

**CM-15950-CWP-2018 in/and
CWP-21836-2017**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM-15950-CWP-2018 in/and
CWP-21836-2017**

Date of decision: 06.12.2018

Sheela Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sajjan Singh, Advocate for the petitioner.

Ms. Shruti Jain, Addl. A.G., Haryana.

Mr. Kanwal Goyal, Advocate for
respondent No. 3-Commission.

Mr. Keshav Gupta, Advocate for respondent No. 6.

Ritu Bahri, J. (Oral).

CM-15950-CWP-2018

Application for preponement of hearing is allowed and the
main case is taken up on Board today itself.

CWP-21836-2017

The petitioner is seeking quashing of the result dated
11.08.2017 (Annexure P-7) and result dated 17.08.2017 (Annexure P-8) to
the extent that respondent No. 4 to 6 have been illegally selected against the
posts meant for BCA of Haryana category. A further direction is being
sought to prepare the result afresh by excluding respondent No. 4 to 6 from
BCA of Haryana category and treating them in their respective categories in

which they have participated and declared successful in written examination and called for interview.

The respondent No. 3-Haryana Public Service Commission advertised 167 posts of Assistant Professor (College Cadre) in the subject of Computer Science vide advertisement dated 16.02.2016 (Annexure P-2). Thereafter vide corrigendum dated 29.04.2016 (Annexure P-3) 8 posts for persons with disabilities (PH) in which 4 posts for visually handicapped and 04 posts for orthopedically handicapped were advertised. 14 posts were reserved for Ex. Serviceman (ESM) category out of 167 posts of Assistant Professor in the subject of Computer Science under BCA of Haryana category. The petitioner applied for the post of Assistant Professor under BCA of Haryana category. She was allotted Roll No. 2925 (Annexure P-4) and written test was held on 04.04.2017. The result of the same was declared on 01.06.2017 (Annexure P-5). The petitioner was declared successful. Vide announcement dated 17.07.2017 (Annexure P-6) candidates were called for viva voce.

Learned counsel for the petitioner contends that petitioner had applied against the 18 posts meant for BCA category and she was issued the admit card (Annexure P-4) in the same category. The result of the written examination was declared on 01.06.2017 (Annexure P-5) and against the 18 posts meant for BCA category, 57 candidates were called for interview and under the ESM category 42 candidates could be called for interview, however only 13 candidates were available who were called for interview. Similarly under the physically handicapped (VH) category only two candidates were available and under the physically handicapped (OH)

category only 10 candidates qualified the written examination as per the result dated 01.06.2017 (Annexure P-5). In the same manner, candidates were called for viva-voce vide announcement dated 17.07.2017 which was to be conducted on 27.07.2017 (Annexure P-6).

The grievance of the petitioner is that when the final result was declared vide Annexure P-7 and P-8, two candidates of the physically handicapped category and one of the ESM category have been given appointments against 18 posts reserved for BCA category.

Learned counsel for the petitioner contends that out of 14 posts advertised under the ESM category only 8 candidates were found suitable and candidate with Roll No. 2849 who has cleared the written examination under the ESM/DESM category was called for interview in the same category but has been selected against a post meant for BCA category. In the same manner, 6 candidates belonging to physically handicapped (OH) category were called for interview in the same category but 2 candidates out of those 6 candidates have been selected for the posts meant for BCA category and the petitioner who had participated in the selection for the 18 posts of BCA category has been deprived of one post which has been occupied by physically handicapped (OH) category candidate belonging to BCA category.

