

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 419 of 2019

Reserved on: 25.9.2020

Date of decision: 8.12.2020

Ganesh Kumar.

...Petitioner.

Versus

State of H.P. & others.

...Respondents.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner: Ms.Anubhuti Sharma, Advocate, through Video Conferencing.

For the Respondents: Mr.R.P. Singh, Deputy Advocates General, for respondents No. 1 and 2, through Video Conferencing.

Mr.Angrez Kapoor, Advocate, for respondent No. 3, through Video Conferencing.

Mr.Lalit Kumar Sehgal, Advocate, for respondents No. 4 and 5, through Video Conferencing.

Vivek Singh Thakur, Judge

Present petition has been preferred against rejection of claim of petitioner to consider him in the category reserved for OBC (IRDP) for appointment to the post of Lecturer (School Cadre) Chemistry, notified vide advertisement dated 19.12.2008 issued in continuation of advertisement No. 13 of 2008 dated 28.8.2008.

2. In sequel to requisition sent by Education Department of Government of Himachal Pradesh, respondent No. 3 H.P. Subordinate Service Selection Board, Hamirpur (herein after referred to be as 'Board') had issued advertisement No. 13 of 2008, dated 28.8.2008,

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

whereby along with other posts, 13 posts of Lecturer (School Cadre) in the subject of Chemistry were notified. Details of availability of vacancies of these 13 posts in different categories were as under:-

General (UR)	=7 Posts
General (IRDP)	=2 Posts
OBC (UR)	=2 Posts
SC (UR)	=2 Posts

Last date to submit applications, for candidates belonging to other than Tribal area was 30.9.2008, whereas the same for candidates belonging to tribal area was 15.10.2008.

3. Petitioner, undisputedly on that relevant time was belonging to OBC (IRDP) category. But there was no post available in the category of OBC (IRDP), thus petitioner had applied under the category of OBC (UR).

4. Later on, on the basis of subsequent requisition received from Educational Department, respondent No. 3 Board had issued public notice on 19.12.2008, whereby it was notified that after issuance of advertisement No. 13 of 2008, number of posts to be filled, had been increased for receipt of more requisitions to the post of Lecturer (School Cadre) in various subjects and, therefore, the posts available along with revised breakup of the posts available in various categories was notified, wherein total posts for Lecturer (School Cadre) in Chemistry were notified as 95 and as per revised breakup, posts reserved for category of OBC were notified as under:-

OBC (UR)	=15 Posts
OBC (IRDP)	=03 Posts
OBC (WFF)	=01 Post

5. In second notification dated 19.12.2008, it was also notified that a candidate, who did not apply earlier for the post notified, could send his/her application on prescribed format to the Secretary of the Board. It was also notified that the candidates, who had applied earlier need not to apply again.

6. Claim of the petitioner is that in pursuance to his application submitted in response to advertisement No. 13 of 2008, he appeared in screening test conducted by respondent No. 3 for short listing candidates for the post in question and was declared successful and vide call letter dated 24.5.2010 was called for interview held on 2.7.2010. It is further case of the petitioner that vide instruction No. 6 of the call letter, he was directed to come along with valid OBC certificate and an affidavit deposing therein that he did not fall under the creamy layer and was eligible to claim reservation under OBC category and vide instruction No. 9, he was also directed to bring necessary valid IRDP certificate along with copy of Parivar Register, having his name entered in the IRDP family, establishing that he was belonging to IRDP family.

7. Petitioner claimed that in response to the call letter and instructions contained therein he had appeared in the interview along with valid OBC and IRDP certificates, requisite affidavit and necessary copy of Parivar Register, establishing that he was belonging to OBC (IRDP) family. However, on declaration of result, he found that a candidate in the category of OBC (IRDP) having secured 93 marks in selection process was selected but petitioner was ignored, whereupon he had applied for information under the Right to Information Act, whereby it was informed that petitioner had secured 140 marks,

whereas selected candidates under OBC (IRDP) category i.e. respondents No. 4 and 5 had secured only 116 and 93 marks respectively.

8. It is case of the petitioner that as it was notified in subsequent notification dated 19.12.2008 that candidates who had applied earlier need not to apply again, so he did not apply again in response to the subsequent notification, because he had already applied to the post of Lecturer (School Cadre) in subject of Chemistry and in pursuance to call letter he had produced the relevant necessary documents to establish his claim against the post reserved for OBC (IRDP) and, therefore, non consideration of his candidature against the post reserved for OBC(IRDP) is patently illegal, arbitrary, unjust and in violation of Article 14 of the Constitution of India.

