HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No.13821/2020

1. Sumit Sharma S/o Shri Govind Narayan Sharma, Aged About 30 Years, Resident Of C-30, Aravali Nagar, Benar Near Bheruji Temple, Benar Road, Via Jhotwara, Jaipur (Rajasthan)
2. Pankaj Agarwal S/o Shri Chandra Shekhar, Aged About 35 Years, At Present Resident Of Plot No. 121, Sector-7, Vidhyadhar Nagar, Jaipur And Permanent Resident Of Plot No. A-6, Shastri Nagar, Jodhpur (Rajasthan)
3. Abhishek Baplawat S/o Shri Mohan Lal Baplawat, Aged About 37 Years, Resident of Plot No.113/33, Pratap Nagar, Near Community Centre, Sector-11, Tonk Road, Kumbha Marg, Jaipur-302033 (Rajasthan)
4. Savita Panwar D/o Shri Niranjan Singh Panwar, Aged About 39 Years, Resident Of D-448, Siddharth Nagar, Near Jawahar Circle, Behind North Westrn Railway Head Quarter, Malviya Nagar, Jaipur-302017 (Rajasthan)

----Petitioners

Versus

1. State Of Rajasthan, Through The Principal Secretary, College Education, Government Secretariat, Jaipur (Raj.)
2. Department Of College Education, Through The Director, Block-Iv, Dr. S. Radhakrishnan Shiksha Sankul, Jawahar Lal Nehru Marg, Jaipur-302015
3. Rajasthan Public Service Commission, Through Its Secretaryat, Ghooghra Ghati, Ajmer (Rajasthan)
4. University Grants Commission, Through Its Secretary, Bahadur Shah Zafar Marg, New Delhi - 110002

----Respondents

For Petitioner(s)	:	Mr.Tanveer Ahmed with Mr.Manish Parihar
For Respondent(s)	:	Mr.Aditya Sharma, Dy.GC Mr.M.F. Baig – for respondent-RPSC Mr.Neeraj Batra – for respondent-UGC

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

06/12/2022

REPORTABLE

The instant petition has been filed by the petitioners making following prayers :

> "In the instant recruitment issued on 02.11.2020 for the post of Lecturer (College Education) the respondents may be directed to specify/mention by way of issuance of a fresh advertisement or a corrigendum that the candidates who have availed relaxation while qualifying the NET/SLET/SET Examination then such candidates would not be allowed to be considered for selection against the post which are earmarked for unreserved category candidates i.e. for the purpose of the consideration against the post of unreserved category candidate all such requirements which are required to be fulfilled by unreserved category candidates i.e. 55% marks in the Good Academic Record, qualifying the NET/SLET/SET Examination with the same qualifying marks which are required to be possessed by the unreserved category candidates and further the cutoff marks in the recruitment process prescribed for the unreserved category have to be fulfilled and lack at any stage either before the selection process and during the selection process would result in non-consideration of such reserved category candidates against the post of unreserved category candidates it has to be specified and directed by the respondents to be mentioned in the advertisement in reference to the advertisement dated 02.11.2020 for all practical purposes, in the interest of justice."

This Court, at the outset, would like to observe that the main prayer, made in the petition, is so widely worded and if such prayer is to be granted, the same would result into giving a direction to the respondents to issue fresh advertisement or corrigendum, relating to selection process, which has been initiated by the respondent – Rajasthan Public Service Commission (for short "the RPSC") for the post of Assistant Professor in different subjects.

This Court, after going through the entire pleadings and after hearing learned counsel for the petitioners, finds that the main grievance, which is raised by the petitioners, is for seeking a direction against the respondents of not-considering the candidates of reserved category against the post of general/un-reserved category, if relaxation in acquiring basic qualification/eligibility has been granted to them by way of relaxation in National Eligibility Test (NET) and State Level Eligibility Test (SLET)/State Eligibility Test (SET).

The facts, as pleaded in the nut shell, are that all the petitioners are possessed the requisite eligibility qualification for the post of Assistant Professor (Lecturer) in college education in the subject of Law and the petitioners belong to general/un-reserved category.