To resolve the issue with respect to reservation of posts in horizontal and vertical reservation and ESM category, an affidavit dated 30.10.2017 was filed by Vijay Singh Dahiya, Director General Higher Education, Haryana reiterating the category wise break-up of 167 posts as per the requisition sent to the HPSC (Annexure R-I). The category wise

break-up of 167 posts of Assistant Professor of Computer Science is as under:-

Gen	SC	Backward Classes		EBCGC	ESM	PH (Horizontal reservation)		TOTAL
		A	B			VH	OH	
69	50	18	8	8	14	4	4	167

It was further clarified that this break-up was given as per instructions dated 15.07.2014 issued by Chief Secretary to Govt. of Haryana (Annexure R-II). Against the requisition sent to the HPSC, the break-up was modified as under:-

Gen	SC	Backward Classes		EBCGC	ESM	PH (Horizontal reservation)		TOTAL
		A	B			VH	OH	
69	50	18	8	3	8	1 (G)	4 (3G,1SC)	156

It was further clarified in para 6 of the affidavit that the 14 posts under ESM category and 8 posts under PH category [4 VH & 4 OH (Horizontally)] were lying vacant with the Department. Recommendation of 8 candidates under ESM and recommendation of 5 candidates under PH category [1-VH & 4-OH] have been received by the HPSC but the appointment process could not be carried out on account of stay granted by this Court vide order dated 21.09.2017 in ***CM-13624-2017 in CWP-21513-2017 titled as Vikas Goyal and others V/s. State of Haryana and others.***

Another detailed affidavit was filed by the Director General

Higher Education on 15.12.2017 in compliance of order dated 02.11.2017

passed by this Court. In this affidavit, it has been clarified that as per instructions dated 15.07.2014 (Annexure R-1) for the purpose of reservation in direct recruitment in Class I & II jobs, ex-servicemen reservation is 5%. These instructions further clarify that in the case of Class III & IV posts, the reservation for ESM/freedom fighters/outstanding sports persons will be horizontal. Hence, in the present case also for the post of Assistant Professor falling in category No. 1 the reservation of 5% posts under ESM category which were 14 in number as per advertisement (Annexure P-2 and P-3) was to be taken as vertical. In sub para M of para 13 of the instructions it has been clarified that the reservation for backward classes of citizens is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Sub para M of para 13 is hereby reproduced:-

M) HORIZONTALITY OF RESERVATION FOR PERSONS WITH DISABILITIES:

Reservation for backward classes of citizens (SCs and BCs) is called vertical reservation and the reservation for categories such as persons with disabilities and ex-servicemen is called horizontal reservation. Horizontal reservation cuts across vertical reservation (in what is called inter-locking reservation) and persons selected against the quota for persons with disabilities have to be placed in the appropriate category viz. SC/BC/General candidates depending upon the category to which they belong in the roster meant for reservation of SCs/BCs. To illustrate, if in a given year there are two vacancies reserved for the persons with disabilities and out of two persons with disabilities appointed, one belongs to a Scheduled Caste and the other to general category then the disabled SC candidate shall be

adjusted against the SC point in the reservation roster and the general candidate against unreserved point in the relevant reservation roster. In case none of the vacancies falls on point reserved for the SCs, the disabled candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SC.

Since the persons with disabilities have to be placed in the appropriate category viz. SC/BC/General in the roster meant for reservation of SCs/BCs, the application form for the post should require the candidates applying under the quota reserved for persons with disabilities to indicate whether they belong to SC/BC or General category.

The affidavit further goes to explain with respect to the horizontal reservation with persons with disabilities. In the affidavit, it has been explained that there are 283 sanctioned posts of Assistant Professor in Computer Science, out of which 9 posts are meant for Persons with Disabilities. One post has already been occupied and requisition for remaining 8 posts was sent to H.P.S.C. In sub clause (c) of para number K of aforementioned instructions dated 15.07.2014, that Points 1, 34 and 67 of the roster have been earmarked for persons with disabilities and one point for each of the three categories of disabilities.

Learned counsel for the State while referring to the instructions dated 15.07.2014 (Annexure R-I) has vehemently argued that benefit of reservation for handicapped category is to be given horizontally as per para 13 sub para M and the correct interpretation of para 13 sub para M would be that if in a selection process, one candidate belonging to physically handicapped category is selected and he belongs to SC category as well,