9. It is also case of the petitioner that after notification of availability of posts against OBC (IRDP), being a candidate belonging to the said category, he was to be considered as OBC (IRDP) candidate and, therefore, at the time of screening test also, in OMR sheet he had marked himself as OBC (IRDP) candidate.

10. To substantiate the claim of the petitioner, learned counsel for the petitioner has referred judgments of Supreme Court passed in ***Mrs.Seema Kumari Sharma Vs. State of Himachal Pradesh and another, AIR 1997 SC 1693; Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another (2016) 4 SCC 754 and Dheerender Singh Paliwal Vs. Union Public Service Commission (2017) 11 SCC 276*** and also judgment dated 18.11.2019 passed by Division Bench of this Court in *CWP No. 2927 of 2019, titled Anjali Vs. State of H.P. & others.*

10. Respondents No. 4 and 5 have filed separate reply, wherein they have stated that they had applied to the post reserved for OBC (IRDP) category and for fulfilling all requisite qualifications for the said post, they have been rightly appointed as Lecturer (School Cadre) in Chemistry, as OBC (IRDP) candidates. Rejection of claim of petitioner to consider him against the post of OBC (IRDP) and consideration of candidature of petitioner as OBC (UR) candidate has been justified for submission of application by the petitioner under the category of OBC (UR).

11. Respondent No. 3-Board has justified the action of the Board on the ground that petitioner had applied under the OBC (UR) category and was declared qualified in the same category in which he had applied and, therefore, his candidature was rightly considered in the category in which he had applied in his application form. It is further submitted that in notice dated 19.12.2008 it was also made clear that candidate, who did not/could not apply for the post earlier could send hi/her application on prescribed format to the Board by 27.1.2009 and the aid last date with respect to remote areas was notified as 11.2.2009, but petitioner did not apply against the post reserved for OBC (IRDP). It is further case of the Board that as per Rules of Business and Procedure of the Board, category once claimed cannot be changed/alterd subsequently. It is further submitted on behalf of respondent/Board that mention of category as OBC (IRDP) in OMR sheet does not entitle petitioner to consider him as OBC (IRDP) candidate, as his category is to be determined on the basis of category claimed by him in his application form.

12. Learned counsel for the respondent-Board has relied upon pronouncement of the Apex Court in ***J&K Public Service Commission Vs. Israr Ahmad and others (2005) 12 SCC 498*** and also judgment dated 24th December, 2014, passed by Single Bench of this Court in *CWP No. 7669 of 2012, titled Suresh Kumar Vs. State of H.P. and others.*

13. In cases decided by the Supreme Court, referred on behalf of petitioner, but except *Dheerender Singh Paliwal's* case, the issue involved was that candidates in those cases had failed to produce/append/annex the certificates along with application forms with respect to their qualification or category on the basis of which they were claiming their right to be considered against the posts reserved in particular category, but in all those cases candidates had applied in a particular category and thus their candidature was directed to be considered in the category claimed by them in the application form on the basis of production of certificate by them at later stage.

14. In *Dheerender Singh Paliwal's* case, petitioner therein was permitted to furnish the certificate of educational qualification during the interview. In that case also claim of the candidate was determined on the basis of application form submitted by him at the time of applying to the post in question.

15. In case of *Anjali* also petitioner therein had applied under the category of ST (BPL), but the certificate annexed by her with the application had expired before last date of submission of form and she was claiming her right on the basis of renewed BPL Certificate, which was renewed after 11 days of expiry of earlier certificate. She was called and permitted to participate in the process as ST (BPL)

candidate and she was only candidate available in her category. Therefore, non-production of BPL Certificate at appropriate time was considered by the Division Bench a trivial issue, need not to be taken into consideration in given facts and circumstances of that case. In fact, in that case also, there is no change of category of candidate during the selection process or otherwise.

16. In *Israr Ahmad's case*, relied on behalf of respondent-Board, petitioner was not permitted to avail reservation on the ground that he had not applied for selection as a candidate entitled to get reservation and thus his claim against the reserved post, on the basis of certificate produced by him at a later stage, i.e. during main examination, was rejected with observation that once a candidate has chosen to opt for the category to which he is entitled, he cannot later on change the status and make fresh claim. Similarly, in *Suresh Kumar's* judgment, Single Bench of this High Court had rejected claim of petitioner to treat a SC (IRDP) candidate against the post reserved for SC (UR), being impermissible under law.

17. It is admitted case of the petitioner that at the time of first notice of advertisement, there was no post available for the category of OBC (IRDP) and thus he had applied for the post reserved for OBC (UR). Therefore, his plea that for the condition notified in subsequent notification that those candidates who had applied earlier, need not to apply again, he did not apply afresh, is not sustainable. Because, as stated by the petitioner, he had not applied to the post of OBC (IRDP) in response to the first advertisement nor he could, as at that time no post reserved under the category of OBC (IRDP) was notified. Thus, for the post, which was notified for the first time in subsequent

notification no application could have submitted prior to second notification but a fresh application was to be submitted to the post in the category of OBC (IRDP) which was available in December, 2008 only so as to consider candidature of the petitioner for the said post.

