations have been made by the petitioners against the selectors who sat in the interview committee. Consequently even this contention is found to be devoid of any factual basis and stands rejected."**

CLAIM FOR REDETERMINATION OF COMPARATIVE MERIT BY JUDICIAL PROCESS IMPERMISSIBLE:

6(ii). While dealing with the scope of interference in allocation of marks by a Selection Committee, the Hon'ble Supreme Court in ***Union of Public Service Commission Versus M. Sathiya Priya and others, 2018 (15) SCC 796***, has outlined that challenge to selection made in terms of the parameters detailed in the Rules or the Policy/Guidelines is not open for interference by the Courts, except in case, where the assessment is vitiated either on the ground of bias or malafide or arbitrariness; and in absence of infraction of these principles, the claim for redetermination of comparative merit of candidates, by assuming the role of either the Appellate Body or a Selection Committee or a like Expert Body was negated, *in the following terms:-*

“17. The Selection Committee consists of experts in the field. It is presided the officers of the Central Government and the State Government who over by the Chairman or a Member of UPSC and is duly represented by have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the

Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. **Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates.** The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e the Selection Committee. The courts have very limited scope of judicial review in such matters.”

6(ii-a). While dealing with a similar eventuality, Three Judges of the Hon'ble Supreme Court in ***Mohd. Mustafa Versus Union of India and others, 2022 (1) SCC 294***, outlined the scope of judicial review and negated the claim of a non-selectee seeking re-assessment

of comparative merit of candidates made by the Selection Committee, *in the following terms:-*

“15. Judicial review may be defined as a Court's power to review the actions of other branches or levels of Government; especially the Court's power to invalidate legislative and executive actions as being unconstitutional. **Power of judicial review is within the domain of the judiciary** to determine the legality of administrative action and the validity of legislations and it aims to protect citizens from abuse and misuse of power by any branch of the State. The power of judicial review is a basic feature of the Constitution of India. Judicial review has certain inherent limitations. However, it is suited more for adjudication of disputes other than for performing administrative functions. It is for the executive to administer law and the function of the judiciary is to ensure that the Government carries out its duties in accordance with the provisions of the Constitution.

18. Conditions prompted by extraneous or irrelevant considerations are unreasonable and liable to be set aside by Courts in exercise of its power under judicial review. (*See State of U.P. v. Raja Ram Jaiswal, Sheonandan Paswan v. State of Bihar, Sant Raj v. O.P. Singla, Padifield v. Minister of Agriculture, Fisheries & Food.*) A decision can be arrived at by an

authority after considering all relevant factors. If the discretionary power has been exercised in disregard of relevant consideration, the Court will normally hold the action bad in law. Relevant, germane and valid considerations cannot be ignored or overlooked by an executive authority while taking a decision. **It is trite law that Courts in exercise of power under judicial review do not interfere with selections made by expert bodies by re-assessing comparative merits of the candidates. Interference with selections is restricted to decisions vitiated by bias, mala fides and contrary to statutory provisions.** (See *Dalpat Abasaheb Solunke v. B.S. Mahajan*, *Badrinath v. State of T.N.*, *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman*, *Major General I. P. S Dewan v. Union of India*, *UPSC v. Hiranyalal Dev*, *M.V. Thimmaiah v. UPSC* and *UPSC v. M. Sathiya Priya*.)”

Considering the *factual matrix* and the precedents outlined by the Hon’ble Supreme Court in ***Durga Devi; Dalpat Abasaheb Solunke; Madan Lal; M. Sathiya Priya; and Mohd. Mustafa [supra]***, this Court is of the considered view, that once the petitioner had faced Interview/Selection for post of Post-Graduate in Political Science in GSSS Gai Ghat, before a duly constituted

