

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

C.W.P. No. 5915 of 2014

Reserved on: 24.05.2016

Decided on: 31.05.2016

Brij Lal

.....Petitioner

Versus

State of Himachal Pradesh & others.

.....Respondents.

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

¹ Whether approved for reporting? Yes.

For the petitioner:

Mr. Lokender Pal Thakur, Advocate.

For the respondents:

**Mr. Virender K Verma, Addl. AG, with
Mr. Pushpinder Jaswal, Dy. AG, for
respondents No. 1 to 4.**

**Mr. T.S. Chauhan, Advocate, for
respondent No. 6.**

Nemo for respondent No. 5.

Chander Bhusan Barowalia, Judge.

**The present writ petition is maintained by the petitioner for
issuance of writ of mandamus to respondents No. 1 to 4 not to act upon
order dated 18.07.2014, treat it as nonest and the said order be quashed and**

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

the appointment of respondent No. 6 as Primary Assistant Teacher (PAT) in GPS Suin Surhar (Sadar) be cancelled after the expiry of contract and the post be re-advertised as per the policy and the rules for the OBC category.

2. As per the petitioner, applications were invited for the post of Primary Assistant Teacher in GPS Suin Surhar (Sadar) by respondent No. 4, for which the interview was conducted on 12.06.2006 by the respondent-department. Thereafter on the recommendation of the selection committee, under the Chairmanship of respondent No. 4, appointment was offered to candidate against OBC category vide BPEO, Sadar, letter dated 10.08.2006. The said candidate did not join in GPS Suin Surhar Sadar and respondent No. 4 re-notified the post vide his letter dated 02.08.2007 for un-reserved category and the post has been filled up against un-reserved category after conducting interview by respondent No. 4 on 06.09.2007 and respondent No. 6 was appointed on the said post. The petitioner has relied upon the reservation roster issued by the respondents, which clarifies that in the event the candidates from the main category(ies) of SCs, STs, and OBCs do not become available in the particular Panchayats, such post(s) will be diverted to such Panchayats where the candidate(s) of the respective reserved categories is/are available by making necessary adjustments of the posts accordingly for ensuring adequate representation to the reserved categories,

failing which, such posts will be filled in out of general category candidates belonging to the same Panchayat for which vacancy has been notified by relaxing the PAT policy to this extent as special case, by carrying over the respective reserved points for future.

3. As per the petitioner, the post was required to be carried forward for at least three successive years and action of the respondents is highly arbitrary, illegal and against the confines of legitimacy and is required to be set right. It is further averred that respondent No. 5 rejected the representation of the petitioner vide order dated 18.07.2014 against the policy, law and the same order is not binding upon the petitioner.

4. Reply to the petition was filed by respondents No. 1 to 4 wherein following preliminary objections are raised:

“That the petitioner belongs to Other Backward Classes (OBC) and seeks appointment as Prathmik Sahayak Adhyapak/Primacy Assistant Teacher (PAT) in the respondent department. He has filed the present writ petition before this Hon'ble Court with the direction to the respondents 1 to 4 to forbear from acting upon the orders dated 18.07.2014 (Annexure P-6) and treat it as nonest and directions or orders be issued to quash the said orders dated 128.07.2014 (Annexure P-6) and the appointment of respondent No. 6 of PAT in GPS Suin-Surhar (Sadar) be cancelled after the expiry of contract and the post be re-advertised as per the policy and the rules and law and the same be advertised for OBC category as per Policy.

2. That the Govt. vide Notification No. EDN.C.B(2)-4/2003, dated 27th August, 2003, has notified “Himachal Pradesh Prathmic Sahayak

Adhyapak/Primacy Assistant Teacher (PAT) Scheme, 2003 to recruit Primacy Assistant Teachers through Panchyati Raj Institutions with a view to achieve the goals as laid down in the National Policy on Education, 1986 and Himachal Pradesh Compulsory Primacy Education Act, 1997. The Govt. framed certain guidelines for recruitment of PAT on the basis of approved Pupil: Teacher Ratio-norms to be appointed by the respective Gram Panchayats of the area in which the primary school is located. These teachers were initially to be recruited for a period of one academic session on fixed honorarium (Rs. 2000/- for untrained and Rs. 2500/- to those candidates who possess the professional qualification) for ten months in an academic year; however, the contract will ordinary be renewed by the concerned Gram Panchayat for further period unless withheld for the reasons to be recorded in writing in accordance with the conditions of the scheme.

