



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWPOA No.1968 of 2019
Decided on: 17.11.2025

Baljinder Kaur ...Petitioner
Versus
State of Himachal Pradesh & Others ...Respondents

Coram:
Hon'ble Mr. Justice Ranjan Sharma, Judge
¹*Whether approved for reporting?. Yes.*

For the petitioner: Mr. Raman Jamalta, Advocate.
For the respondents: Mr. Sumit Sharma, Deputy Advocate General, for respondents No.1 to 3-State.
Mr. Surender Sharma, Advocate, for respondent No.4.

Ranjan Sharma, Judge [Oral]
Petitioner, Baljinder Kaur, initially filed CWP No.7643 of 2010 before this Court and upon establishment of State Administrative Tribunal, the matter was transferred as T.A. No.2636 of 2015, and after the abolition of Learned Tribunal, the matter stood transferred to this Court, as *CWPOA No.1968 of 2019*, seeking the following relief(s):—

- (i). That appointment of the respondent No.4 issued vide Office Order dated 24.10.2010 (Annexure P-8) may kindly be quashed and set aside and respondents may be directed to appoint the petitioner as Punjabi Teacher in Government Senior Secondary School, Majari,

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

District Bilaspur with all consequential benefits.”

FACTUAL MATRIX:

2. Grievance of the petitioner is that she is working as Punjabi Teacher, *under PTA* in GSSS Majari, District Bilaspur. It is averred that 06 posts of Punjabi Teachers were advertised on 06.08.2010 [*Annexure P-7*] on period basis by Deputy Director of Education, Bilaspur out of which one post was reserved for OBC category. In this backdrop, it is stated that the petitioner being an OBC, had applied for the post of Punjabi Teacher from OBC category but the private respondent No.4 [Daljeet Singh] was selected and the non-selection of the petitioner as Punjabi Teacher against reserved OBC post was claimed to be illegal.

STAND OF RESPONDENTS IN THE REPLY-AFFIDAVIT:

3. Pursuant to the issuance of notice, the Respondents No.1 to 3 filed the Reply-Affidavit dated 24.11.2011 of Director of Elementary Education, Himachal Pradesh.

3(i). Reply-Affidavit stated that the Recruitment-Notice dated 06.08.2010 [*Annexure P-7*], was issued, advertising 06 posts of Punjabi Teachers. In Para 11(A)

and 11(E) of the Reply-Affidavit, the Respondents have stated that out of 06 advertised posts, one post of Punjabi Teacher was reserved for the OBC category [in GSSS Majari] but the petitioner had not applied for reserved OBC post nor made the application as in *Annexure P-10* was received by respondents.

REBUTTAL BY PETITIONER:

4. Petitioner filed a rejoinder to the reply of respondents No.1 to 3, stating that as per the OBC Certificate dated 21.08.2004 [at Page 86 of Paper-Book] the petitioner had a right for appointment against the OBC post.

5. Heard, Mr. Raman Jamalta, Learned Counsel for the petitioner, Mr. Sumit Sharma, Learned Deputy Advocate General, for respondents No.1 to 3 and Mr. Surender Sharma, Learned Counsel for respondent No.4 and have gone through the available material on record.

ANALYSIS:

6. Taking into account the entirety of the facts and circumstances and the material on record, this Court is of the considered view that the claim of

the petitioner against her non-selection as Punjabi Teacher against the reserved OBC post; and the selection/ appointment of the Respondent No.4 [Daljeet Singh] on 24.10.2010 [Annexure P-8] does not call for any interference, for the following reasons:

6(i). Perusal of the Recruitment Notice- Advertisement dated 06.08.2010 [Annexure P-7], reveals that six posts of Punjabi Teachers on period basis were to be filled up by Deputy Director of Elementary Education, Bilaspur. Recruitment Notice shows that out of total six posts, one post was meant for OBC category candidates. Further, the Recruitment Notice [Annexure P-7], indicates that eligible candidates were to submit applications on prescribed proforma as spelt out in the Advertisement-Recruitment Notice. Clause 17 of the Recruitment Notice expressly mandated that the candidates applying for SC/ST/**OBC**/ESM/PH/FF/ Sports Personnel/Women Category/Himachal Bona fide/ Local Panchayat Resident should annex the reserved category certificate(s) along with the application.

