

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP No.12036 of 2014 (O&M)
Date of Decision: July 11, 2017**

Dr. Nimish Grover and another

....Petitioners

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Sandeep Jasuja, Advocate
for the petitioners.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

The petitioners, who are two in number, have filed the instant petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ of mandamus for directing the respondents to appoint them on the post of Medical Officer.

Brief facts that may be noticed are that the Health and Family Welfare Department, State of Punjab, advertised 256 posts of Medical Officers through the Punjab Public Service Commission on 21.01.2014. Two posts were reserved for wards of Freedom Fighters.

Petitioners herein, applied for the post of Medical Officer in pursuance to the advertisement against the reserved category of wards of Freedom Fighters.

It is not in dispute that in the selection process that ensued upon issuance of the advertisement, the present

petitioners having participated in the same, a category wise merit list as also combined merit list was prepared and put in public domain. In the category wise merit list for the reserved Freedom Fighter category, the names of the present petitioners figure at Sr. Nos.4 and 5 respectively.

The precise submission raised by counsel appearing for the petitioners, is that three other candidates who have secured a higher ranking than the petitioners in the Freedom Fighter category have also secured higher marks than the last candidate selected in the General category for the post of Medical Officer. As per counsel, a candidate belonging to the reserved category and who secures higher marks than a candidate in the General category has to be considered as per merit and against the General category. Counsel argues that if this principle was to be followed, then candidates higher to the petitioners in the ranking list, pertaining to the Freedom Fighter category, would migrate and be adjusted in the General category and consequentially, the petitioners would be vested with the right to be offered appointment to the post of Medical Officer.

Counsel for the parties have been heard and pleadings on record have been perused.

The precise issue set up on behalf of the petitioners and as culled out and noticed hereinabove is no longer *res integra*.

In the case of ***Rajesh Kumar Daria v. Rajasthan Public Service Commission, 2007(4) S.C.T. 99***, it was categorically held that social reservations in favour of Scheduled Castes, Scheduled Tribes

and Other Backward Classes, fall under Article 16(4) of the Constitution of India and would be covered in the expression of “*vertical reservation*”. On the other hand, special reservations in favour of Physically Handicapped, Women, Freedom Fighter etc., would fall under Article 16(1) and Article 15(3) of the Constitution of India and would be termed as “*horizontal reservation*”. Where a “*vertical reservation*” is made under Article 16(4) of the Constitution of India, the candidates belonging to such Backward Class or Scheduled Castes, as the case may be, would be entitled to compete for the non-reserved post and if they are appointed to the non-reserved post on their own merit, their number will not be counted against the quota reserved for such class. In other words, if the number of BC/SC/ST candidates who by their own merit, get selected to open competition vacancies, still their quota of reservation would remain intact. However, such principle and modus would not be available to other reservations falling under the term of “*horizontal reservation*”. The relevant observations made by the Apex Court in such regard are contained in Para 9 of the judgment in **Rajesh Kumar Daria's case(supra)** and the same is reproduced as under:-

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward

Class under [Article 16\(4\)](#), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide [Indra Sawhney](#), [R.K. Sabharwal v. State of Punjab](#), [Union of India v. Virpal Singh Chauhan](#) and [Ritesh R. Sah v. Dr.Y.L. Yamul.](#)) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women

selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women." (Emphasis added)

In the light of such dictum, the prayer of the petitioners for candidates falling under the reserved Freedom Fighter category and to be considered against the General category on account of their having secured more marks cannot be accepted.

For the reasons recorded above, there is no merit in the petition and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

11.07.2017

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Whether speaking/reasoned : **Yes/No**
Whether reportable **:** **Yes/No**