

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 162 of 2016**

Satnarayan Karsh, S/o Resham Lal Karsh, aged about 33 years, Rural Medical Assistant (R.M.A.), Primary Health Centre Kurda, Block Sakti, District Janjgir-Champa (C.G.), R/o Village Mukta, PS Malkharouda, District Janjgir-Champa (C.G.)

---- Appellant**versus**

1. State of Chhattisgarh through the Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director, The Directorate of Health Services, Chhattisgarh, Raipur, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Joint Director (Establishment), Directorate of Health Services, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
4. R. Prasanna, Presently posted as Director, The Directorate of Health Services Chhattisgarh, Raipur, Block-1, 3rd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
5. Smt. Triveni Patil, W/o Dr. Yuvraj Patil, Aged about 35 years, presently posted as Rural Medical Assistant, at Primary Health Centre Chhiraha, District Bemetara, R/o village Sankari, PO Pairi, PS & Tahsil Gunderdehi, District Balod (C.G.)
6. Smt. Kiran Patel, W/o P.K. Patel, Aged about 28 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bonda, District Raigarh, R/o village Bahaya, PO, PS & Tahsil Lailunga, District Raigarh (C.G.)
7. Smt. Sunita Verma, W/o Dr. Salik Ram Verma, Aged about 27 years, presently posted as Rural Medical Assistant, at Primary Health Centre Mardapal, District Kondagaon, R/o Qtr. No. 4 Bahigaon, PO Bahigaon, PS Kondagaon, District Kondagaon (C.G.)
8. Smt. Rukhmani, aged about 32 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bamhani, District Kondagaon (C.G.)

---- Respondents

And

Writ Appeal No. 168 of 2016

Dwarika Prasad Patel, S/o Girdhari Lal Patel, aged about 31 years, Rural Medical Assistant (R.M.A.), Primary Health Centre Bhithidih, Block Pithora, District Mahasamund, R/o village Turidih, PO Jhalap, PS Patewa, District Mahasamund (C.G.)

---- Appellant

versus

1. State of Chhattisgarh through the Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director, The Directorate of Health Services, Chhattisgarh, Raipur, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Joint Director (Establishment), Directorate of Health Services, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
4. R. Prasanna, Presently posted as Director, The Directorate of Health Services Chhattisgarh, Raipur, Block-1, 3rd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
5. Smt. Triveni Patil, W/o Dr. Yuvraj Patil, Aged about 35 years, presently posted as Rural Medical Assistant, at Primary Health Centre Chhiraha, District Bemetara, R/o village Sankari, PO Pairi, PS & Tahsil Gunderdehi, District Balod (C.G.)
6. Smt. Kiran Patel, W/o P.K. Patel, Aged about 28 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bonda, District Raigarh, R/o village Bahaya, PO, PS & Tahsil Lailunga, District Raigarh (C.G.)
7. Smt. Sunita Verma, W/o Dr. Salik Ram Verma, Aged about 27 years, presently posted as Rural Medical Assistant, at Primary Health Centre Mardapal, District Kondagaon, R/o Qtr. No. 4 Bahigaon, PO Bahigaon, PS Kondagaon, District Kondagaon (C.G.)
8. Smt. Rukhmani, aged about 32 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bamhani, District Kondagaon (C.G.)

---- Respondents

For Appellants : Shri Mateen Siddiqui, Advocate

For State/Respondents 1 to 3 : Shri Yashwant Singh Thakur,
Additional Advocate General

For Respondent No.4 : Shri Jai Prakash Shukla, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, Judge

Judgment on Board

12/01/2017

1. Since these two writ appeals arise out of a common judgment dated 13.1.2016 passed in Writ Petition (S) No. 869 of 2015 and analogous cases, they are being disposed of by this common judgment.
2. Briefly stated facts of the case are that the State of Chhattisgarh issued an advertisement dated 19.8.2013 for filling up 741 posts of Rural Medical Assistant (for short 'the RMA') in the State of Chhattisgarh. These 741 posts were divided amongst different categories as follows:-

Merit (General)	-	311
Schedule Tribes	-	237
Schedule Castes	-	89
Other Backward Class	-	104

