

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**CWP No.8149 of 2022**

**Decided on: 30.11.2022**

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Ambika Sharma & others

.....Petitioners

Versus

State of Himachal Pradesh & another

.....Respondents

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*Coram*

**Hon'ble Ms. Justice Sabina, Judge**

**Hon'ble Mr. Justice Sushil Kukreja, Judge**

<sup>1</sup> *Whether approved for reporting?*

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For the Petitioners: Mr. Kush Sharma, Advocate.

For the Respondents: Mr. Ashwani Sharma, Additional Advocate General, for respondent No.1/ State.

Mr. Vikrant Thakur, Advocate, for respondent No.2.

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**Sabina, Judge (Oral)**

Petitioners have filed the petition under Article 226 of the Constitution of India, seeking following relief(s):-

*“A. That the impugned action of the respondents to shortlist the candidates for the post of Agriculture Development Officer vide press note dated*

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

*27.10.2022 (Annexure P-2) and in pursuance thereto to hold the personality test vide impugned press note dated 14.11.2022 (Annexure P-4) is contrary to the conditions stipulated in the advertisement, thus may kindly be ordered to be quashed and set-aside for all intent and purposes.*

*B. That the respondents may kindly be directed to declare the result accordingly and call the candidates for personality test in the ratio as mentioned in para 7 of the writ petition and as per the advertisement.”*

2. Learned counsel for the petitioners has submitted that respondent No.2 had issued advertisement dated 24.11.2021 (Annexure P-1) for filling up 52 posts of Agriculture Development Officer. 11 posts came to the share of candidates belonging to General Category. Petitioners had applied for the said posts in pursuance to the advertisement (Annexure P-1) in general category. Learned counsel has submitted that in terms of Clause 1(iii) of the advertisement (Annexure P-1) under the head of 'Computer Based Test/Offline Test (Objective or Descriptive/ Examination/Personality Test/Final Selection', the respondents were required to call five times the number of posts in general category. However, a perusal of the press note (Annexure P-2) shows that the same was not in conformity with the said Clause.

3. In support of his arguments, learned counsel for the petitioners has placed reliance on **Duddilla Srinivasa Sharma and others Versus V. Chrysolite, (2013) 16 Supreme Court Cases 702**, wherein the Hon'ble Supreme Court in para-11 has held as under:-

*“11. Therefore, what follows from the above is that whenever a particular criterion for short listing is adopted, the validity thereof is to be examined keeping in view whether the same is rational and having nexus with the objective sought to be achieved. It would depend on the facts and circumstances of each case as to whether a particular criteria is valid or not. At the same time, it also becomes clear that whenever there is a particular provision for short listing the candidates in the Rules or Instructions, then the short listing is to be resorted to in accordance with the criterion mentioned in those rules or instructions.”*

4. Learned counsel for the petitioners has also placed reliance on **Bedanga Talukdar V. Saifudullah Khan & ors., AIR 2012 Supreme Court 1803**, wherein the Hon'ble Supreme Court in para 28 has held as under:-

*“28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any*

*further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.*

5. Learned counsel for respondent No.1, on the other hand, has opposed the petition and has submitted that the selection

process was strictly followed as per the advertisement as well as the relevant Rules. In fact, the Secrecy Department was required to check the eligibility in the ratio 1:5 after seeing the uploaded documents category-wise. So far as the list of candidates qualified for the personality test is concerned, for that purpose, number of candidates required to be called as per Rules. As per the Rules, in the present case as there were 11 posts in the general category, 37 candidates were required to be called for the personality test. There was no ambiguity in the Rules.

6. Clause 1(iii) of the advertisement (Annexure P-1), under the head 'Computer Based Test/Offline Test (Objective or Descriptive/Examination/Personality Test/Final Selection', reads as under:-

*“(iii) In the Computer Based Test (CBT) (objective type) there will be 100 questions of 01 mark each on the basis of syllabus approved by the Commission for the test. Each question will be followed by four (a, b, c, d) answer options. The candidate will have to click on the circle adjacent to the option he/she thinks is correct. The answer key of CBT (objective type) shall be uploaded online on the 'MY EXAMINATION MY ONLINE REVIEW' in the User IDs of all appeared candidates immediately after its conduct for inviting objection(s) for which 03 (three) days time from the*

*day of publishing of answer key (day of publishing of the answer key plus 3 (three) next days upto 11.59 P.M. of the last date of receipt of objections after which the link will be disabled) shall be given to them to submit their objection(s) in online mode only. Objection(s) submitted in any other mode will not be entertained. The received objection(s), if any, will be got verified from the concerned Subject Expert/ Paper Setter. Based on the opinion/decision of the concerned Subject Expert/Paper Setter to the objection(s) raised by the candidates the revised answer key shall be prepared & finalized. After finalization of answer key category-wise zone of consideration in the ratio of 1:4 in the case of 20 & above category-wise posts advertised, in the ratio of 1:5 in the case of 11 to 19 category-wise posts advertised and in the ratio of 1:6+ 3 in the case of 10 or less than 10 category-wise posts advertised will be prepared and provided by the Secrecy Cell on the basis of performance of the candidates in the CBT to check their eligibility by the Branch responsible for making direct recruitment on the basis of documents uploaded by them on the OTRS portal submitted on the day of CBT. In case the number of candidate(s) to be declared qualified for personality test fall(s) below the prescribed ratio then to meet this shortfall an additional category wise zone of consideration as per requirement shall be prepared by the Secrecy Cell. In*