The petitioners have pleaded in the writ petition that for qualifying NET/SLET/SET, there are different criteria for reserved category and un-reserved category candidates and marks of the reserved category candidates are lower in comparison to that of un-reserved category candidates and as such, the petitioners have supplied details in their petition in respect of the candidates, who were selected in last recruitment and such information has been

placed by them after seeking information under the Right to Information Act, 2005.

The petitioners have pleaded that in the last recruitment held for the post of Lecturer, the OBC candidates came to be selected against un-reserved category, while their marks secured in NET examination, was due to benefit of relaxation. The petitioners, to the same effect, have filed certain score-cards of the candidates, who were selected in the last recruitment.

The petitioners have pleaded that since there are different cut-off marks for reserved and un-reserved category candidates and if a reserved category candidate has availed any relaxation for the purpose of qualifying NET/SLET/SET examination then after availing such relaxation, such candidate should not be allowed to be considered against the post of un-reserved category, as the level playing fields have become different.

The petitioners have pleaded that the State Government has also issued a circular dated 26th July, 2017 after the judgment, passed by the Apex Court in **Civil Appeal No.3609/2017 (Deepa E.V. Vs. Union of India & Ors.)** decided on 06th April, 2017.

The petitioners have pleaded that an advertisement dated 02nd November, 2020 has been issued by the respondent – RPSC, where the selection process is being undertaken to make appointment on the post of Assistant Professor in different subjects including Law.

The petitioners have referred to Note No.2 of Condition No.14 of the advertisement, wherein it is prescribed that if the reserved category candidate has taken any benefit/relaxation, like, age limit, marks and physical fitness, etc., except the fees,

such candidate, on availing these relaxation, will not be considered against un-reserved vacancies.

The petitioners have pleaded that the Note No.2 of Condition No.14 of the advertisement also prescribes in respect of relaxation in the marks but the same did not make it clear whether marks at the level of NET/SLET/SET, were to be considered as a relaxation or not.

The petitioners have pleaded that this ought to have been clearly included in the advertisement or a separate corrigendum/fresh advertisement, was required to be issued so that there was no ambiguity in the advertisement conditions and un-reserved category candidates were not to suffer adversely on this count.

The petitioners have pleaded that they have filed the writ petition immediately after issuance of notification, as the illegality committed by the respondents may be stopped immediately and the petitioners have used the phrase *"evil have to be nipped into the bud"* and as such, when the application forms are to be submitted through online process, the petitioners have immediately approached this Court.

The petitioners have also pleaded that the last selection, initiated by way of recruitment in 2015, was also subject matter of challenge before this Court, however, in order to save the present recruitment, the petitioners have taken due care to approach this Court.

The petitioners have also pleaded that the Apex Court has also passed a judgment in the case of **Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors. [(2018) 11 SCC 352]**, whereby the Apex Court has laid down the law that those candidates, who

have availed relaxation, cannot be allowed to migrate or considered against the un-reserved category.

Learned counsel for the petitioners has made following submissions :

(1) The candidates, who have got relaxation in NET/SLET/SET, by virtue of reserved category, should not be considered against un-reserved seats, as these candidates have availed the benefit of reservation at the threshold.

(2) The advertisement, issued by the respondent – RPSC, provides for relaxation of 5% for Good Academic Record, i.e., in the eligibility criteria and as such, the persons, who are from reserved category, should not be considered against un-reserved category, as the reserved category candidates have been conferred benefits not only at the initial stage but also at the time of considering minimum eligibility as well.

(3) Since the reserved category candidates have less than minimum marks required for qualifying NET/SLET/SET, and as such, the relaxed norms, at any stage, should result into forgiving their right to be considered under un-reserved category or against the general seats.

(4) The past recruitment, undertaken by the respondent-RPSC, has already resulted into serious infirmity in selection and as such, before damage is done in the present recruitment, the directions are required to be issued by this Court for debarring the reserved category candidates having relaxation of marks in NET/SLET/SET for the purpose of appointment.

Learned counsel for the petitioners has placed reliance on the following judgments :-

(i) Govt. of NCT Delhi & Ors. Vs. Pradeep Kumar & Ors. (Civil Appeal No.8259/2019

(ii) Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors. [(2018) 11 SCC 352]

Learned counsel – Mr.MF Baig, appearing for the respondent – RPSC, has filed reply to the writ petition.

The respondent – RPSC has pleaded that they had received a recommendation from the College Education Department and accordingly, the advertisement dated 02nd November, 2020 was issued under the **Rajasthan Education Service (Collegiate Branch) Rules, 1986 (for short "the Rules of 1986")** for the post of Assistant Professor and later on, amended advertisement dated 18th December, 2020 was issued, as certain amendments were made in "Good Academic Record" requirement.

The respondent – RPSC has pleaded that so far as the circular of Department of Personnel dated 26th July, 2017 is concerned, the same is to the extent that if any candidate of reserved category (SC-ST/OBS/MBC/EWS) obtains benefit of any other relaxation, like, age limit, marks, physical fitness, etc. except relaxation in fees, then such candidate shall not be considered against the vacancies of un-reserved category **in the recruitment process**.

The respondent – RPSC has taken a stand that the circular dated 26th July, 2017 did not mention about selection of candidates of reserved category, who had obtained relaxation in the marks, secured in NET/SLET/SET Examination against un-reserved post.

The respondent – RPSC has filed an additional affidavit, whereby they have placed on record a Notification dated 23rd October, 2013, wherein last eligibility test was conducted by RPSC for Rajasthan State Eligibility Test for Lecturership in different subjects.

The respondent – RPSC has also placed on record Information Bulletin of University Grants Commission (UGC) and copies of NET certificate issued by UGC.

Learned counsel Mr.MF Baig, appearing for the respondent – RPSC, has made following submissions :-

(a) The advertisement, issued by the RPSC, has prescribed the eligibility conditions and selection procedure by holding competitive examination consisting of written examination and interview.

(b) The marks obtained by the candidates in NET/SLET/SET are not taken into account for the purpose of preparing the merit list and as such, the merit list is to be prepared solely on the basis of competitive examination consisting of above two parts.

(c) The relaxation of marks to reserved category candidates, while appearing in NET/SLET is as per the guidelines issued by the UGC and if different percentage of pass marks is prescribed for reserved and un-reserved category candidates, the same has no relevance for the purpose of selection in question.

(d) The educational qualification, required for the post of Assistant Professor, not only provides for Good Academic Record but also it requires a candidate to have cleared NET examination, conducted by UGC, CSIR or similar accredited test of UGC, like, SLET/SET.

(e) Even the persons, who have been awarded Ph. D. degree in accordance with the **University Grants Commission (Minimum**

Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009 (for short "Regulations of 2009") are exempted from the requirement of minimum eligibility condition of NET/SLET/SET and further, NET/SLET/SET is also not required for certain Masters Degree Programmes in disciplines, for which, NET/SLET/SET accredited test is not conducted.

(f) The writ petition, filed by the petitioners, deserves to be dismissed, as without participating in the selection process and declaration of result, the entire petition has been filed on apprehension and assumptions.

(g) The petitioners have approached this Court without even completion of selection process and without any right being accrued in their favour or finding their place in merit anywhere, thus the prayer for direction of fresh advertisement or corrigendum is a sheer misuse of extraordinary powers of this Court.

Learned counsel for the respondent – RPSC has also placed reliance on the following judgments :-

(i) Vikas Sankhla & Ors. Vs. Vikas Kumar Agarwal & Ors. (Civil Appeal Nos.3545-3549/2016).

(ii) Pradeep Singh Dehal Vs. State of Himachal Pradesh & Ors. reported in **[(2019) 9 SCC 276].**

(iii) Deepa E.V. Vs. Union of India & Ors. (Civil Appeal No.3609/2017) decided on **06.04.2017.**

(iv) Jitendra Kumar Singh & Anr. Vs. State of U.P. & Ors. reported in **[(2010) 3 SCC 119].**

(v) RPSC, Ajmer Vs. Smt. Pushpa Panwar & Anr. (D.B.Civil Special Appeal (Writ) No.532/2002) decided on **08.04.2010.**

(vi) RPSC Vs. Dr. Megha Sharma & Ors. (D.B.Review Petition (Writ) No.180/2019) and other connected writ petitions decided on **23.03.2020.**

(vii) R.K.Sabharwal & Ors. Vs. State of Punjab & Ors. reported in **[1995 AIR 1371].**

I have heard learned counsel for the parties and perused the material available on record.