3. In the State of Chhattisgarh, the Recruitment Rules provide 30% reservation for women. This is horizontal reservation cutting across the vertical reservation and accordingly 30% posts have to be filled up by women candidates in all categories. The selection was made on the basis of marks obtained in the qualifying examination. As far as

open/general category candidates are concerned, minimum qualifying marks were fixed at 50%, for reserved category they were 40% and for the disabled category 45%. The number of candidates having 50% or more marks were only 98 out of the candidates who had applied. They were all treated to be selected on their own merit. These 98 candidates who were on the top of the merit, not only included the general category candidates but also included the candidates belonging to reserved category, such as other backward class (OBC) and schedule caste (SC). Whether men or women, candidates selected in this category, all have 50% marks or above, 71 male candidates were offered appointments and all of them have 50% or above. Out of these 71, as many as 38 belong to the OBC category, who had come on their own merit. Out of 27 women candidates selected, 8 belong to OBC category.

4. As far as OBC category is concerned, there were 104 seats and as per direction of the State Government qualifying marks for OBC is 40%. Even after excluding $38 + 8 = 46$ candidates selected on their own merit, there was sufficient number of candidates who had secured more than 40% marks. Therefore all 104 posts earmarked for OBC were filled up, out of which 73 were men and 31 women.
5. It is not disputed that all males selected in the OBC category have secured higher marks than the Petitioners. There are 2 Petitioners before us and they had 43.3 % marks. Out of 31 women selected, 27 have marks higher than the Petitioners, 2 have equivalent marks and 2 have lower marks than the Petitioners.

6. Initially, the State issued an appointment letter in favour of the Petitioners denying appointment to 4 women who had equivalent or lesser marks than the marks secured by the Petitioners. At that time, the State moved on the assumption that since 8 women belonging to OBC category had been selected in the open merit category, there was no need to fill up that many number of posts under horizontal reservation for women.
7. After the Petitioners were appointed, 4 ladies having 43.3% and 42.7% approached this Court that they should have been appointed against the OBC women category. This Court directed that the representation of the Petitioners be decided. After considering their representation, the appointments given to the Petitioners was cancelled and appointments were offered to the 4 ladies. Thereafter the Petitioners have filed the present writ petitions.
8. There is no manner of doubt that horizontal reservation has to be confined and compartmentalized within the vertical reservation. The law is also well established that when any person belonging to any one of the reserved category gets selected not on the basis of reservation but on the basis of his/her own merit in the combined merit list, then such person is to be treated as own merit candidate and cannot be treated as reserved category candidate. Consequently the appointment of such person will not in any way reduce the number of seats meant for reserved category. Reasoning is that such a person has not used the crutches of reservation for being appointed.

9. The issue before this Court is whether horizontal reservation could be confined to lesser number of women by taking into consideration the number of women appointed in the merit category amongst OBC category.
10. The Apex Court has laid down the process which should be followed in such like case (in (1995) 5 SCC 173 (Anil Kumar Gupta vs. State of U.P.) in following terms:

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied – in case it is an overall horizontal reservation – no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

11. This process has been followed by the State in the case. We have carefully gone through the material placed on record and we are of the considered view that in the facts and circumstances of the case, this argument is not tenable. In the present case all 8 women

belonging to the OBC who were selected had more than 50% marks. They had higher marks than the male and female candidates selected under the OBC category. Therefore, they have to be treated as own merit candidate. Once they had been treated as own merit candidates, then 30% women i.e. 31 belonging to OBC category had to be brought into compartment of OBC. The argument made by Shri Siddiqui that these 8 women were not appointed on their merit, cannot be accepted. The government decided that 50% is the cut off mark for open/general category. These women and men had more than 50% or more marks. Therefore they were appointed on their own merits. If we were to accept the argument of Shri Siddiqui then it would mean that 38 OBC candidates appointed in merit category would also be adjusted in the OBC category, then the Petitioners will not stand anywhere in OBC category.

12. In view of the above discussion, we dismiss the writ appeals. However we may point out that as on date about 177 posts in category of schedule castes are lying vacant. If and when the government decides to de-reserve these posts then the case of the Petitioners/Appellants can also be considered for appointment.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE