

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 2032 of 2015**

1. Gireesh Kumar S/o Shri Indradev Aged About 26 years R/o Village- Premnagar P.S.- Basantpur, Tahsil- Wadrfnagar, District- District- Balrampur- Ramanujganj (CG).
2. Pramesh Kumar S/o Bhandari Prasad Aged About 26 Years R/o Village & P.S.- Basantpur, Tahsil- Wadrafnagar, District- District- Balrampur- Ramanujganj (CG)
3. Om Prakash S/o Suresh Prasad Aged About 33 Years R/o Village- Murka, P.S.- Chalgali, Tahsil - Pal, District- District- Balrampur- Ramanujganj (CG).
4. Vivek Kumar Yadav S/o Pandav Prasad Yadav Aged About 27 Years R/o Village- Jokapath P.S. & Tahsil - Shankargarh, District - District - Balrampur- Ramanujganj (CG).
5. Farida Begam W/o Sahim Ansari Aged About 32 Years R/o Village- Mahuwadih P.S. & Tahsil- Shankergarh, District- District- Balrampur- Ramanujganj (CG).

---- Petitioners**Versus**

1. State of Chhattisgarh Through : Secretary, Panchayat & Gramin Vikas Vibhag, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (CG)
2. Chief Executive Officer, Zila Panchayat, Balrampur- Ramanujganj District- Balrampur- Ramanujganj (CG)

---- Respondents

For Petitioners : Shri AK Yadav, Advocate.
 For Respondent/State : Shri YS Thakur, Deputy AG.
 For Respondent No.2 : Shri Harshal Chouhan, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/07/2015**

1. The petitioners are working as Rojgar Sahayak in different Gram Panchayats of Balrampur-Ramanujganj district. They have challenged the advertisement dated 20.4.2015 issued by the Zila Panchayat, Balrampur notifying vacancies of Panchayat Secretary lying vacant in different Gram Panchayats within the district.
2. Learned counsel for the petitioners would submit that 88 posts of Panchayat Secretary have been advertised, however, no post is made available for open category and OBC category candidates. Therefore, the impugned advertisement is violative of Articles 14 and 16 of the Constitution of India. He would submit that reservation in favour of ST candidates is more than 50% inasmuch as out of 88 advertised vacancies, 83 posts have been reserved for the said category.
3. In the return filed by the Zila Panchayat, it has been stated that after creation of Balrampur-Ramanujganj district, a separate roster has been prepared for the district and the reservation is made in accordance with the roster, therefore, no interference is called for.
4. Annexure-R-2/1 is a proposal wherefrom issuance of impugned advertisement has originated. It would appear from the document that 415 posts of Panchayat Secretary are available in the district, out of which 17 posts are reserved for SC category candidates, 257 posts are reserved for ST category candidates and 58 posts are reserved for OBC category candidates, leaving 83 posts to be filled up from open category. At present, 83 posts meant for open category candidates are already filled up. Similarly, as against 58 posts available for OBC candidates, 74 OBC candidates are working as Panchayat Secretary in different Gram Panchayats. There is shortfall of candidates belonging to ST and SC category inasmuch as out of 257 posts available for ST category candidates, only 159 are filled up from the said category and similarly, as against 17 posts available for SC category candidates, only 11 persons are working.
5. While dealing with similar issue wherein challenge was thrown to the advertisement for recruitment of Block Resource Coordinator (for short 'BRC') and Cluster Coordinator (for short 'CC') under the

District Water and Sanitation Samiti, this Court while deciding the batch of writ petitions viz. WP(S) No.2543/2012 (**Roshan Sahu & others Vs. State of Chhattisgarh & others**), has held in paragraphs 11 to 14 thus:-

“11. It has been argued that the reservation exceeds more than 50%, therefore, it is contrary to law laid down by the Supreme Court and is violative of Article 14 of the Constitution of India. When this Court proceeded to examine the extent of reservation made in the impugned advertisement, it became apparent that the advertisement for the districts, which are under challenge before this Court, does not exceed 50% in all the districts. It appears in the districts of Bilaspur (BRC), Mungeli (BRC & CC), Baloda Bazar (BRC), Gariyaband (BRC) & Balod (BRC), the extent of reservation appears to be exceeding 50%. However, on perusal of the reservation roster for the said districts, as mentioned in Schedule III of the Rules, 1998, it would appear that the said extent of reservation is permissible as per the roster.

12. Once the reservation is within the prescribed roster notified under Schedule III of the Rules, 1998, which is legislative in character, the same cannot be declared illegal or contrary to law because there is no challenge to the constitutional validity of the Rules, 1998 and the Schedule to the Rules, which prescribes the extent of reservation and the roster for a particular district.

13. Moreover, the Supreme Court in *Indra Sawhney* (supra) has held thus :

“810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

14. Based on the above observation/ratio laid down

by the Supreme Court, if the roster and extent of reservation is prepared for a particular backward district/block depending upon the volume of population of a particular backward class i.e. SC/ST/OBC, the same is permissible and the question whether the said extent of reservation, if it exceeds 50%, is unconstitutional can only be gone into in properly constituted writ petition challenging the vires of the said rules/schedule/roster.”

6. In the case at hand also, advertisement has been issued reserving posts for SC and ST category candidates on the basis of number of vacancies earmarked for each category according to roster. The grounds on which similar plea has been repelled in the case of **Roshan Sahu** (Supra) applies squarely in the present case also.
7. For the foregoing, this writ petition, sans substance, is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

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