then he shall be adjusted against the SC point in the reservation roster. In the same manner, a person belonging to physically handicapped category and he belongs to general category as well, he will be adjusted against general category point in the reservation roster. She has further argued that as per instructions dated 15.07.2014 (Annexure R-I) in case none of the vacancies falls on point reserved for SC, the disable candidate belonging to SC shall be adjusted in future against the next available vacancy reserved for SC. She has argued that the benefit of disability is not to be taken away from a selected candidate even if roster point for SC candidate is not available. The candidate under the physicaly handicapped category shall be given appointment as and when the roster point becomes available. She has further argued that the benefit of reservation is to be given to handicapped category in appropriate category i.e. SC/OBC/General in the roster meant for reservation of respective category. That is why it is called horizontal reservation and in the present selection, the respondents-candidates who were selected under the physically handicapped category belonged to BCA category and they had to be given the reservation out of 18 posts meant for BCA category as per advertisements (Annexure P-2 and P-3) and the appointments have been made by interpreting the instructions dated 15.07.2014 (Annexure R-1) in the correct perspective. She has further argued that as per the instructions, the benefit of reservation of ESM to the extent of 5% had to be given vertically. It means that out of 14 posts reserved for ESM, if an ex-serviceman belongs to BCA category and had secured marks at par with the last candidate in the BCA category he has to be given appointment under the BCA category against those 18 posts and

only ESM candidates who had lower marks had to be accommodated against 14 posts reserved for ESM, for the purpose of giving them benefit of vertical reservation. In a selection, initially all the meritorious candidates have to be adjusted against the general category posts and thereafter the respective vertical reservation benefit is to be given under SC/BCA/BCB as the case may be. If an ESM candidate gets marks at par with the last candidate under the BCA category, he has to be given benefit in the BCA category and not in ESM category. In the present case, candidate with roll No. 2849, though had applied against the ESM category and belongs to BCA category as well and got higher marks which made him successful against the 18 posts meant for BCA category and he has been rightly adjusted in BCA category.

On the other hand, learned counsel for the petitioner has argued that when 14 posts were reserved for ESM, the candidates belonging to ESM category should have been adjusted against the posts reserved for ESM category and could not have been shifted under the BCA category. He further argues that only 8 suitable candidates have been selected and 6 posts are still lying vacant. By shifting one candidate under the 18 posts of BCA category, the petitioner has been deprived of getting benefit of reservation under the BCA category.

I have learned counsel for the parties. At the outset, reference can be made to the judgment of Supreme Court in ***Rajesh Kumar Daria V/s. Rajasthan Public Service Commission and others 2007(4) S.C.T. 99*** in which the Constitution Bench was examining the issue of implementation of vertical reservation as well as horizontal reservation. It was observed

that social reservation in favour of SC/ST and OBC is vertical reservation and is under Article 16(4) of the Constitution. Special reservations in favour of physically handicapped, woman etc. are under Article 16(1) and 15(3) are the horizontal reservation. In the case of vertical reservation, 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. Hence if the number of SC candidates, who by their own merits, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that reservation quota for SCs has been filled. The entire reservation quota will remain intact and available in addition to those selected under open competition category. This principle is not to be applied with respect 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 amongst them who belong to the special reservation group of scheduled caste-women or physically handicapped. If there is any shortfall, only then the benefit of reservation can be given to other candidates. In para 7 of the aforesaid Supreme Court judgment, it has been explained in detail as to how benefit of horizontal reservation is to be given and has quoted an example which is as under:-

7. 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 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 vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (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.]

The Division Bench of this Court in the case of *Ajit Singh V/s.*

State of Haryana and others, CWP-18738-2009 has culled out the following principles with respect to reservation after following the judgment passed in the case of *Rajesh Kumar Daaria* (supra):-

(i) The reservations for Physically Handicapped, Exservicemen, dependants of freedom fighters and women etc. are the horizontal reservations.

(ii) The candidates belonging to horizontal reservations will cut across the vertical reservations in the following manner:

(a) Firstly the seats for Open Category candidates will be filled up on the basis of merit;

(b) Secondly, the seats meant for vertical reserved categories will be filled up on the basis of merit in their own quota;

(c) Thirdly, the seats equal to the number of the candidates belonging to horizontal reserved category and also falling within vertical reserved category, shall stand consumed in the vertical reserved category. The candidate lower in vertical reserved category will make way for him;

(d) Fourthly, if a candidate belonging to horizontal reserved category does not belong to any of categories of reservations, a candidate in the open category will make way for such reserved category so as to satisfy quota of the seats meant for the horizontal reserved category.

