

CWP No.15182 of 2014 :1:

**221 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.15182 of 2014

Date of Decision: 17.03.2017

Sarita

... *Petitioner*

Versus

State of Haryana & Ors.

... Respondents

CORAM:- HON'BLE MR.JUSTICE P. B. BAJANTHRI

Present:- Mr. Anil Ghanghas, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

....

P. B. BAJANTHRI.J.

In the instant writ petition, the petitioner has questioned rejection of her representation (Annexure P-11) and also selection of any one or all respondents No.3 to 12 under ESM category. Further sought for a direction to provide 33% reservation for women under Rule 19(2) of the Haryana State Education School Cadre (Group-B) Service Rules, 2012. Insofar as PGT English post in the category of Dependent of Ex-Serviceman under 33% reservation for women, the petitioner and private respondents No.3 to 12 are candidates for the recruitment to the post of PGT English. Pursuant to the advertisement dated 07.06.2012 (Annexure P-1), for the purpose of filling up 1870 posts of PGT English the selecting authority has classified the number of posts as under:-

General 1160, Scheduled Caste(SC),374, (Backward Class (BC) 187, Ex-Servicemen (ESM) 93, PHC 56.

For the purpose of women reservation is concerned Rule 19(2) is required to be followed. Rule 19(2) reads as under:-

19. (1) *“Nothing contained in these rules shall affect reservations and other concessions required to be provided for Scheduled Castes, Backward Classes, Ex-Servicemen, Physically Handicapped persons or any other class or category of persons in accordance with the orders issued by the State Government in this regard, from time to time:*

Provided that the total percentage of reservation so made shall not exceed fifty percent, at any time.

(2) *In case of direct recruitment, {on contract basis (the words 'on contract basis' have been omitted by amendment notification dated 6.6.12)} minimum thirty three percent posts in each category i.e. General/Open Competition (OC), Scheduled Caste (SC), Backward Class (BC), Ex-Servicemen (ESM) and differently abled shall be reserved for women and this reservation shall be horizontal.”*

Learned counsel for the petitioner submitted that each of the category like general, SC, BC and PHC women reservation has been followed. In so far as ESM category is concerned even though 33% of 93 posts would be 31. Nor even a single post has been filled up among the ESM women. In the event of non-availability of ESM women then as per the condition imposed in Appendix A Haryana School Teacher Selection Board (HSTSB) special instructions in particularly para 6 relates to reservation in so far as Ex-Servicemen, ESM and DESM is concerned which reads as under:-

“DESM candidates who fulfill all conditions of qualifications, age etc. prescribed for posts will be considered on merit for the posts reserved for ESM to the extent of non-availability of suitable ESM candidates.”

In view of Rule 19(2) the selecting authority who have not filled up 33% under ESM category. This is not disputed by the State as well as selecting authority counsel.

Therefore learned counsel for the petitioner contended that the selecting authority have erred in selecting private respondents No.3 to 12 in the absence of reservation of 33% of women under ESM category. Learned counsel for the petitioner relied on the decision of Apex Court reported in **Rajesh Kumar Daria versus Rajasthan Public Service Commission and others, 2007(8) SCC 985** wherein the Supreme Court in para 7 to 10 reads as under:-

“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 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 numbers will not be counted against the quota reserved for the 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 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 – Indira Sawhney (Supra), **R. K. Sabharwal v. State of Punjab, 1995(2) SCT 646 : (1995(2) SCC 745), Union of India v. Virpal Singh Chauhan, 1995(4) SCT 695 : (1995 (6) SCC 684 and Ritesh R. Sah v. Dr. Y.L. Yamul, 1996(2) SCT 524: (1996(3) SCC 253)**]. 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 Castes-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. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the

261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category-Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20 % reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC-Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.”

Having regard to the principle laid down by the Apex Court the selecting authority who have reserved 33% of women reservation under ESM category & nor filled up or operated. Thus, there is violation consequently the selection and appointment of respondents No.3 to 12 are

liable to be set aside. Per contra learned counsel for the respondent vehemently contended that having regard to the circular issued from time to time by the State of Haryana in respect of reservation of Ex-Servicemen and the fact that at the younger age the Ex-Servicemen would be discharged from the military service they would be seeking civil service employment therefore, the post earmarked for Ex-Servicemen to the extent of 93 posts have been filled up other than woman.

Heard learned counsel for the parties.

The undisputed facts are that respondents-selecting authority have earmarked Ex-Servicemen posts to the extent of 93 amongst 1870 posts of PGT English. It is also undisputed that not even a single woman is appointed under ESM.

In view of these facts and circumstances read with rule 19(2) of the Haryana State Education School Cadre(Group-B) Service Rules, 2012 specifically provided for 33% reservation for women in all categories. Thus there is a clear violation of Rule 19(2) in not filling up of ESM women. It is further to be noted that the petitioner is candidate under DESM woman. If the ESM woman are not available in that event the selecting authority is required to fill up or operate DESM women candidates list. Admittedly the selecting committee have not appointed a single ESM woman. Consequently the selection of the last candidate under ESM category respondent's No.12 selection and appointment is liable to be set aside. Accordingly it is set aside. The selecting authority is directed to consider the petitioner's name for selection and appointment to the post of PGT English under DESM women category if she is otherwise eligible in accordance with law. The above exercise shall be completed within three months.

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Petition stands allowed.

If the petitioner is found to be eligible and appointed such appointment would be only notional and seniority would be placed at appropriate place having regard to the merit of the petitioner.

17.03.2017

rimpal

**(P. B. BAJANTHRI)
JUDGE**

*Whether speaking/reasoned:
Whether Reportable:*

*Yes/No
Yes/No*