18. Apart from aforesaid note, referred by the petitioner, it was also notified that candidate, who did/could not apply for the post earlier could send his/her application on prescribed format. Petitioner was well aware that he had applied to the post reserved under the category of OBC (UR), but not to the post available under OBC (IRDP) category, therefore, his claim to consider him as OBC (IRDP) candidate in view of instructions contained in memo of call letter, issued to him to appear in personal interview, is not a valid base for his claim. As stated in the reply of respondent-Board, those instructions are general in nature, which are published and notified to each and every candidate called for interview, irrespective of category of candidate this plea is also substantiated from the language of the instructions contained in the call letter as in instruction No. 9, it has been stated that 'in case candidate belongs to IRDP category', he should bring necessary certificate as prescribed under this instruction, but it does not mean that a candidate who had not applied to the post reserved for IRDP category, would be entitled for consideration being candidate of IRDP on the basis of necessary certificate/documents produced by him at the time of interview for direction under this instruction.

19. Post under the category of OBC (IRDP) was available only after receipt of subsequent requisition received from the Education Department and was notified on 19.12.2008. Therefore, neither an application could have submitted to such post in response to the

advertisement dated 28.8.2008 nor there was any occasion for any candidate belonging to the said category to do so. Petitioner is a well qualified person having passed M.Sc Chemistry with 70% marks, putting his claim to be appointed as a Lecturer in School Cadre and, therefore, he must have such basic understanding that his first application was against the post reserved for OBC (UR) and for putting a claim to consider his candidature against the post reserved for OBC (IRDP), notified later on, a fresh application to the post reserved for the said category, was necessary to be submitted to the Board. Posts reserved for certain categories were not available at the time of issuance of advertisement No. 13 of 2008 in August 2008 and they had become available on subsequent date and thus notified in December, 2008 and for this reason only a fresh chance was given to the candidates, who did/could not apply for such posts earlier, to apply on prescribed format to the Board for such post. Candidature of the petitioner on the basis of application submitted to consider him against the post of OBC (UR) cannot be considered as an application to consider him against the post reserved for the category of OBC (IRDP). As provided under Rules of Business and Procedure of the Board and also held by the Apex Court in *Israr Ahmed's* case, once a candidate has chosen to opt for the category to which he is entitled, he cannot later on change the status and make fresh claim during the selection process.

20. In case petitioner was desirous to consider his candidature under the category of OBC (IRDP), the post for which category was notified later on, he should have submitted fresh application, claiming his right against the said category. It may be canvassed that for one

post a candidate cannot apply twice in one and the same selection process. In normal course it may be true but in given facts and circumstances, more than one application may have to be permitted but, in any circumstance, applicant has to choose, in the beginning, one category only in which he would be desirous to compete. His appearance against particular admit card/Roll Number, shall determine status of his category and category once opted shall not be permitted to be changed. Now a days, online applications are invited. There may be a case where an incomplete or wrongly filled application may be submitted by mistake. In such eventuality, in absence of specific provision, a candidate may apply afresh but within prescribed time. His candidature may be determined on the basis of complete and correct application. In present case, on submitting fresh application to the post reserved for OBC (IRDP), petitioner would have received two roll numbers and his appearance against particular roll number would have determined his status and against other roll number he would have been treated absent.

21. In present case posts, under some categories, were available at the time of first notification of advertisement No. 13 of 2008, whereas certain post, in the same categories as well as in some other categories, had become available later on. Therefore, for those posts, for want of availability/requisition, applications were not invited. Notes below second notification dated 19.12.2008 are to be understood and applied in perspective of aforesaid fact. No application was possible to be submitted for the post which was not available at the time of first notification. Therefore, fresh applications were invited and thus for posts reserved for those categories for which posts were

not available at the time of first notification, fresh applications were to be filed. There was increase in number of posts reserved for certain categories which were notified earlier and thus candidates, of all categories, including those for which posts were available at first instance, who had not applied or had failed to apply earlier, were also permitted to apply. Note of 'need not to apply again' was applicable to those who had applied to the post reserved for particular category but not to those who had applied to post reserved under category 'A' but intending to compete for a post reserved for category 'B' or who had applied for sub category 'A-1' but intending to compete for sub category 'A-2'.

In view of above discussion, I find no merit in this petition and accordingly the same is dismissed.

8th December, 2020
(Keshav)

(Vivek Singh Thakur),
Judge.