

CWP No.23917 of 2023

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2024:PHHC:000733

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

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**CWP No.23917 of 2023
Date of Decision : 8.1.2024**

*Parmila**..... Petitioner**versus**State of Haryana and another**..... Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Vivek Salathia, Advocate, for the petitioner

Mr. Parveen Mehta, DAG, Haryana

Mr. Kanwal Goyal, Advocate, for the respondent/HPSC

TRIBHUVAN DAHIYA J.

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the result of screening test dated 6.10.2023, Annexure P-5, vide which the petitioner has not been selected for appearing in the 'Subject Knowledge Test' for the post of Post Graduate Teacher/PGT-Mathematics, pursuant to advertisements no.29 of 2023 dated 24.6.2023 (Rest of Haryana cadre), and 44 of 2023 dated 24.6.2023 (Mewat cadre), Annexures P-1 and P-2 respectively. Further, to quash conditions 1 (i) and 2 (e) of the Scheme/Pattern of Exam for PGT-Mathematics (for short 'Scheme of Exam'), as contained in the aforesaid advertisements, being violative of Articles 14 and 16 of the Constitution of India. Further, to quash the selection process initiated by the respondents on the basis of aforesaid conditions of the Scheme of Exam.

2. Facts of the case in brief are;

2.1. The respondent/Commission issued the impugned

advertisements for 315 posts of PGT-Mathematics. It prescribes a Scheme of Exam; screening test, subject knowledge test and interview/*viva voce*. The marks obtained by the candidates in the screening test will not be counted for final selection because it is only for short listing of candidates for the selection. It is stipulated that candidates four times the number of advertised posts will be called for subject knowledge test category-wise, provided they secure the cut-off marks of twenty-five per cent in the screening test. Further, the candidates, category-wise, two times the number of advertised posts will be called for interview, provided they secure the minimum cut-off marks of thirty-five per cent. The last stage of selection is *viva-voce*/interview. The final selection list will be prepared on the basis of marks of subject knowledge test and interview by giving weightage in the ratio of 87.5 per cent and 12.5 per cent, respectively. The scheme notified in the impugned advertisements reads as under:

Scheme/Pattern of Exam:

1. Screening Test

a) to h) xxxx xxxx

(i) Candidates four times the numbers of advertised posts, including bracketed candidates, if any, category-wise, will be called for the next stage of selection process, provided that they have secured the minimum cut-off marks of 25% in the screening test.

(j) xxxx xxxx

(k) The marks obtained by the candidates in the screening test will not be counted for final selection because it is only for short listing of category-wise candidates, for the subject knowledge test.

2. Subject Knowledge Test

a) to d) xxxx xxxx

e) The numbers of the candidates to be called for interview will be two times, including bracketed candidates, if any, of the number of category-wise advertised posts provided that they have secured the minimum cut-off marks of 35%.

f) The weightage of the subject knowledge test will be 87.5%.

3. Interview/Viva-Voce

The weightage of the interview will be 12.5%.

The final merit list will be prepared by adding the marks of the subject knowledge test and interview/viva-voce.

2.2. The petitioner being fully eligible, applied for the post as Backward Class/BC (B) category candidate. She was issued admit card for appearing in the combined screening test, which was conducted by the Commission as per the Scheme of Exam to short-list the candidates. Its result was uploaded on the website on 6.10.2023, wherein four times the number of candidates, category-wise, were short-listed for the subject knowledge test. The petitioner's roll number did not figure in the list of candidates under BC (B) category.

2.3. In these circumstances, the instant petition was filed, *inter alia*, impugning conditions 1 (i) and 2 (e) of the Scheme of Exam pertaining to screening test and subject knowledge test respectively, whereby candidates will be called for further stages of selection in their separate reserved categories/category-wise.