In the backdrop of the Recruitment Notice dated 06.08.2010 [Annexure P-7] and the averments

made in Para 11(A) and 11(E) of the Reply-Affidavit, it is borne out that in pursuance to the advertisement though one post of Punjabi Teacher was reserved for OBC category but the petitioner did not apply against reserved OBC post. The operative part of the Reply-Affidavit in Para 11(A) and 11(E), reads as under:-

“11. That this para call for no submission in view of the facts and submissions as submitted in preceding paras. It is further submitted that no cause of action has accrued in favour of the petitioner to file and maintain the present writ petition against the replying respondents. However, reply to the sub paras of this para is an under:-

- (A) That the contents of this para are wrong hence denied. **As the post of Punjabi Teacher in GSSS Majari, District Bilaspur was reserved for the OBC category and the petitioner belongs to General Category,** the petitioner could not be offered appointment. Hence there is no violation of Article 14 and 16 of the Constitution of India.
- (E) That the contents of this sub para are wrong hence denied. It is further submitted that the **petitioner had neither applied against the post reserved for the OBC category nor made any application to the replying respondents to consider her candidature against the post reserved for the OBC category.”**

Nothing has been placed on record by the petitioner to show that while applying for the post of Punjabi Teacher in pursuance to the Recruitment Notice-

Advertisement dated 06.08.2010 [Annexure P-7] the petitioner had applied as OBC category candidate. In this situation, once the petitioner has chosen not to avail benefit of reservation available as OBC candidate then, after participation and having remained unsuccessful, the petitioner has neither any locus nor any right to turn around and claim/appointment against OBC post and the petitioner cannot question the selection of private respondent, who being OBC was selected against such reserved post, on the basis of merit, on the recommendations made by duly constituted Selection Committee. In these circumstances, this Court does not find any merit in the claim of the petitioner.

7. Merely because the petitioner belonged to OBC category, as per Certificate dated 21.08.2004 [at Page 86 of the Paper-Book] will not confer an *ipso facto* right of appointment against the reserved OBC post. Right of a reserved candidate for consideration against reserved post accrues and crystalizes only in case, a reserved candidate opts and applies for reserved post and not otherwise. Pertinently, unless Recruitment

Notice-Advertisement or the Recruitment and Promotion Rules permit that a reserved candidate who had not applied against respective reserved category can seek such benefit at a stage after commencement of selection, then only, such a claim could subsist. In instant case, no such provision permitting change in category since the date of applying for post and/or till culmination of selection, [based as Rules or Advertisement] has been pointed out. The petitioner who claims to be OBC and has chosen not to apply as OBC candidate but has applied as an Unreserved-General candidate cannot be permitted to seek appointment against reserved OBC post, on which respondent No.4, being OBC, had applied and was validly selected/appointed and had been serving since 2010 till day. Even the application Annexure P-10 will not confer any right, when, no such application was received by the department. Non-selection of the petitioner against the OBC post of Punjabi Teacher was attributable solely to the inaction/omission of the petitioner herself for having chosen not to apply for OBC-reserved at the relevant time.

8. The matter needs to be tested from another angle. The State Authorities issued the Recruitment Notice-Advertisement for 06 posts of Punjabi Teacher on 06.08.2010, out of which 01 post was meant for OBC category. OBC Certificate of the petitioner [as placed on record at Page 86 of Paper-Book] was issued on 21.08.2004. As per the norms in Clause 28.13 of Himachal Pradesh Land Records Manual issued by the State Authorities, the OBC Certificate has a validity of one year, which expired on 21.08.2005. Nothing has been averred in the petition that after expiry of OBC Certificate dated 21.08.2005, the petitioner still continued to be OBC and did not come within the purview of 'Creamy Layer'. In these circumstances, once the petitioner did not have a valid OBC Certificate on the date of Advertisement on 06.08.2010 [Annexure P-7] and the petitioner had chosen not to apply as OBC category against the one post reserved for OBC, therefore, in these circumstances, the non-selection of petitioner as Punjabi Teacher against the OBC post needs no interference. Resultantly, the selection and appointment of Respondent No.4-

eligible OBC as Punjabi Teacher on 24.10.2010 [Annexure P-8] is upheld.

9. Learned Counsel for the petitioner contends that as per the Advertisement dated 06.08.2010 [Annexure P-7] for the post of Punjabi Teacher, the private respondent No.4 was ineligible as he did not possess the M.A. qualification and being ineligible the appointment of private respondent [Daljeet Singh] was bad in law.

9(i). For appreciating the above contention essential qualifications prescribed for the post of Punjabi Teacher as in the Advertisement dated 06.08.2010 vis-à-vis the applicable Recruitment and Promotion Rules dated 09.10.2007, reads as under:

Essential Qualifications as in Advertisement Recruitment Notice dated 06.08.2010 [Annexure P-7] for post of Punjabi Teachers.	Essential Qualification as per translated Version	Essential Qualifications as per Recruitment and Promotion Rules, notified on 09.10.2007 [Annexure -A]
ਪੰਜਾਬੀ ਆਨਰਜ਼ ਸਰਟਿਫਿਕੇਟ ਬੀ.ਏ. ਆਨਰਜ਼ ਸਹਿਤ-ਬੀ. ਏਡ/10 + 2 ਜ਼ਾਨੀ ਸਰਟਿਫਿਕੇਟ ਸਹਿਤ/ਮਾਨਯਤਾ ਪ੍ਰਾਪਤ ਵਿਸ਼ਵਵਿਦਯਾਲਯ/ਬੋਰਡ/ਸੰਸਥਾਨ ਸੇ ਐਮ. ਏ. ਪੰਜਾਬੀ।	Punjabi Honours Certificate/ B.A. Honors with B.Ed./10+2 with Gyani Certificate/M.A. Punjabi from recognized University/Board/Institute.	Honours in Punjabi or B.A. (Hons.) in Punjabi with B.Ed. or +2 with Giani Certificate or M.A. in Punjabi from a recognized University/board/ Institution.

