



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 31st DAY OF MAY, 2022

BEFORE

HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN

&

HON'BLE MR. JUSTICE CHANDER BHUSAN BAROWALIA

CIVIL WRIT PETITION NO. 578 of 2021

BETWEEN

**RAJESH KUMAR S/O SH. SUKH DEV SHARMA, R/O
VILLAGE BADAIL, P.O. GEHRWIN, TEHSIL
GHUMARWIN, DISTRICT BILASPUR, H.P.**

...PETITIONER

(BY MR. ARUN SEHGAL, ADVOCATE)

AND

- 1. STATE OF HP THROUGH ITS SECRETARY
(EDUCATION) TO THE GOVT. OF HIMACHAL
PRADESH.**
- 2. DIRECTOR, ELEMENTARY EDUCATION TO THE
GOVERNMENT OF HIMACHAL PRADESH.**
- 3. DEPUTY DIRECTOR, ELEMENTARY EDUCATION,
BILASPUR, HIMACHAL PRADESH.**

...RESPONDENTS

(BY MR. RAJINDER DOGRA, SENIOR ADDITIONAL ADVOCATE GENERAL WITH MR. VINOD THAKUR, MR. SHIV PAL MANHANS, ADDITIONAL ADVOCATE GENERALS, MR. YUDHVIR SINGH THAKUR, DEPUTY ADVOCATE GENERAL AND MR. RAJAT CHAUHAN, LAW OFFICER FOR THE RESPONDENTS-STATE)

This petition coming on for admission this day, the **Hon'ble Mr. Justice Tarlok Singh Chauhan** passed the following:

ORDER

The instant petition has been filed for the grant of following relief(s):

- “(a) That the result list dated 17.12.2020 be set aside and fresh list be prepared as per the R& P Rules and similar treatment be given to all the candidates and the candidates who scored more than 0.5% be considered as 1%.
- (b) The petitioner be selected for the post of TGT on batch wise basis under ex-serviceman category.
- (c) The petitioner's percentage in graduation i.e. 44.8 be considered as 45% for the purpose of selection in batch wise basis under ex-serviceman category.”

2. The respondents have placed on record the instructions dated 27.5.2022, relevant portion whereof reads as under:

“In this regard, it is humbly submitted that the proposal for amendment in Recruitment & Promotion Rules of TGTs in consonance with NCTE notification dated 13.11.2019 was sent to the Government vide this Directorate letter dated 16.6.2021 (Copy

enclosed) wherein a note has been proposed to be inserted in column 7 of the relevant R&P Rules to the following extent:-

“Provided that minimum percentage of marks in graduation shall not be applicable to those incumbents who had already taken admission to the Bachelor of Education or Bachelor of Elementary Education or equivalent course prior to the 29th July, 2011.”

It is further submitted that the Govt. vide their letter No. EDN-C-A(3)2/2020, dated 7.9.2021 (copy enclosed) informed that they further took up the matter with the Department of Personnel (Apptt-II) who observed as under:

“Examined. Department is advised to clarify the purpose for inserting proviso/note in Col. No. 07, as proposed rules are not for admission but relate to recruitment.”

Accordingly, requisite clarification was sent to the Government vide this Directorate letter dated 8.12.2021 (copy enclosed) and the Government vide letter No. EDN-C-A(3)/2020, dated 6th April, 2022 (copy enclosed) has intimated that the matter was taken up with the Department of Personnel (Appointment-III) who have observed as under:

“Examined. The Department is advised to wait for issuance of notification vide which 15 marks of Evaluation are to be dispensed with and move proposal thereafter so that amendments matter could be decided in one go.”:

Now, the Govt. vide Notification dated 4.05.2022 (copy enclosed) has decided to dispense with the evaluation of 15 marks for selection to Class-III & Class IV posts and the decision

regarding proposed amendments in Recruitment & Promotion Rules for the category concerned (TGTs) as per the provision of NCTE notification dated 13.11.2019 is still awaited from the Government which may take some more time. Hence, the case of the petitioner for appointment can be considered by the respondent department while making appointments, in the future, in accordance with the amended R&P Rules when such amendments are approved by the competent authority since appointments have already been offered to the successful candidates as per prevailing Recruitment & Promotion Rules, framed under the provisions of Article 309 of the Constitution of India and the respondents are bound to make appointments strictly as per the Recruitment & Promotion Rules, in vogue.”

3. Now that the respondents themselves have held the petitioner to be eligible in accordance with Recruitment and Promotion Rules, we find no impediment in issuing the direction to the respondents to consider his case for the post of TGT on batch wise basis under ex-serviceman category, for which one post has already been ordered to be kept vacant as per the orders passed by learned Vacations Judge on 2.2.2021.

4. Accordingly, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner for appointment to the post of TGT on batch-wise basis under Ex-serviceman category, in accordance with the amended Recruitment

& Promotion Rules, within a period of six weeks from today. The pending application(s), if any, are also disposed of.

5. For compliance, to come up on 26.7.2022.

(Tarlok Singh Chauhan)
Judge

(Chander Bhusan Barowalia)
Judge

May 31, 2022
Kalpana

High Court of J&K