

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.831 of 2005

Date of Decision: 13th January, 2006.

Sandeep Kumar

Petitioners

Versus

State of H.P. and others

Respondents

Coram

The Hon'ble Mr. Justice V.K. Jhanji, J.

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting?¹

For the petitioners: **Mr. Vivek Thakur, Advocate.**

For the respondents: **Mr. M.S. Chandel, Advocate General with
Mr. R.M. Bisht, Dy. Advocate General.**

V.K. Jhanji, J. (Oral)

The Himachal Pradesh University issued prospectus on behalf of respondents No.1 and 2 for entrance test for admission to the courses of Multi Purpose Workers (hereinafter referred to as "MPW") male/females for the session 2004-2005. According to petitioner, respondents had decided to admit 300 trainees throughout the State of Himachal Pradesh purely on the basis of merit obtained by the eligible candidates in the entrance examination. In the prospectus it was laid down that the question papers for the entrance test would be of 100 MCQ (objective type) of two hours duration and the merit of the selected candidates shall

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

be determined on the basis of marks obtained in the entrance test. It was made clear in the prospectus that the training would not guarantee Government service after completion of the training.

Competitive examination was slated for 21st November, 2004, but before the competitive examination could take place, vide public notice dated 1st October, 2004, amendment was made in the prospectus. The said amendment provided that in addition to 100 marks for written examination, there would be 15 marks for interview and 10 additional marks for the candidates who have passed two examinations out of 5th, 8th, 10th and 10+2 from the schools situated in rural areas of the State. The distribution of seats as provided in para 1.3 of the prospectus was also omitted. As per clarification given by the respondents, only part of para 1.3 which provided for reservation on the basis of urban and rural areas was omitted. However, by means of subsequent instructions dated 7th March, 2005, it was decided to delete awarding of additional 10 marks to the candidates who may have passed two examinations out of 5th, 8th, 10th and 10+2 from the schools situated in the rural areas of the State and 15 marks which were to be awarded for viva-voce were also bifurcated i.e. 10 marks for academic qualification and 5 marks for viva-voce.

The competitive examination took place on 21st November, 2004 and the result of the same was published on 31st January, 2005. The petitioner qualified for the same and in pursuance of notice dated 1st October, 2004 wherein holding of interview had been provided, petitioner appeared for interview, but before the result could be declared, the present petition came to be

filed by the petitioner on the ground that holding of interview and awarding of marks thereof was totally uncalled for and should not have been conducted for admission to the courses of the nature like MPW. In support of this submission, learned counsel for the petitioner has relied upon two judgments rendered by a Division Bench of this Court in Rajeev Sharma Vs. State of H.P. and others (CWP No. 611 of 2004) decided on 6th May, 2005 and Rajender Baloria Vs. State of H.P. and others (CWP No.722 of 2004) decided on 12th January, 2006.

In Rajiv Sharma's case (supra), the Division Bench of this Court keeping into consideration the entire law on the subject, has held that the interview test is totally uncalled for and should not be conducted for the admission courses of the nature like Vateriaary Pharmacist, JBT etc. where young boys and girls whose personality has not fully developed are to be judged. The Division Bench declared test interview illegal, discriminatory and suffering from the vice of arbitrariness and also violative of Article 14 of the Constitution of India.

In Rajender Baloria's case (supra), selection of JBT teachers has been quashed to the extent whereby the marks have been awarded on the basis of viva-voce, but awarding of marks on the basis of academic qualifications, besides the marks obtained by the candidates in written examination, has been maintained.

Upon notice of the writ petition, respondents have filed detailed reply and in their reply they have tried to support awarding of marks on account of viva-voce and on the basis of basic

academic qualification by saying that the interview was for the purpose of assessing the suitability and preparedness of the prospective candidates for appointment to the Government jobs and also enabling the candidates to stand the rigors of international competition.

In order to determine as to how the marks were awarded for the items other than the written examination, we called for the record and on going through the same we find that the result sheet of the interview does not indicate that separate marks have been awarded for viva-voce and academic qualification. In fact marks have been awarded on the basis of 'personal interview' and the two examinations passed by the candidates from the rural areas. The awarding of marks on these two counts is contrary to the two judgments of the Division Bench of this Court referred to above and thus liable to be quashed.

From the record, we further find that at some stage respondents had taken a decision to make appropriate distribution of marks on the basis of percentage obtained in matriculation examination i.e. the basic academic qualification for the course. For example, if a student was to get 55 marks, he/she would be given 5.5 marks out of 10 marks. This criterion of awarding marks on the basis of basic qualification i.e. matriculation is in tune with the judgments of this Court rendered in the cases of Rajiv Sharma and Rajender Baloria (supra). However, the respondents have not been able to explain why this decision was not given effect to.

In view of the above, we dispose of this writ petition with the following directions:-

- (i) That the respondents shall prepare and declare the result strictly on the basis of marks obtained by the candidates in written competitive examination and the marks to be awarded on the basis of basic educational qualification i.e. percentage of marks in matriculation examination out of 10 maximum marks as per the decision already taken vide letter No. HFW(DME) H(III)C-34/2004 dated 26th July, 2005 of the Director, Medical Education, Himachal Pradesh available on the record produced by the learned Advocate General;
- (ii) That the list of the successful candidates would be published in at least two newspapers having wide circulation in the State. In the publication to be carried out in the news papers, the marks obtained by the successful candidates in aforesaid two sub-groups shall be separately indicated as also the aggregate of marks obtained by them;
- (iii) That the aforesaid exercise shall be completed on or before 15th March, 2006.

At this stage it has been brought to our notice by the learned Advocate General that identical writ petition, namely, 849 of 2005, titled Rajesh Kumar Vs. H.P. University and others, is pending in this Court and because of interim order dated 1st September, 2005, it would not be possible for the respondents to complete the exercise and declare the results as directed above on or before 15th March, 2006. The relevant portion of interim order dated September 1, 2005 reads as under:-

“Subject to any order that may be passed after hearing the opposite side in the main matter as well as in CMP NO.1693 of 2005, in the interim it is ordered that the respondents shall not declare the result based on interviews conducted on the basis of Annexures P-4

and P-5 for imparting training to MPW (Male and Female) until further orders from this Court.”

On reading of the above interim order, we find that vide the said order, the respondents were only directed not to declare the result based on interviews conducted on the basis of Annexures P-4 and P-5 for imparting training. Since we have disapproved the awarding of marks on the basis of interview and have directed that the result of the candidates would be declared based on the marks obtained in the competitive written examination and basic educational qualification, the said interim order would not come in the way of respondents to comply with the directions given in this judgment.

Writ petition stands disposed of in the terms indicated above.

Pending application(s) shall also stand disposed of and the interim order, if any, shall also stand vacated forthwith.

Record produced has been returned to the learned Advocate General.

Copy of order Dasti.

(V.K. Jhanji), J.

January 13, 2006 (ss)

(Surjit Singh), J.