3. Mr. Vivek Salathia, learned counsel for the petitioner has contended that the Scheme of Exam followed by the respondents is contrary to the settled law on the issue of reservation, that the reserved category candidates are to be considered against un-reserved/general posts at first instance. Short-listing of candidates on the basis of their respective reserved categories, is contrary thereto as it prevents them from being considered for selection against general/un-reserved posts on the basis of merit, irrespective of the category they belong to. The petitioner scored

41.85 marks in the screening test in BC (B) category, which are higher than the marks scored by many of the general category candidates, who scored between 38.04 to 41.58, and have been selected for the subject knowledge test, as per the result declared; whereas, she has not been despite being more meritorious. Once the petitioner has scored more marks than those of the general/un-reserved candidates, she has a right to be considered against un-reserved posts irrespective of the category she belongs to, and the same cannot be denied by not selecting her for further stages of selection. He has placed reliance upon the Supreme Court judgment in *Indra Sawhney v. Union of India and others*, 1992 Suppl. (3) SCC 217 and *A. P. Public Service Commission v. Balaji Badhavath*, 2009 (5) SCC 1, to contend that the Scheme of Exam being followed by the respondents is violative of law and needs to be set aside.

4. Mr. Kanwal Goyal, learned counsel for the respondent/Commission, on the contrary, contends that the petition is not maintainable because the petitioner herself participated in the selection process, and only after remaining unsuccessful in the screening test she approached this Court impugning that very process which is impermissible. Once she has accepted the terms and conditions of advertisement and the selection process has also begun, she cannot be allowed to turn around and challenge the same.

4.1. Secondly, he has contended that the petitioner has challenged the selection process without impleading the affected parties. None of the successful candidates who qualified the screening test as per the impugned result, dated 6.10.2023, has been impleaded as a party to the petition, though they would be affected by its outcome. This also renders

the petition not maintainable.

4.2. Thirdly, it has been contended that the issue raised herein has already been settled against the petitioner by two Division Bench judgments of this Court rendered in CWP No.3144 of 2019 titled *Naveen Rao v. State of Haryana and others*; and in LPA No.1053 of 2011 titled *Gur Jai Pal Singh v. Punjab Public Service Commission and others*. Therefore, the petition deserves rejection.

5. Heard.

6. The first objection to maintainability of the petition on account of the petitioner having participated in the selection process, is not sustainable. Since, as held by the Supreme Court in *Dr. (Major) Meeta Sahai v. State of Bihar and others*, 2019 (20) SCC 17, by participating in the process she accepted the procedure for selection, and not the illegality in it that arises on account of wrong implementation of the rule of reservation. Relevant paragraph of the judgment reads as under:

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

Therefore, the petitioner cannot be precluded from the challenging the stated illegality in the selection process by filing the petition.

7. The second objection to maintainability of the petition on account of not impleading the candidates who have cleared the screening

test, is also not sustainable for the reasons no right has been conferred upon such candidates pursuant to clearing the screening test in their respective categories. The test, as the advertisement itself stipulates, is only to determine eligibility of the candidates to participate in the selection process by appearing in the subject knowledge test. And outcome of the petition will only determine as to whether the rule of reservation is being correctly followed for the selection in question. It will not adversely affect rights of the candidates in any manner as they are still to participate in the process of selection. Therefore, they need not be impleaded as parties to the petition.

8. After rejecting the objections to maintainability of the petition, this Court proceeds to decide the issue, *whether the respondents could have categorised the candidates on the basis of their respective reserved categories for shortlisting and during the selection process.*

8.1. It is apparent on record, the candidates who applied for the post of PGT-Mathematics pursuant to the advertisements in question, were subjected to a screening test. As per the Scheme of Exam given in the advertisement, candidates four times the number of advertised posts, in their respective categories, have been called for the subject knowledge test, on securing the minimum cut-off marks of twenty-five per cent in the screening test. The test is pre-requisite to the process of selection, and is only meant to decide eligibility of candidates for the subject knowledge test; that is why marks obtained in screening test are not to be counted for final selection, which is based only upon a candidate's performance in subject knowledge test and interview.

8.2. The result of screening test has been declared category-wise,

i.e., by categorising candidates on the basis of the reserved categories they belong to, and confining them within these categories to determine eligibility for the subject knowledge test. Resultantly, the petitioner who, as per the data provided in the petition and not specifically denied by the respondents, secured 41.85 marks as BC (B) category candidate and could not be selected for the subject knowledge test; whereas, the general category candidates who secured less marks, as compared to her, have been so selected. Therefore, despite being meritorious, she has been prevented from crossing the eligibility benchmark and being considered for selection on the basis of merit against the un-reserved/open posts and thereupon, if need be, against the posts meant for BC (B) category to which she belongs. This in effect compromises merit, which is not the intent of rule of reservation.