- 3. That the selection of the teachers under the said policy was to be made by the Selection Committee duly constituted strictly according to the norms prescribed in the policy. Initially, there was no provision to apply Reservation Roster for engagement of PAT as this is a contractual engagement by the Gram Panchayat for particular schools, however, the Govt. in partial modification vide Notification No. EDN-C-B(2)4/2003, dated 17.11.2006 provided following application of Reservation Roster at District level since JBT is a district cadre post. The roster points will be applied to the schools in alphabetical order:**
 - (i) Where candidates from the sub-category such as Ex-servicemen, Ward of Freedom Fighters, Physically Handicapped and IRDP etc. do not become available, the post will be filled in from the main reserved category under "Vertical Reservation" such as SCs, STs, OBCs or General category, as the case may be, pursuant to the existing reservation policy.**
 - (ii) If even the candidates from the main category(ies) of SCs, STs and OBCs do not become available in the particular Panchayat(s), such post(s) will be diverted to such Panchayat(s) where the candidate(s) of the respective**

reserved category(ies) is/are available by making necessary adjustments of the post(s) accordingly for ensuring adequate representation to the reserved categories, failing which, such post(s) will be filled in out of general category candidates belonging to the same Panchayat for which vacancy has been notified by relaxing the PAT policy to this extent as a special case, by carrying over the respective reserved point(s) for future.

- (iii) The reservation roster will be maintained in a particular District according to the number of posts of PAT allotted to that District on the analogy of 200 points model roster system.

5. On merits, the contents of the writ petition are denied by the respondents and it is averred that the petition is not maintainable in accordance with the instructions of the PAT policy as there is no provision to continue the reservation roster for the next successive years after affording due opportunity and none joining in place of selected candidate. Hence, the appointment under General category has been made after giving due opportunity to the OBC candidate in the first instance. It is further averred that in order to decide the representation of the petitioner, respondent No. 4 had called the petitioner in his Chamber to submit his statement/grievance against the appointment of PAT of General category in the school concerned on 22.02.2014, but the petitioner had refused to submit his statement in writing. In compliance of the orders passed by the Hon'ble High Court, representation of the petitioner has been decided by respondent No. 4. The

case of the respondent further is that as the person who had been selected under OBC category did not join the department and so the post de-reserved.

6. Respondent No. 6 has also filed his reply and has stated that the petition is barred by delay and latches against respondent No. 6 and has further averred that the replying respondent is having higher qualification than the petitioner and is more meritorious. It is further averred that the replying respondent was appointed after following the due process of law. It is further stated that even the representation, Annexure P4, was made after four years of the selection of the respondent and the same suffers from delay and latches.

7. Heard. At this moment it is clear that respondent No. 6 was selected in the year 2007 and the representation was made by the petitioner against the selection of respondent No. 4 on 11.10.2011, the delay of four years has already occurred.

8. In the above facts and circumstances, the contentions of the parties are required to be looked into. As per the petitioner, respondent No. 6 was appointed after de-reserving the post and the policy of the respondents is that in case the candidate from the main category(ies) of SCs, STs and OBCs do not become available in the particular Panchayat(s), such post(s) will be diverted to such Panchayat(s) where the candidate(s) of the

respective reserved category(ies) is/are available by making necessary adjustments of the post(s) accordingly for ensuring adequate representation to the reserved categories, failing which, such post(s) will be filled up out of general category candidates belonging to the same Panchayat for which vacancy has been notified by relaxing the PAT policy to this extent as a special case, by carrying over the respective reserved point(s) for future.

9. In the instant case, there is nothing on record to show that the reservation points were carried for future; however, the averments of the respondents that as the post was de-reserved by respondents No. 1 and 2, so respondent No. 6 was selected. At this moment, it is found that the respondents have not carried over the respective reserved points for future and averred that no fresh post was filled up in the district thereafter. The respondents are renewing the contract of respondent No. 6 on year to year basis. Respondent No. 6 has also acquired the right by continuing in the similar capacity, as nothing adverse has been found against him, but at the same point of time, the legal right of the petitioner has been infringed. The respondents should have re-advertised the post for the OBC category and after holding that no person was available from the OBC category in the year 2007, they could have de-reserved the post that too in accordance with law, but there is nothing on record to suggest that respondents have come to the

findings that no person from OBC category was available in the Panchayat.

10. At this moment, as respondent No. 6 is continuing on the post for the last many years and the petitioner has made the first representation after four years of the selection of respondent No. 6, the equity demands that respondents No. 1 to 5 be directed to consider the petitioner for appointment alongwith others who fall in the same category by creating the next post in the OBC category and then consider the petitioner for appointment alongwith others who fall in the same category against the said post in District, Bilaspur. The petitioner will be entitled for the benefits of the post from the year 2011 when he made the representation. No other point requires consideration in the present case, as not argued by the learned counsel for the parties.

11. In view of this, it is ordered that the respondents shall reserve the ensuing post of Primary Assistant Teacher (PAT) in District, Bilaspur; for OBC category as right accrued to the petitioner as he was the only candidate to be appointed in the OBC category in the year 2007, had the respondents followed the policy, but at the same point of time respondent No. 6, who was appointed, has also acquired the same right as the petitioner challenged the appointment order of respondent No. 6 after many years . The action of respondents No. 1 to 5 will not become legal because it was challenged by

the petitioner late, so the present writ petition is allowed with the direction to respondents No. 1 to 5 to consider the petitioner for appointment as Primary assistant Teacher (PAT) alongwith others who fall in the same category on the next post to be filled up in District, Bilaspur; by reserving that post for OBC category.

12. The writ petition is accordingly disposed of with no order as to costs.

**(Chander Bhusan Barowalia)
Judge**

31st May, 2016
(virender)