This Court deems it proper to quote the relevant clauses of the advertisement dated 02.11.2020 :-

" राजस्थान लोक सेवा आयोग, अजमेर

संयुक्त विज्ञापन संख्या : 04/परीक्षा/सहायक आचार्य/कॉलेज शिक्षा/EP-I/2020–21
दिनांक : 02.11.2020

आयोग द्वारा कॉलेज शिक्षा विभाग के लिए राजस्थान शिक्षा सेवा (महाविद्यालय शाखा) नियम, 1986 के अन्तर्गत सहायक आचार्य (Assistant Professor) के निम्नलिखित विषय पदों पर भर्ती हेतु ऑनलाइन आवेदन आमंत्रित किए जाते है। पद स्थाई है तथा विभाग से प्राप्त कुल रिक्त पदों की संख्या (पदों की संख्या में कमी/वृद्धि की जा सकती है) एवं उनमें आरक्षित पदों की संख्या निम्नानुसार है :–

उक्त सभी पदों के लिए शैक्षणिक योग्यताएं (राजस्थान शिक्षा सेवा (महाविद्यालय शाखा) नियम, 1986 की अनुसूची– 1 क बि.सं. 8 अनुसार) :–

1.

i. Good academic record with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from an accredited foreign university.
ii. Besides fulfilling the above qualification, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR, or similar test accredited by the UGC like SLET/SET.
iii. Candidates, who are, or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, Shell be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant professor.
iv. NET/SLET/SET shall also not be required for such masters programmes in disciplines for which NET/SLET/SET is not conducted.

तथापि, दिनांक 11 जुलाई 2009 से पूर्व एम.फिल/पीएच.डी. हेतु पाठ्यक्रमों के लिए पंजीकृत अभ्यर्थियों को प्रदान की जाने वाली डिग्री, संबंधित संस्थान के तत्कालीन अध्यादेश/उपबंधों/विनियमों के द्वारा अभिशसित होगी और पीएच.डी. डिग्रीधारक अभ्यर्थियों को निम्नवत् शर्तों को पूरा करने के अध्याधीन महाविद्यालयों में सहायक आचार्य पद की भर्ती एवं नियुक्ति हेतु उन्हें NET/SLET/SET की न्यूनतम पात्रता शर्तों की अनिवार्यता से छूट प्राप्त होगी :–

(क) अभ्यर्थी को केवल नियमित पद्वति से पीएच.डी. डिग्री प्रदान की गई हो।

(ख) कम से कम दो बाहरी परीक्षकों द्वारा शोध प्रबन्ध की मूल्यांकल किया गया हो।

(ग) अभ्यर्थी का मुक्त मौखिक परीक्षा आयोजित की गयी हो।

(घ) अभ्यर्थी ने अपने पीएच.डी. शोध कार्य मे से दो शोध पत्र प्रकाशित किये है जिनमें से कम से कम एक पत्र संदर्भित जर्नल (Refereed) पत्रिका में प्रकाशित हुआ हो।

(ड) अभ्यर्थी ने अपने पीएच.डी. शोध कार्य में से दो पेपर संगंष्ठियों/सम्मेलनों में प्रस्तुत किये हो।

2. Working knowledge of Hindi written in Devnagri Script and knowledge of Rajasthani Culture.

गुड एकेडमिक रिकॉर्ड की परिभाषा (राज्य सरकार के पत्र दिनांक 21.02.2014 के अनुसार) : Good academic record means an average of at least 55% marks in three examinations preceding to Master's Degree with at least 50% marks in graduation and any one of Secondary/High School, Higher Secondary/Senior Secondary or equivalent grades in the point scale wherever grading system is followed without including any grace marks and/or rounding off to make it 55% or 50% as the case may be.