*respect of the scrapped question(s) no credit to appeared candidates shall be given. The final answer key along with question paper shall be uploaded on the website of the Commission immediately after the declaration of the result of the CBT. No objection(s)/representation(s) shall be entertained against the final answer key.”*

7. Clause 7(B)(ii)(a) of the Himachal Pradesh Public Service Commission (Procedure & Transaction of Business and Procedure for Conduct of the Screening Tests/ Examinations & Personality Tests etc.) Rules, 2021 (Annexure P-3), reads as under:-

*“(a) In the Computer Based Test (CBT) (objective type) there will be 100 questions of 01 mark each on the basis of syllabus approved by the Commission for the test. Each question will be followed by four (a, b, c, d) answer options. The candidate will have to click on the circle adjacent to the option he / she thinks is correct. The answer key of CBT (objective type) shall be uploaded online on the ‘MY EXAMINATION MY ONLINE REVIEW’ in the User IDs of all appeared candidates immediately after its conduct for inviting objection(s) for which 03 (three) days time from the day of publishing of answer key (day of publishing of the answer key plus 3 (three) next days upto 11.59 P.M. of the last date of receipt of objections after which the link will be disabled) shall be given to them*

*to submit their objection(s) in online mode only. Objection(s) submitted in any other mode will not be entertained. The received objection(s), if any, will be got verified from the concerned Subject Expert/Paper Setter. Based on the opinion/decision of the concerned Subject Expert/Paper Setter to the objection(s) raised by the candidates the revised answer key shall be prepared & finalized. After finalization of answer key category-wise zone of consideration in the ratio of 1:4 in the case of 20 & above category-wise posts advertised, in the ratio of 1:5 in the case of 11 to 19 category-wise posts advertised and in the ratio of 1:6+3 in the case of 10 or less than 10 category-wise posts advertised will be prepared and provided by the Secrecy Cell on the basis of performance of the candidates in the CBT to check their eligibility by the Branch responsible for making direct recruitment on the basis of documents uploaded by them on the OTRS portal at the time of filling up of ORA. In case the number of candidate(s) to be declared qualified for personality test fall(s) below the prescribed ratio then to meet this shortfall an additional category wise zone of consideration as per requirement shall be prepared by the Secrecy Cell. In respect of the scrapped question(s) no credit to appeared candidates shall be given. The final answer key alongwith question paper shall be uploaded on the website of the Commission*



*immediately after the declaration of the result of the CBT. No objection(s)/representation(s) shall be entertained against the final answer key.”*

8. Clause 7(B)(vi) of the Himachal Pradesh Public Service Commission (Procedure & Transaction of Business and Procedure for Conduct of the Screening Tests/Examinations & Personality Tests etc.) Rules, 2021 (Annexure P-3), reads as under:-

*“(vi) Number of candidates to be called for Personality Test on the basis of Computer Based Test/Offline Test (objective or descriptive):*

*Normally six eligible candidates for a single post and three eligible candidates for every subsequent post will be declared qualified. If the number of qualified candidates in a particular category is fewer than all of them will be called for personality test. In case there is a tie between or amongst the candidates on account of having obtained equal minimum cut off marks in the Screening Test all such candidates shall be called for the personality test.”*

9. A perusal of the above clauses reveal that the advertisement has been issued as per the relevant Rules. Thus, after the finalization of answer key category-wise, in case number of posts in the category falls between 11 to 19, then the Secrecy Department is required to check the eligibility of the candidates in

the ratio of 1:5 and thereafter for personality test, as per Clause 7 (B) (iii) of the Rules, normally six eligible candidates for a single post and three eligible candidates for every subsequent post will be declared qualified. Thus, so far as the personality test is concerned, as there were 11 posts in the general category, 37 eligible candidates were required to be declared qualified for the personality test.

10. Learned counsel for respondent No.1 has submitted that vide Annexure P-2, 37 candidates in the general category have been declared qualified for the personality test. Thus, there is no force in the submission made by learned counsel for the petitioners that the requisite number of candidates have not been declared qualified for the personality test.

11. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the judgments, relied upon by the learned counsel for the petitioners, but the same fail to advance the case of the petitioners as they are based on different facts.

12. Lastly, learned counsel for the petitioners has again made a feeble attempt to put-forth his argument that the documents of the candidates had not been taken by the respondents in the examination centre and, thus, a fair and uniform procedure had not

been adopted. However, when learned counsel for the petitioners was questioned as to whether all the documents from the petitioners had been taken in the examination centre when they had appeared, learned counsel has submitted that their documents in the examination centre were duly taken. Hence, the argument raised by learned counsel for the petitioners that a fair and uniform procedure had not been adopted, is without any basis.

13. Keeping in view the facts and circumstances of the case, there is no merit in the writ petition and the same is dismissed.

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

**( Sabina )**  
**Judge**

**( Sushil Kukreja )**  
**Judge**

November 30, 2022  
( VH )