

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

CWP No.15761 of 2014 (O&M)

Date of Decision: April 27, 2017

Yogita Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Chopra, Senior Advocate with
Mr. Gaurav Sharma, Advocate
for the petitioner.

Ms. Lavanya Paul, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

The prayer in the instant writ petition is for issuance of a writ in the nature of *mandamus* directing the respondents to give her the benefit of 5% marks, as per notification dated 29.07.2011 and thereafter, include the name of the petitioner in the merit list of candidates belonging to Backward Class Category and appoint her as ETT/JBT teacher, as the candidates lower in merit have been appointed.

2. In brief, the facts as noticed are that, State Council of Education Research and Training Punjab, respondent No. 3, invited applications online from eligible candidates for appearing in the Punjab State Teachers Eligibility Test. All those candidates, who acquired at least 60% marks, were to be declared as having passed the State Teachers

Eligibility Test. By notification dated 29.07.2011, NCTE gave a relaxation up to 5% in the qualifying marks to the candidates belonging to the Scheduled Castes/Schedule Tribes Category. As the benefit of 5% relaxation in the qualifying marks was not made available to candidates belonging to the Backward Class Category, a Civil Writ Petition No.21387 of 2011, titled as ***“Shabir Khan and another vs. State of Punjab and another”*** was filed in this court, claiming the relaxation to be allowed to candidates belonging to the Backward Category. The writ petition was allowed by this court on 29.02.2012, wherein, it was held that candidates belonging to the Backward Class Category shall also be entitled to relaxation up to 5%. The National Council for Teacher’s Education issued a notification dated 29.07.2011 laying down the minimum qualifications of a person to become eligible for appointment as teacher which included passing of Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

3. The petitioner herein appeared in the State Teachers Eligibility Test in the General Category conducted and was awarded 86 marks out of a total of 150 which would make it in that a total of only 57.3%, which is lesser than the required marks. An advertisement was issued by respondent No. 2 inviting applications for recruitment of teachers in different subjects. The petitioner applied for appointment as ETT/JBT in the Backward Class Category with qualifications of B.A, B.Ed. but was not offered appointment on account of the fact that she had not secured sufficient marks in the TET test that was conducted. Aggrieved the instant writ petition has been filed.

4. Mr. R.K Chopra, learned senior counsel appearing on behalf of the petitioner along with Mr. Gaurav Sharma, Advocate would contend that denial of appointment to the petitioner merely on account of not having sufficient marks in the TET examination, is wholly unjustified. It is argued that by virtue of belonging to the Backward Class Category, the petitioner herein would be entitled to benefit of 5% relaxation in the TET examination as per the decision rendered in ***“Shabir Khan’s case” (supra)*** which has subsequently been followed in Civil Writ Petition No. 2998 of 2013 ***“Baljeet Singh vs State of Punjab and others”***, wherein, it has been held that benefit of 5% relaxation would be available to a candidate who had passed the TET if such candidate belongs to a Backward Class Category. Mr. Chopra, further places reliance upon a judgement rendered in CWP No. 14140 of 2013 titled as ***“Jagdish Kaur versus State of Punjab and others”*** wherein, relief was given to the petitioner by placing reliance upon a judgment rendered in ***“Baljeet Singh’s case” (supra)***. It is submitted that in case the relaxation of 5% is allowed to the petitioner she would then become qualified to appointment as a elementary teacher.

5. Per contra, Ms. Lavanya Paul, learned AAG Punjab, however argues that the petitioner herein does not have the necessary qualification to be appointed as Elementary Teacher on account of the fact that she has not passed the TET examination which is a prerequisite qualification and mandatory. Counsel further places reliance upon a judgment rendered in LPA No. 1910 of 2014 ***“State Of Punjab and another vs. Shaveta Kamboj”*** decided on 7.7.2015 wherein a Division Bench of this court while dealing with a similar situation held that if a person has appeared in the TET

as a general candidate would not be entitled to claim benefit of other backward classes after that the result had been declared.

6. I have heard both the learned counsels appearing for the parties and with their assistance have gone through the pleadings of the case.

7. There is no dispute that the petitioner belongs to the Backward Class Category and had applied for appointment to the post of ETT pursuant to an advertisement issued as a Backward Class Candidate. As per the qualifications required, a person with BA., B.Ed. degree would be eligible for appointment as teacher to Class I to Class V, provided such candidate also had a PSTET passed certificate. The petitioner herein though had the necessary educational qualification, had not passed PSTET. The claim of the petitioner for benefit of 5% relaxation in the said examination would not be tenable in the light of the judgment rendered in “*State Of Punjab and another vs. Shaveta Kamboj*” (*supra*). The Division Bench while noticing the judgment rendered in “*Baljeet Singh’s case*” (*supra*) categorically held that once a candidate has applied as a General Candidate in the examination, would not be able to claim benefit of Other Backward Class, after the result was declared. The judgment of this court in “*Baljeet Singh’s case*” (*supra*) was held not to lay the correct enunciation of law. No reliance can be placed on a judgment rendered in “*Jagdish Kaur’s case*” (*supra*) since the facts of the case are distinguishable and the said judgment has not noted the ratio as laid down by the division bench in “*Shaveta Kamboj’s case*” (*supra*).

8. The judgment rendered above in “*Shaveta Kamboj’s case*” (*supra*) is fully applicable to the facts of the instant case. The petitioner had undertaken the PSTET as a candidate under the General Category and did

not secure sufficient marks to be declared as pass. She would now not be entitled to claim the benefit of 5% relaxation, as has been allowed to candidates belonging to Backward Castes and Scheduled Castes/Scheduled Tribes Categories.

9 Therefore in view of the above the instant writ petition being devoid of any merit is hereby dismissed.

April 27, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No