Three Members Selection Committee, consisting of Sub-Divisional Magistrate as Chairman, President of concerned SMC as Member and Head of Institution/Secretary of the SMC as the third Member, therefore, in the absence of any proof of malafide or bias or violation of any Statutory Rules or infraction of any Scheme or Policy, including the SMC Policy [Annexure P-1 & Annexure P-2], mere contention that the petitioner was awarded lesser marks in Interview whereas the Private Respondent was awarded more marks, cannot come to the aid of the petitioner. Even judicial re-assessment of comparative merit, including award of marks in Interview, by a duly constituted Selection Committee does not fall within the domain of this Court. Moreover, the Selection Committee had awarded marks to candidates in terms of seven parameters out of a total 60 marks, as per the *SMC Scheme-Policy*. The Selection Committee has awarded 30.52 marks to Private Respondent No.6, whereas, the petitioner was awarded 30.33 marks by the Selection Committee. Nothing has been shown by the petitioner that the SMC Scheme notified on 17.07.2012 and/or the amendment dated 16.08.2014 [Annexure P-1 & Annexure P-2], expressly stipulated that out of 10 marks prescribed for viva-voce, the marks were to be awarded during viva-voce, under different sub-heads and that too

in a particular manner. In absence of any express mandate in the Scheme-Policy for awarding the marks during the Interview-viva-voce [sub-head wise], then, in such an eventuality, the over-all assessment-performance adjudged by a duly constituted Selection Committee, cannot be interfered with by this Court. Moreover, this Court cannot assume the role of a Selection Committee or an Expert Body or an Appellate Authority. The job assigned to the Selection Committee or Expert Body is not liable to be interfered with, except for the exigencies as spelt out in the mandate of law, as referred to above, which in instant case are absent. Resultantly, the contention of petitioner is misplaced and is turned down.

7. Second contention of Learned Counsel for the petitioner is that petitioner possessed higher educational merit and yet she was awarded lesser marks in Interview by ignoring her higher educational merit vis-à-vis the Private Respondent No.6, reveals arbitrariness.

7(i). For appreciating the contention, an extract of marks awarded to petitioner-Manju Devi vis-à-vis Private Respondent No.6-Gitanjali, are reproduced in the Chart hereunder:-

“DISTRIBUTION OF MARKS FOR EVALUATION BY THE SMC DURING THE COURSE OF SELECTION PROCESS FOR POST OF PGT-POL. SCIENCE (ON PERIOD BASIS) GOVT. SEN. SEC. SCHOOL GHAIGHAT DISTT. SOLAN (H.P.)

1	2	3	4	5	6	7
Sr. No.	Name of candidate	Father's Name Sh.	Date of Birth	Address	Graduation / Shastri 10	B.Ed. 10
15	GITANJALI	RAMESH CHAND	6.8.88	UPPER SURYA VIHAR SOLAN	7.54	6.61
20	MANJU DEVI	SHYAM SUNDAR	16.2.90	VILL-BUDHON P.O.-NAYAGRAM THE-KASAULI	6.03	5.88
8	9	10	11	12	13	14
Post-Graduation	Ph.D.	Concerned Patwar Circle	Sub-Total	Interview	Grand Total	Sign of Members of the Selection Committee
10	10	10	50	10	10	
6.87	-	-	21.2	9.5	30.52	I
6.09	-	10	28.00	2.33	30.33	II

A bare reading of marks awarded by a Selection Committee as reproduced above, negates the contention of petitioner on the face of it, *for the reason*, that the Private Respondent No.6 had higher educational merit in Graduation, B.Ed. and Post-Graduation vis-à-vis the petitioner who was not selected. Consequently, in view of the higher educational merit of the Respondent No.6, the award of higher marks to her in Interview, cannot be disbelieved or casually tinkered with, without there being

anything on record to establish malafides or bias or infraction of Policy-Scheme or the law. Resultantly, this contention of petitioner also fails.