विशेष नोटः उक्त अच्छे शैक्षणिक अभिलेख में अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग (नॉन क्रिमीलेयर), अति पिछड़ा वर्ग (नॉन क्रिमीलेयर) एवं निःशक्तजन वर्ग के अभ्यर्थियों को 5 प्रतिशत अंको की छूट देय है। उक्त 5 प्रतिशत अंको की छूट औसत 55 प्रतिशत अंको में देय है, सैकण्डरी/सीनियर सैकेण्डरी तथा स्नातक तीनों परीक्षाओं के अंकों मे ं पृथक्–पृथक् रूप से 5 प्रतिशत अंकों की छूट देय नहीं है।

नोट :–

1. राजस्थान लोक सेवा आयोग की राज्य स्तरीय पात्रता परीक्षा (SLET/SET) उत्तीर्ण मान्य है।

2. 01 जून, 2002 से पूर्व किसी भी प्रदेश से SLET/SET उत्तीर्ण अभ्यर्थी पात्र होगा।

3. 01 जून, 2002 को या उसके पश्चात् अन्य प्रदेश से उत्तीर्ण (SLET/SET) अभ्यर्थी को इस पद हेतु पात्र नहीं माना जायेगा।

निम्नलिखित श्रेणी के अभ्यर्थियों को उपर्युक्त अर्हता में निम्नानुसार छूट देय होगी :–

(अ) अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग (नॉन क्रिमीलेयर), अति पिछड़ा वर्ग (नॉन क्रिमीलेयर) एवं निःशक्तजन वर्ग के अभ्यर्थियों को पात्रता/शैक्षणिक योग्यता में 5 प्रतिशत अंकों की छूट देय होगी।

(ब) दिनांक 19.09.1991 से पूर्व स्नातकोत्तर स्तर की डिग्री प्राप्त अभ्यर्थियों को पीएच.डी. उपाधि धारण करने पर स्नातकोत्तर स्तर में 5 प्रतिशत की छूट देकर 55 से 50 प्रतिशत।"

14. राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेलन) नियम, 1988 के अनुसार भूतपूर्व सैनिकों को ऊपरी आयु सीमा में 05 वर्ष की छूट देय होगी परन्तु यह कि शिथिलीकरण के पश्चात् यदि अनुज्ञेय आयु 50 वर्ष से अधिक निकलती है तो ऊपरी आयु सीमा 50 वर्ष लागू होगी।

According to the Rajasthan Civil Services (Absorption of Ex-servicemen) Rules, 1988, relaxation in upper age limit shall be five years to Ex-servicemen. Provided that if permissible age after relaxation works out to be more than 50 years then upper age limit of 50 years will be applicable.

स्पष्टीकरण :– कार्मिक (क–2) विभाग के परिपत्र दिनांक 22.8.2019 के अनुसार राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेलन) नियम, 1988 यथासंशोधित के प्रावधानों के होते हुए भी किसी भर्ती से संबंधित सेवा नियमों में आयु संबंधी जो शिथिलता अन्य लोक सेवकों/अभ्यर्थियों को देय है, वह भूतपूर्व सैनिक को भी देय होगी अर्थात् आयु संबंधी शिथिलता के संबंध में दोनों नियमों में जो भी हितकर प्रावधान है, उसका लाभ भूतपूर्व सैनिकों को मिलेगा।

नोट –

1 XX XX XX

2 2. कार्मिक (क–2) विभाग के परिपत्र दिनांक 26.7.2017 एवं पत्र दिनांक 14.9.2017 के अनुसार यदि किसी आरक्षित वर्ग (SC/ST/OBC/MBC/EWS) के अभ्यर्थी द्वारा शुल्क के अतिरिक्त उनको देय किसी अन्य रियायत (जैसे– आयुसीमा, अंक, फिजिकल फिटनेस आदि) का लाभ लिया जाता है तो उसे अनारक्षित रिक्तियों के प्रति विचारित नहीं किया जायेगा।

This Court also deems it proper to quote the relevant para of University Grants Commission-National Eligibility Test December 2020 Cycle (May 2021) :-

1 xx xx xx

2 xx xx xx

3. University Grants Commission-National Eligibility Test (UGC-NET)

3.1 UGC-NET is a test to determine the eligibility of indian nationals for 'Assistant Professor' and 'Junior Research fellowship and Assistant Professor' in indian universities and colleges.

