

C.F. 1007

①

Division Bench

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)**

Writ Appeal No. 27 of 2014

APPELLANT/

Petitioner

A. No. ... 27/14
Presented by Shri ...
dated ... 22.1.14

Ms. Kirti Sharma daughter of Shri Hemant Sharma, aged about 27 years, resident of S.D. Plaza, Near Nadi Gate Pul, MLB Road Gwalior (M.P.) Pin Code : 474009

VERSUS

RESPONDENTS

1. High Court of Chhattisgarh, through its Registrar General, High Court of Chhattisgarh, Bilaspur (C.G.)
2. The In-Charge Selection and Appointment Cell, High Court of Chhattisgarh, Bilaspur (C.G.)
3. Mohd. Jahangir Tigala son of Shri Mainuddin Tigala, resident of 550, Sunder Nagar, Nr. Football House, Pragati Chowk, Raipur (C.G.) 492001
4. Bhupat Sing Sahu S/o Firanta Ram Sahu, R/o Road No. 1 Sector No. 3, Behind kali Mandir, Professor Colony, Raipur (C.G.) 492001
5. Subodh Mishra S/o late Shri Lalji Mishra, R/o Cooperative Societies Rajmahal Parisar, Jagdalpur (C.G.) 494001
6. Namita Anne Minj D/o Shri Serjus Minj, R/o 21/376 Opp. Holly Heart School, Civil Line, Raipur (C.G.) 492001
7. Jeetendra Pradhan S/o Shri Ganesh Ram Pradhan, Infront of Bharat Petroleum,



dk

2

Purana Power House, Main Road, Torwa,
Bilaspur (C.G.) 495001

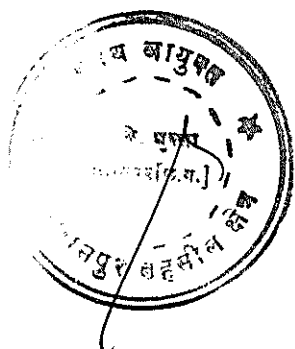
8. Nixion Daved Lakara S/o Boniface Lakara,
R/o Juna Bilaspur, Police Thana City
Kotwali, Bilaspur (C.G.) 495001

9. Pratibha Markam D/o Shri Radhe Shyam
Markam, R/o Ganga Nagar Ward, Near
Balaji Compex, Jagdalpur, Bastar (C.G.)

10. Shyam Kumar Sahu S/o Shri Puni Ram
Sahu, Occupation Service and A.D.P.O. LS
1 CID Police Headquarter, Civil Line, Raipur
(C.G.) 492001

11. Chandrakala Devi Sahu D/o Shri Bholaram
Sahu, R/o Tarbahar Industries, Guru Nanak
Chowk, Station Road, Raipur (C.G.) 492001

12. Mahesh Babu Sahu S/o Laxmi Narayan
Sahu, R/o Vill. Jharpai, P.O.-Donger, Tahsil
Mahasamund, District-Madhusudangarh
(M.P.) 473287



**WRIT APPEAL UNDER SECTION 2 SUB-SECTION (1) OF THE
CHHATTISGARH HIGH COURTS (APPEAL TO DIVISION BENCH)**

ACT, 2006

1

27

HIGH COURT OF CHHATTISGARH AT BILASPUR

DB:- HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J

Writ Appeal No.27 of 2014

Appellant

Ms. Kirti Sharma

VERSUS

Respondents

High Court of Chhattisgarh and Others

Present: Shri Hemant Sharma with Shri Anup Majumdar, counsel for
the Appellant.

Shri Ashish Shrivastava, counsels for the Respondents No.1 &
2.

Shri Dilman Rati Minz, counsel for respondents No.3 to 12.

J U D G M E N T

(4th of February, 2015)

Per Navin Sinha, Acting Chief Justice

The present appeal arises from order dated 19.12.2013 dismissing
Writ Petition (S) No.4135 of 2013.

2. The Learned Single Judge held that reservation for SC/ST/OBC
was vertical reservation. If a candidate belonging to the reserved
category secured merit position in the open category, such candidate was
to be treated as an open category candidate and not a reserved category
candidate. It was further observed that apart from the same no other
ground had been argued on behalf of the Petitioner.

28

3. Learned Counsel for the Appellant submitted that once a candidate applied in the reserved category and obtained benefit at one stage of selection on that basis, migration to the general category at another stage of selection was impermissible either at the written examination or interview. Another submission was similarly sought to be made with regard to the one post in the physically handicapped category.

4. Learned Counsel for the Respondents opposing the appeal urged that it is always open for a reserved category candidate qualifying in the general category to forego the benefit and opt for the reserved category seat instead. It was next submitted that the Appellant was not even in the select list but in the waiting list. The merit panel was published on 8.5.2013 and exhausted itself with no occasion for the wait list candidates to be considered.

5. We have considered the submissions on behalf of the parties. The Appellant does not claim as a physically handicapped candidate and even otherwise in view of the issue not having been raised before the Single Judge, we decline to consider the same.

6. The next question for our consideration is the rights of a candidate included in the wait list. The law stands settled that a wait listed candidate only has an opportunity to be considered if a candidate in the select list does not join during the life of the panel itself. In the present case the vacancies have been exhausted from candidates in the select list itself and the life of the panel has also expired.

7. The law with regard to the reservations has rightly been applied by the Learned Single Judge and we find no reason to take any different view of the matter. The reliance by the Appellant on (2009) 5 Supreme

(29)

Court Cases 473 (Uttar Pradesh Public Service Commission v. Satyanarayan Sheohare) is completely misconceived. The facts in that case were that the candidates had applied in the general category and participated in the written examination as general category candidates. In the meantime, after they had applied, the caste to which they belonged was classified as OBC. It was in the peculiar facts of that case that directions came to be made to consider them in the OBC category in view of the saving clause incorporated in the rules. The case has no relevance to the present controversy.

8. In (2009) 7 Supreme Court Cases 251 (Union of India & Ors v. Dalbir Singh), the facts were that the OBC caste certificate furnished by the candidate was from a different State not recognized in the State of Punjab. This case is again distinguishable on its own facts and has no application to the present controversy. The discussion in that background at paragraph-13 has no application to the facts of the present case.

9. Lastly, reliance was placed on (2010) 7 Supreme Court Cases 234 (Union of India v. Ramesh Ram) by referring to paragraph-42 of the same.

10. We fail to find any observation therein to the benefit of the Appellant and on the contrary, the discussion reiterates the general law with regard to the option available to a reserved category candidate to opt for the reserved category status itself securing a better position rather opting for a general category post because of the marks obtained equivalent to a general category candidate.



30

4

11. We may also refer to (2012) 13 Supreme Court Cases 516 (Alok Kumar Pandit v. State of Assam) wherein the controversy sought to be urged before us was expressly considered holding as follows :-

"24.1. A reserved category candidate who is adjudged more meritorious than the open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category."

12. We find no reason to interfere with the order under appeal. The appeal is dismissed.

Sd/-
Acting Chief Justice

Sd/-
P. Sam Koshy
Judge

Priya