9(ii). A combined reading of the Advertisement dated 06.08.2010 [Annexure P-7] and the Recruitment and Promotion Rules dated 09.10.2007 indicates that for appointment as Punjabi Teacher a candidate

should possess either of the qualification(s) i.e. "Punjabi Honors Certificate or B.A. Honors with B.Ed. or 10+2 with Gyani Certificate or M.A. in Punjabi from recognized University/ Board/Institute."

9(iii). In this backdrop, contention of Learned Counsel for petitioner that since private respondent [Daljeet Singh] did not possess the M.A. in Punjabi qualification, renders him ineligible for the post of Punjabi Teacher cannot be acceded to for the reason that the qualifications mentioned in the Advertisement-Recruitment Notice [Annexure P-7] and the Recruitment and Promotion Rules are inconformity with each other. That being so, once the post of Punjabi Teacher could be filled-up from either of the 04 category of candidates who possessed the qualification(s) of Honors in Punjabi Certificate or B.A. (Honors) in Punjabi with B.Ed. or 10+2 with Gyani Certificate or M.A. in Punjabi from recognized University/Board/Institute then, once Respondent No.4 [Daljeet Singh] possessed the qualification of 10+2 from Punjab School Education Board on 02.11.1999 [at Page 70 Annexure R-2, Colly] and possessed the Gyani Certificate on 04.08.2006

from Punjabi University, Patiala, Annexure R-3, then, respondent No.4 being fully eligible, was rightly appointed as Punjabi Teacher on 24.10.2010, *Annexure P-8*.

Based on the combined reading of the Advertisement and the Recruitment & Promotion Rules once, it is established that terms and conditions including educational qualifications as spelt out in the Advertisement and the Recruitment & Promotion Rules [as extracted in Para 9(i) of this judgment] is same, then, in such an eventuality, the selection of Respondent No.4 being eligible, is not required to be interdicted by this Court and the same is upheld in view of the judgment of the Hon'ble Supreme Court in **Chandra Shekhar Singh and Others versus State of Jharkhand and Others, (2025) 9 SCC 740**, which reads as under:

“30. We feel that **there is no ambiguity whatsoever in the FSS 2011 Rules or the subject advertisement** which can exclude the Master's degree in subjects referred to in the preceding part of Rule 2.1.3 of the FSS 2011 Rules, other than Chemistry, as being a valid qualification. The special reference to the Master's degree is given in the said Rule, only for those who have acquired their degree course in Chemistry subject, for whom, the minimum qualifying criterion will be a Master's

degree in Chemistry. However, so far as the other subjects are concerned, a person having any degree, be it graduation or postgraduation, would be equally qualified for the post in question.”

9(iv). Contention of Learned Counsel for the petitioner that as per Advertisement dated 06.08.2010 [Annexure P-7] the mark [/] in the Advertisement reveals that the M.A. in Punjabi was an essential qualification and since the petitioner does not fulfill M.A. in Punjabi qualification, therefore, he was not eligible.

The above contention of Learned Counsel for the petitioner is misconceived, *for the reason* that mark [/] in the Advertisement has to be read in conformity with the Recruitment and Promotion Rules which provide that all four prescribed qualifications are alternative qualifications, in view of the expression “**or**” used inter-se the qualifications in the Rules. Even in case of conflict between the Advertisement and the Service Rules/ Regulations, the prescription of qualifications and conditions in the Recruitment Rules have to prevail. Accordingly, Respondent No.4 who possessed the alternative qualification of 10+2 with Giani from recognized Board/University was eligible for the

post and the contention that the Respondent No.4 did not possess M.A. in Punjabi is misconceived when either of the qualifications of 10+2 with Giani Certificate or M.A. in Punjabi besides other qualifications rendered the Respondent No.4 eligible for the post. The qualifications prescribed in the Recruitment Rules shall prevail over the ambiguous and inconsistent terms and conditions, if any, in the Advertisement.