18. Procedure and Criteria for declaration of result

18.1 The following steps will be followed :

Step I : The number of candidates to be qualified (total slots or Eligibility for Assistant Professor) shall be equal to 6% of the candidates appeared in both the papers of NET.

Step II : The total slots shall be allocated to different categories as per the reservation policy of Government of India.

Step III : In order to be considered for **'JRF and Eligibility for Assistant Professor'** and for 'Assistant Professor' the candidate must have appeared in both the papers and secured at least 40% aggregate marks in both the papers taken together for General (unreserved)/General-EWS category candidates and at least 35% aggregate marks in both the papers taken together for all candidates belonging to the reserved categories (viz., SC, OBC (belonging to Non-Creamy Layer, PWD and Third gender).

Step IV : The number of candidates to be declared qualified in any subject for a particular category is derived as per the methodology illustrated below:

This Court, on bare reading of various conditions of advertisement, finds that the respondent-RPSC has prescribed the eligibility conditions of the candidates and apart from good academic record, the other requirements of acquiring the NET/SLET/SET has been prescribed.

This Court finds that the selection procedure has also been provided by way of competitive examination and written examination of three papers prescribe total 200 marks and further there is an interview of 24 marks and then merit list is to be prepared for declaring the selected candidate.

The said procedure has nowhere prescribed adding of any marks either of good academic record or having the eligibility of clearing the NET/SLET/SET and basic education qualification and as such, clearance of NET/SLET/SET, is a minimum requirement for eligibility and thereafter, the candidate has to appear in the written examination. The entire process does not have any

element of adding the marks and as such, the entire selection is to be done on the basis of marks obtained by the candidates in the competitive examination.

This Court further finds that the State Government has also issued a circular dated 26.07.2017, wherein it has been provided that if a candidate belonging to SC/ST/OBC has not availed any of the special concessions, such as in age limit, marks, physical fitness **in the recruitment process**, which are available to the candidates belonging to these categories, except the concession of fees and then if such candidate secures more marks than the marks obtained by the last unreserved category selected candidate, then such a candidate belonging to SC/ST/OBC, is to be counted against the unreserved category and not the vacancies reserved for the SC/ST/BC, as the case may be.

The bare reading of the said circular shows that if in the recruitment process, a candidate belonging to SC/ST/BC avails concession of marks and other things, as provided in the circular, then only such candidate cannot be allowed to claim his appointment against unreserved/general category.

The word 'recruitment process' will not include any stage prior to issuance of advertisement and conducting examination by way of preparing the merit list on the basis of written examination and interview.

The submission of learned counsel for the petitioners that since reserved category candidates have already availed the concession at the time of clearing the NET examination with lower marks, as such, they are required to be treated as reserved category candidate at all the subsequent stages in the recruitment process, cannot be accepted by this Court. This Court finds that if

qualifying marks have been prescribed for clearing the NET Exam as per UGC guidelines and aggregate marks are fixed for reserved and unreserved category candidates and their percentage has also been fixed i.e. equal to 6% of the candidates appeared, then such category of candidates qualifying in NET, cannot be taken as a factor for determining the merit of reserved category candidates.

The submission of learned counsel for the petitioners that the respondents have granted benefit to the reserved category candidates in good academic record while these candidates have already availed concession at the initial stages, while clearing the NET/SLET/SET, this Court finds that the prescription of good academic record as one of the eligibility conditions and relaxation of certain percentage in good academic record, would not result into extending the double benefit to the reserved category candidates, as has been tried to be canvassed by the counsel for the petitioners.

The submission of learned counsel for the petitioners that the respondents cannot treat the candidates, who availed the relaxation by permitting them migration or considering them against unreserved category qua change the level playing field, this Court finds that if the recruitment process is undertaken and merit is a criteria for making appointment on the basis of written examination and interview. Possessing minimum education qualification or getting some relaxation at initial stage, does not change the level playing field, as has been submitted by counsel for the petitioners.