(e) Lastly, in case of women candidates, who also fall within any one of special reservations or social reservations, such candidate shall be taken into consideration for determining the quota for both women and social reservations.

Learned counsel for the Commission has also referred to the instructions dated 18.07.1984 issued by the Chief Secretary to Govt. Haryana with regard to concessions/benefits to Ex-servicemen belonging to Scheduled Castes etc. Para 2 of these instructions reads as under:-

2. The matter has been examined further and it has been decided that it would be appropriate to count the selection and appointment of ex-serviceman who is also SC/BC, against the quota of the choice of the appointing authority. He will, however be entitled to the benefits given subsequently to both ex-servicemen and SC/BC personnel.

As per the above said instructions, it has been decided that it would be appropriate to count the selection and appointment of an ex-serviceman who is also SC/BC, against the quota of the choice of the appointing authority. He will be entitled to the benefits given subsequently to both ex-servicemen and SC/BC.

These instructions clarify that benefit of reservation is to be given to ex-servicemen belonging to any other category whichever is beneficial. The instructions of 15.07.2014 (Annexure R-1) is as per the instructions of 18.07.1984. As per Annexure R-1, for Class I and Class II posts, the benefit of reservation of ESM is 5% and is vertical reservation. The ESM can take the benefit in the open category. If he is meritorious, he will be adjusted against the open category and thereafter benefit of reservation can be claimed by other candidates. In the facts of the present case, one candidate in the ESM category belonged to BCA category and in the final result of Assistant Professor (Computer Science), he had the roll No. 2849 and was given one of the posts of BCA category as per his merit. Hence, as per instructions dated 18.07.1984 and 15.07.2014 (Annexure R-1) being the case of vertical reservation, he has been rightly adjusted against 18 posts reserved for BCA category. Even out of 14 posts only 8 candidates were found suitable, the candidate with roll no. 2849 has to be given post as per his merit out of 18 posts and he could not be appointed by giving him benefit of reservation under the ESM category being a case of vertical reservation. And this aspect has been clarified by the Supreme Court in ***Rajesh Kumar Daaria's supra*** in para 7 that vertical reservation is under Article 16(4) and firstly it has to be filled up on merit and then benefit of reservation is to be given for appointment. As far as ESM candidate is concerned, he has been rightly given appointment against 18 posts of BCA category. As far as appointment of 2 physically handicapped candidates is concerned, they have to be given benefit of horizontal reservation. And as far as horizontal reservation is concerned, para 13 sub para M of the

instructions dated 15.07.2014 (Annexure R-1) is very clear that if a disabled candidate belongs to SC category and is selected he will be adjusted against the SC category point in the reservation roster. Hence physically handicapped candidates belonging to BCA category had to be adjusted against the reservation point meant for BCA category as this was the horizontal reservation within the vertical reservation and there were no separate posts earmarked for physically disabled. Physically disabled persons have to be placed in the appropriate category. They are suitable candidates and have been rightly adjusted against the 18 posts meant for BCA category who fulfill 3% of the horizontal quota of physically handicapped category. The instructions dated 15.07.2014 (Annexure R-1) further provides that if there is no vacancy reserved for disabled candidate belonging to SC category, he shall be adjusted in future against the next available vacancy reserved for SC category. It means if there is a shortfall of disabled candidates in the cadre after selection the candidates will be given appointment when the roster point becomes available in their category. Hence the case of the petitioner that he belongs to BCA category and no person with disability can be appointed against the 18 posts reserved for BCA category, is liable to be rejected. The candidates who were selected under the physically handicapped quota have been rightly appointed against their respective category i.e. BCA in the present selection and the reservation policy has been rightly implemented with regard to vertical as well as horizontal reservation as per the aforesaid Supreme Court judgment.

No merit.

Dismissed.

06.12.2018
Divyanshi

(RITU BAHRI)
JUDGE

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