While dealing with the issue of inconsistency between the terms and conditions of the Advertisement vis-à-vis the Service Rules, it has been mandated that the qualifications and conditions laid down in the Service Rules/Regulations shall prevail over the inconsistent terms in the Advertisement. The plea raised by the petitioner also fails for the reason that the Hon'ble Supreme Court has categorically held that in the event of a conflict between the Advertisement and the Service Rules/Regulations, it is the Service Rules/Regulations which shall prevail, as held in ***The Employees' State Insurance Corporation v. Union of India & Ors., 2022 LiveLaw (SC) 78***, in the following terms:

20 The advertisements issued by the appellant mentioned that the DACP Scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In **Malik Mazhar Sultan v. U.P. Public Service Commission** a two-judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held:

“21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the **recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules.** The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

21 In **Ashish Kumar v. State of Uttar Pradesh** a two-judge Bench of this Court followed the decision in **Malik Mazhar Sultan** (supra) in interpreting an advertisement issued by the Director, Social Welfare Department, Uttar Pradesh for the position of a psychologist. **This Court declined to give precedence to the erroneous qualifications prescribed in the advertisement against the relevant recruitment rules and held:**

“27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. **It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence....**”

22 The contesting respondents urged that the advertisements indicated the applicability of the DACP Scheme before the ESIC Recruitment Regulations 2015 were issued. **However, a subsequent amendment to recruitment regulations would override the conditions prescribed in the advertisement.** In Rajasthan Public Service Commission v. Chanan Ram²⁵ a two-judge Bench of this Court held that an earlier advertisement becomes infructuous after a subsequent amendment to the service rules:

“13. Under these circumstances, therefore, it is difficult to appreciate how the Division Bench of the High Court could persuade itself in agreeing with the submission of the learned counsel for the respondent-writ petitioner that despite this change of cadres and the provision for recruitment on new posts the old advertisement of 5-11-1993 Annexure P-1 seeking to consider the candidature of applicants for erstwhile 23 advertised vacancies in the posts of Assistant Directors (Junior) in the Agricultural Marketing Service of the State of Rajasthan would still be pursued further and recruitment should be effected for these 23 erstwhile vacancies as per the old advertisement. It is easy to visualise that even if such an earlier advertisement of 5- 11-1993 was proceeded with further it would have resulted into a stalemate and an exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Directors (Junior)

after 1995 amendment of Rules as there were no such posts in the hierarchy of State Service. Consequently it must be held that on account of the amendments to the Rajasthan Agricultural Marketing Service Rules the earlier advertisement dated 5-11-1993 had become infructuous and otiose. Only on this short ground the writ petition of the respondent-writ petitioner should have been dismissed by confirming the order of dismissal of the writ petition earlier passed by the learned Single Judge.....”

(emphasis supplied)

- 27 The contesting respondents did not challenge the ESIC Recruitment Regulations 2008 or the ESIC Recruitment Regulations 2015 before the CAT or the High Court. The argument on lack of prior approval as per Section 17(2) of the ESI Act is obviated by the preamble to the ESIC Recruitment Regulations 2015. The contesting respondents have only supported the applicability of the DACP Scheme to claim promotion as Associate Professor after two years of service. **The advertisements for recruitment mentioning the DACP Scheme would have no effect since they were in contravention of the applicable recruitment regulations. Therefore, for the above reasons, we are of the view that the appeal should be allowed.**

10. At this stage, Learned Counsel for the petitioner states that out of six posts of OBC four posts were meant for General-Unreserved category candidates. It is further averred that out of four General category posts, the petitioner had secured 20.33 marks. It is asserted that against those four posts though the petitioner has higher merit viz-a-viz the selected Unreserved-General category candidates yet, the

petitioner has been denied the resultant appointment.

11. Learned Counsel for the petitioner states that he has filed an application whereby petitioner is stated to have secured more than marks i.e. 20.76 marks viz-a-viz Unreserved-General category candidates. In these circumstances, this Court is unable to adjudicate the matter qua the selection of General-Unreserved category candidates for the reason that the General category selected candidates as per the Recruitment Notice have not been arrayed as party respondents in the instant case.

12. Case needs to be tested from another angle. Selection in pursuance to the Recruitment Notice dated 06.08.2010 [Annexure P-7] was made by the respondents, in the month of October, 2010 [Annexure P-8]. The General-Unreserved Category Candidates who were selected in the year 2010 are not before this Court.

13. At this stage, Learned Counsel for the petitioner states that he intends to implead the General Category candidates in instant proceedings. This Court does not find favour with the contention

raised for the reason that the selection in pursuance to the Recruitment Notice issued on 06.08.2010 culminated in October, 2010 whereby the selected candidates i.e. General and Reserved category candidates were appointed as Punjabi teachers. Above more than 15 years have passed since the culmination of selection process. The intended impleadment of General category candidates at this stage, suffers from delay and laches also.

14. No other point was raised/argued.

15. In these circumstances, this Court does not find any merit in the instant petition and the same is dismissed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

November 17, 2025
[Shivender]