8.3. The principles of rule of reservation have been well settled as per law laid down by the Supreme Court in *Indra Sawhney* case (*supra*) as well as *Saurav Yadav and others v. State of UP and others*, 2021 (4) SCC 542. Relevant paragraphs no.59, 65 and 66 of the latter judgment in that regard, read as under:

59. The features of vertical reservations are:

59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC)

59.2. Mobility ("migration") from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in

rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be "carried forward" or dealt with appropriately by rules.

60. to 64. xxxx

xxxx

65. In view of these clear decisions, it is too late in the day for the respondent State to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out of selection.

66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.

8.4. It has been clearly laid down that social reservations are based on merit, and these are not rigid communal slots. Merit of a reserved category candidate will have to be recognised and in case he/she is entitled to an un-reserved post, it cannot be denied. Accordingly, migration from the reserved category to un-reserved/open posts is allowed based on meritorious performance of the candidates. This rule has to be given full effect to, and the appropriate manner to do so is by categorising the candidates in their respective categories only at the time of drawing final

merit list, and not at any stage prior thereto. Meaning thereby, during the process of selection where the candidates are to clear various stages/tests, viz., screening test, subject knowledge test and/or interview etc., they are not to be categorized, i.e., considered within their respective reserved categories for assessing merit to cross these stages, since doing so would compromise merit, and they might be deprived of competing against open/un-reserved posts despite being meritorious. For instance, in the case at hand, the petitioner despite having secured higher marks in the screening test than those of a reserved category candidate, could not clear the same only because her merit was considered within the category she belonged to. On account of not falling within four times the number of advertised posts for the BC (B) category, she was declared unsuccessful and not called for the subject knowledge test *dehors* her overall higher merit. This has robbed her of the right to be considered for selection and appointment against the open/un-reserved posts on her own excellence. Therefore, if a candidate is categorised resulting in his/her ouster from the process of selection before the final merit list is drawn, it will deprive such a candidate from being considered against open/un-reserved posts on merit. This flies in the face of the rule of reservation, and cannot be permitted.

8.5. There is another reason why categorisation of candidates on the basis of their respective reserved categories during the process of selection, is bad in law. It will be opposed to the rule of migration in reservation, which presupposes equality of opportunity and a level playing field in judging comparative merit of the candidates. Since a meritorious reserved category candidate is to be allowed to migrate to an open/un-

reserved post, his/her merit for that purpose needs to be judged on an equal footing by open competition amongst all the candidates, without any categorisation. In case the candidates are to be categorised and judged within their respective reserved categories, they would be subjected to a restrictive competition which is not the same as the unreserved candidates would be subjected to. Such limited competition may or may not be as tough as the open competition, but the two cannot be termed equal. In case the unreserved posts are to be offered to all the candidates, the principle of equality demands that all of them need to be subjected to one and the same competition to earn the merit position that entitles them to those posts. In fact, there lies the justification for offering unreserved posts to all the candidates, irrespective of the category they belong to. To put it differently, once the merit position earned by a candidate entitles him/her to an un-reserved post, the competition that such a candidate faces to earn that position must also be open/unrestricted that the unreserved candidates face. Unless merit of the candidates is so judged, there is no justification for the rule of migration as that would amount to treating unequals as equals. Besides, such a method is not detrimental to the interests of reserved category candidates in any manner, since they remain entitled to be considered for appointment against the posts reserved for their respective categories based on the *inter-se* merit, in the event of not being selected against the unreserved posts.

8.6. Therefore, there is no justification to categorise the candidates for shortlisting and during the process of selection as, firstly, it compromises merit and, secondly, militates against the rule of migration in reservation.

8.7. That is why, the correct method to give effect to the rule is, to draw only the final merit list on the basis of reserved categories of candidates; and, at that stage, before drawing the selection list, the meritorious among the reserved category candidates be first considered for selection against open/un-reserved posts. And the one who is able to secure an open/unreserved post on merit, will have to be first offered the same; the candidate next in merit in that specific reserved category is to be fill the vacancy so caused. In the instant selection, the candidates are confined to their respective reserved categories during the selection process, which deprives them of the right to be considered/migrated to open category slots/posts on the basis of merit, as discussed herein above. Thus, the Scheme of Exam being followed by the respondents for making selection to the advertised posts, is contrary to the rule of reservation.