CLAIM FOR APPOINTMENT AFTER PARTICIPATION IMPERMISSIBLE:

8. In terms of the SMC notified on 17.07.2012 amended by State Authorities on 16.08.2014 [Annexure P-1 & Annexure P-2], the applications were invited for the post of Post-Graduate Teacher in Political Science in GSSS Gai Ghat. Material on record, including Annexure P-4/ Annexure R-1 with the reply, reveals that a total of 23 candidates, including petitioner and Private Respondent No.6 participated in Selection Committee. Having participated in selection in terms of parameters and criteria prescribed in the Policy, then, after having remained unsuccessful, petitioner loses his right and locus to assail the award of marks, including lower marks in Interview. Similar plea has been repelled by the Hon'ble Supreme Court in **Tajvir Singh Sodhi and others versus State of Jammu and Kashmir and others, 2023 (17) SCC 147** and in the case of **State of Uttar Pradesh versus Karunesh Kumar and others, 2022 SCC Online SC 1706**, wherein, after referring to the judgments passed in the case of **Madan Lal and others versus State of Jammu & Kashmir and others,**

1995 (3) SCC 486; K.H. Siraj versus High Court of Kerala and others, 2006 (6) SCC 395; Union of India and others versus S. Vinodh Kumar and others, 2007 (8) SCC 100; and Union of India and others versus N. Murugesan and others, 2022 (2) SCC 25, with the findings that merely because the result of selection did not suit a candidate who had participated in selection, without protest or demur coupled with the fact that once there is no infraction of any Statutory Rules or SMC Policy and there is no cogent and convincing material to establish malafides and bias [as no such allegation(s) can be entertained behind the back of Members of Selection Committee also] therefore, the non-selectee is disentitled to seek re-assessment of comparative merit, including marks awarded in via-voce by way of judicial interpretation. Resultantly, the claim of the petitioner is misplaced, and is turned down.

**CLAIM FOR PREFERENCE IN APPOINTMENT
UNTENABLE:**

9. Third contention of Learned Counsel for the petitioner, is that, once she belonged to Local Patwar Circle, therefore, as per Para-5 of SMC Policy notified by the State Government on 17.07.2012, as amended on 16.08.2014 [Annexure P-1 & Annexure P-2 page 35

of paper book; therefore, the petitioner has a preferential right of selection/appointment vis-à-vis the Private Respondent No. 6.

9(i). For appreciating the contention, Clause 5 of SMC Policy reads as under:-

“5. The SMC will conduct an interview and follow distribution of Marks for evaluation during the course of Selection Process as per Annexure-II. Preference will be given to local eligible candidates.”

In the backdrop of Para 5 of SMC Policy, the claim for preference cannot be accepted, *for the reason*, that the petitioner-Manju Devi has already been awarded 10 marks under Head “concerned Patwar Circle” out of total 60 marks. Even otherwise, the “Principle of Preference” is invocable, where the merit of two or more candidates is equal, in view of the broader principle of law, outlined by the Hon’ble Supreme Court in the case of ***Dr. Sharmad versus State of Kerala and others*** [Civil Appeal No.13422 of 2024 and connected matter], **2025 SCC OnLine SC 71**, that “*preference*” can be claimed, only in case, the merit of two or more candidates is equal, *in the following terms*:-

“28. **Arun Kumar Agarwal (Dr.)** (supra) is distinguishable on facts. **Since preference’ has been referred to, it goes without**

saying that the ratio thereof could apply where other qualifications/things being equal, preference is given to an aspirant having higher qualification. In the case before us, although both Dr. Sharmad and Dr. Jyotish were holders of M. Ch. degrees, as on date of occurrence of the vacancy on the said post of Associate Professor i.e. 13th November, 2012, Dr. Jyotish did not have the requisite experience of 5 years physical teaching as an Assistant Professor (he admittedly having been promoted to such post only on 22nd July, 2008). Question of preferring Dr. Jyotish to Dr. Sharmad did not arise at all since the former was deficient insofar as experience on the post of Assistant Professor is concerned.”