The submission of learned counsel for the petitioners that once a reserved category candidate has availed relaxation then he has to carry the same tag every time in the matter of

employment, cannot be accepted by this Court. This Court adjudging the submission of learned counsel for the petitioners takes into account the certain provisions which have been incorporated in the Constitution of India, whereby under Article 15(4), the State has been given power to make special provisions for advancement of Socially and Educationally Backward Classes of citizens or for the Scheduled Castes & Scheduled Tribes and can make special provisions relating to give admissions in the educational institutions including the private educational institutions whether aided or unaided by the State except the minority educational institutions. This Court can draw an analogy that if any candidate belonging to above mentioned three categories is granted admission on account of some special provision, being made, the same would not mean that for all times to come wherever these candidates appear for employment, they will be treated as the persons having relaxation and as such, even after securing higher position or equally placed with general category candidates, such candidates will still be treated as reserved category candidate, plea of the petitioners cannot be accepted.

This Court finds that the minimum eligibility/education qualification is a condition precedent for applying and to see minimum requirement of a candidate to appear in the competitive examination and if after appearing in the examination process, while final merit list is prepared and if reserved category candidate secures more marks than the general category candidates, such candidate of reserved category is required to be counted against the general seat. This principle has been settled long back by the Apex Court and the same has been reiterated from time to time.

The submission of learned counsel for the petitioners that the respondents have extended the benefit to reserved category candidates in last selection held for the same post and as such, illegality is being perpetuated by the respondents in making the selection, suffice it to say by this Court that only on account of any appointment being made by the employer previously, the petitioners do not have any right to file the writ petition on the assumptions and apprehensions.

This Court finds substance in the submission of learned counsel for the respondent-RPSC that the petitioners only by showing their eligibility to participate in the selection process but before culmination of the said selection process, have approached this Court and as such, the writ petition is not liable to be entertained by this Court.

This Court finds that the petitioners without any cause of action accruing to them have rushed to this Court and even interim order was also passed by this Court, at initial stage.

This Court finds that the Apex Court in the case of ***Vikas Sankhla & Ors. (supra)***, has considered the issue, as whether, relaxation in minimum eligibility to pass some test (TET) will amount to concession in the recruitment process. The passing of any examination has been treated as an eligibility condition of appointment and if necessary qualification is not available with a candidate then such candidate is not eligible to be considered for appointment. The Apex Court has further found that when the method of appointment is altogether different and merit is to be prepared on the basis of marks obtained under different heads, then concession is not given in the recruitment process on the basis of relaxation of passing the test.

This Court finds that in the present case, clearing/passing of NET/SLET/SET, is a condition of eligibility for appointment as Assistant Professor and without having such qualification, a person is not eligible for appointment, however, the method of appointment of Assistant Professor and the basis of preparation of merit is altogether different and as such, it cannot be inferred that only by getting relaxation, while clearing the NET/SLET/SET, a person from reserved category will always remain as a candidate of reserved category and even if, he secures his merit position on the basis of his performance in the selection process and he secures higher marks or cut off marks equal to the unreserved category candidate, then still he will be considered for reserved category.

This Court is also constrained to observe that the present writ petition has been filed without any cause of action accruing to the petitioners and only on the basis of availability of certain details in respect of candidates, who were selected in earlier year, the same would not mean that the petitioners, even at the stage of issuing advertisement, can file the writ petition.

This Court further finds that if a candidate whose right is infringed by any arbitrary action of the State, definitely, he can raise a grievance by way of filing a writ petition. However, only on account of gathering certain information in respect of previous recruitment and without waiting for the outcome of the recruitment, filing of such writ petition is not approved by this Court and same is treated frivolous taking toll of Court’s precious time.

This Court, therefore, finds that the present writ petition lacks merit and the same is accordingly dismissed. The interim order dated 26.11.2020 passed by this Court, also stands vacated.

All the applications, if any, stand disposed of.

(ASHOK KUMAR GAUR), J

Preeti Asopa/Himanshu Soni