9. A related issue was considered by the Supreme Court in *Baloji Badhavath* case (*supra*), wherein the question for adjudication was whether short-listing of candidates for main examination in the State of Andhra Pradesh in the ratio of 1:50 of total number of vacancies on the basis of preliminary examination, without determining any community based cut-off mark, infringed the right of reservation of candidates belonging to the reserved categories. The Court held in the negative. Relevant paragraphs no.32 and 43 of the judgment read as under:

32. Judging of merit may be at several tiers. It may undergo several filtrations Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward

people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.

43. One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. (See for example, *Union of India v. Satya Prakash*, SCC paras 18 to 20, *Ritesh R. Shah v. Dr. Y.L. Yamul*, SCR at pp. 700-701 and *Rajesh Kumar Daria v. Rajasthan Public Service Commission*, SCC para 9.)

9.1. In the aforementioned case, the Supreme Court while holding that short-listing of candidates for the main examination without fixation of category-wise cut-off marks for respective reserved categories does not infringe the right to reservation, also opined, '*if category wise statement is prepared... it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories*'. The facts of the instant case are also somewhat on similar lines, as by categorising the candidates during the selection process and shortlisting them for selection based upon their *inter-se* merit, in effect, the respondents have prescribed community based cut-offs for the reserved category candidates which are detrimental to the interests of the meritorious, as already discussed. This has been disapproved of in *Balaji Badhavath* case (*ibid*), and cannot be sustained.

10. The reliance placed by learned counsel for the Commission on the Division Bench judgments of this Court in *Gur Jai Pal Singh* case (*supra*), which was followed in *Naveen Rao* case (*supra*), is mis-placed.

The question before the Division Bench was, whether the policy/rule of reservation that the reserved category candidates, who have secured higher merit in the process of selection, were to be considered against the general/un-reserved vacancies at the stage of qualifying examination/short-listing/screening test or at the time of making appointment on completion of the selection process. Considering the issue, it was held in *Naveen Rao* case as under:

..... (T)he principle that the reserved category candidates who secured higher merit in the process of selection for appointment are to be considered for appointment against the general category vacancies in spite of the fact that they have applied under the reserved categories and the slot vacated by them has to be given to the next candidate in the reserved category would apply at the time of making appointment on the completion of selection process and not at the stage of qualifying examination/short-listing/screening test. The said judgment i.e. *Paramveer Singh and Others (Supra)* has been followed in the case of *Deepak Kumar (Supra)*. Therefore, we do not find any error on the part of the respondents in restricting the candidates in their own category though they have secured more marks than the general category candidates and were not shifted to the General category, making a slot for the reserved category candidates.

10.1. The Division Bench, therefore, laid down that the rule of reservation/migration to consider the reserved category candidates against the open/un-reserved seats will not be applicable at this stage of short-listing of candidates, and will apply only at the time of making appointment after the process of selection is over. Resultantly, the respondents' action therein in not shifting the reserved category candidates in

the open/general category at the stage of shortlisting, despite having secured more marks than the general category candidates, was upheld. It needs to be noted that the petitioner, in the instant case, is not seeking migration to the open/un-reserved slots during the process of selection. Instead, the grievance is against categorisation of candidates within their respective reserved categories during the process of selection which compromises merit, this was not the issue before the Division Bench. Therefore, no advantage can be taken by the respondents by placing reliance on these judgments. Besides, as already discussed, categorisation amounts to applying the rule of reservation during the selection process, which has been disapproved of by the Division Bench also.

11. In view of the discussion, the petition is allowed, and conditions 1 (i) and 2 (e) of the Scheme/Pattern of Exam for PGT-Mathematics in advertisements no. 29 of 2023 and 44 of 2023, to the extent it is stipulated therein that candidates will be called, category-wise, for the next stage of selection process, i.e., subject knowledge test and interview/*viva voce* respectively, as well as the result of screening test dated 6.10.2023, are hereby quashed. The respondents are, accordingly, directed to revise the screening test result and proceed with the process of selection for the advertised posts in accordance with law without categorizing the candidates till the final merit list is drawn.

12. Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

8.1.2024

Ashwani

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No