Based on factual matrix and the broad principles outlined by the Hon’ble Supreme Court in the case of **Dr. Sharmad (supra)**, once the petitioner had lower over-all merit vis-à-vis the higher merit of the Respondent No.6 [Gitanjali] determined by duly constituted Selection Committee for post of Post-Graduate Teacher [Political Science] in GSSS Gai Ghat, in District Solan, therefore, “in case of unequal merit, the petitioner has neither any right nor any locus to claim preference in selection/ appointment”, by giving a complete go-bye to relative merit in selection and such a claim is impermissible. The plea

of the appointment, by giving her preference, but by ignoring the comparative merit shall negate the core principle of public employment and therefore the contention of the petitioner, is turned down.

9(ii). Accepting the plea of petitioner for preference, despite her lower in merit vis-à-vis the higher merit of Private Respondent No.6, shall lead to an anomalous situation, shall certainly violate the core principle of Articles 14 and 16 of the Constitution of India and shall distort the selection and appointment of candidates on the basis of higher comparative merit. In these circumstances, the contention is devoid of any merit and is rejected.

RELIANCE BY PETITIONER ON JUDGMENTS:

10. Petitioner has placed reliance on the judgment dated 20.10.2016 passed in **CWP No.1796 of 2015**, titled as **Santosh Versus The State of Himachal Pradesh and others**, decided on 20.10.2016, to contend that in similar eventuality, the selection was set aside, in the said case and therefore, petitioner deserves to be granted the benefit of said judgment.

The above contention of Learned Counsel for the petitioner is misplaced and the judgment in the case of **Santosh [supra]** is distinguishable, for the

reason, firstly, that the aforesaid selection was assailed by invoking bias and favoritism against the Selection Committee Members, who were party Respondents or had appeared before this Court, including the fact that [as per discussion made in Para 9, 10 and 13 of said judgment] the marks of selectee-Parul Pundir were increased by President of SMC concerned from “7” to “9” in the said case. Another distinctive feature is that though the Chairman of Selection Committee had awarded higher marks, but the same were altered by other Committee Members, which is not the fact-situation in the instant case; and the principles outlined by the Hon’ble Supreme Court in ***Durga Devi; Dalpat Abasahed Solunke; Madan Lal; M. Sathiya Priya; and Mohd. Mustafa [supra]***, were neither raised nor contended before the Court in aforesaid judgment and therefore, in view of these facts, the judgment in the case of ***Santosh [supra]*** is not applicable on facts as well as the principle of law, outlined by the Hon’ble Supreme Court, as discussed hereinabove. In these circumstances, reliance placed by Learned Counsel for the petitioner, on the judgment is misplaced and same is distinguishable, on facts as well in law.

CONCLUSION:

11. Based on above discussion, the selection has been made in terms of parameters prescribed in *Annexure-II* of SMC Policy of *Annexure P-2* [at page 33 of the paper book] and the petitioner had participated but remained unsuccessful due to her lower merit and there is neither any infraction of any Guidelines or Policy nor any cogent material has been placed on record to establish malafide, bias and favoritism, therefore, the selection made on the basis of over-all merit in accordance with the parameters prescribed under the Policy/Scheme, does not warrant any interference by this Court and therefore, the claim of petitioner is turned down.

12. No other point pressed/argued.

DIRECTIONS:

13. In view of above discussion and for reasons recorded hereinabove, the instant writ petition, is ***dismissed***, in the following terms:-

- (i) Selection of Private Respondent No.6- Gitanjali as Post-Graduate Teacher in Political Science pursuant to the Interview held on 31.10.2014, is upheld;
- (ii) Non-selection of petitioner due to lower over-all merit, including lower educational merit and lesser marks awarded in Interview, does not suffer from infirmity or illegality or perversity;

(iii) Since Private Respondent No.6 stands already appointed and is working as such, her appointment and continuance, is affirmed; and

(iv) Parties to bear their respective costs.

In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

September 10, 2026
[Bhardwaj]