

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1455 of 2010

1. Yashomati Shandilya W/o Shri Tejnath Shandilya, aged about 28 years, R/o village Bhitarras, Tahsil Nagri, District Dhamtari (C.G.).
2. Ambika Nareti D/o Shri Tularam Nareti, aged about 27 years, R/o village and Post Pakhanjur, Tahsil Bhanupratappur, District Kanker (C.G.).
3. Ku. Ramila Uike D/o Shri Gangaram Uike, aged about 30 years, R/o village Urkura, Tahsil Charama, District Kanker (C.G.).
4. Ku. Lakshmi Dhruv D/o Shri Khem Singh Dhruv, aged about 27 years, R/o village & P.O. Pharsiya, Tahsil Nagri, District Dhamtari (C.G.).
5. Sagoteta W/o Shri Prem Singh Teta, aged about 30 years, R/o village Gharpichwadi, Post Kanker, District Kanker (C.G.).
6. Ajit Kumar Salam S/o Shri Channu Ram Salam, aged about 29 years, R/o village Biyaskongera, Tahsil & District Kanker (C.G.).
7. Paras Kumar Otti W/o Shri Bhagwan Singh Otti, aged about 26 years, R/o Azad Nagar, Bhanupratappur, Tahsil Bhanupratappur, District Kanker (C.G.).
8. Manoj Kumar Netam S/o Shri Chhattar Singh Netam, aged about 29 years, R/o village Kohinpara, Post Gattasilli, Tahsil Nagri, District Dhamtari (C.G.).
9. Shailendra Komre S/o Late Shri Sahdev Ram Komre, aged about 29 years, R/o village Kokdi, Post Nuthiya Nawagaon, Tahsil & District Kanker (C.G.).
10. Kanti Netam D/o Shri Shobhiram Netam, aged about 28 years, R/o village & P.O. Nagri, Tahsil Nagri, District Dhamtari (C.G.).

---Petitioners

Versus

1. State Of Chhattisgarh, Through Secretary, Department Of Forest, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).
2. Conservator of Forest, District Kanker (C.G.).
3. Rameshwar Tandia, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
4. Shiv Shankar Tandia, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
5. Birjhu Ram, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).

6. Moti Ram Kawda, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
7. Chamru, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
8. Krishna, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
9. Sukhram, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
10. Heera Lal, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).
11. Ram Charan, R/o Care of Conservator of Forest, Circle Kanker, District Kanker (C.G.).

---Respondents

For petitioners	:	Shri Pranjal Shukla, Advocate.
For State	:	Shri Salim Kazi, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

29/01/2019

1. The present Writ Petition has been filed claiming for the following reliefs:-

“10.2 - To kindly direct the respondent No.2 to prepare a fresh selection list including both male and female candidates as per their comparative merits and thereafter consider the petitioners in accordance with merit list.

10.3 - To kindly direct the respondent No.2 to cancel the appointments of respondents No.3 to 11 and further direct the respondent No. 1 & 2 to consider the petitioners for appointment to the post of Forest Guard as per their comparative merits.”

2. The whole dispute revolves around the selection of "Forest Guard" carried out by the respondents vide advertisement Annexure-P/2 dated 06/06/2003.

3. The grievance of the petitioners is that, the respondents while preparing the selection list have prepared two separate lists each for the male as well as the female candidates and thereby the claim of the petitioners for the said post have got diminished.

4. According to the counsel for the petitioners, the total number of posts that were available for the ST category were 116 and 6 posts were there for the SC category. This makes the total vacancies available in the reserved category at 122. Of this, according to him, the State had provided 30% of reservations to the women candidates. According to him, the respondents have illegally considered the case of the respondents No. 3 to 11 along with the petitioners and other selected candidates for the said posts in respect of the fact that the respondents No. 3 to 11 have not participated in the selection process and thus their selection was apparently bad in law and in the event if the respondents No. 3 to 11 are removed from the said posts, the petitioners can have a chance for being considered against the vacancy that may fall vacant then. He further contended that, the stand taken by the respondents in the reply of having only 33 posts as 30% of the number of posts in the ST category is incorrect. According to him, the total vacancies in the ST category is 116. 30% of the said figure come to 34.8 which if rounded off would come to 35 and therefore there ought to had been 35 female

candidates who should have been considered for appointment from the said recruitment process. He further contended that, instead of preparing two select lists, the respondents should have prepared one consolidated select list wherein the overall merit of each of the candidates should have been considered and the meritorious candidates from the female list would have gone in the merit list and thereby the vacancies would have further accrued in the female ST category.

5. Perusal of record and on considering the submissions put forth on either side, this Court is of the opinion that, there is no dispute to the stand taken by the respondents on having filled up 33 posts of ST category candidates.

6. The only dispute now left is that, the respondents No. 3 to 11 have also been accommodated from the said select list who infact have not participated in the recruitment process but have been regularized from among the backlog vacancy and what also requires to be seen is that whether 33 posts which has been sought to have been reserved by the State Government is proper and legal when it should had been 35.

7. Having heard the contentions put forth on either side and on perusal of record what also reflected is that the State Government as a matter of policy on 04/07/2003 had passed an order whereby they had clearly taken a decision that all those candidates who were eligible for regularization as per the order of the State Government and who also fulfills the minimum eligibility criteria as also if they fall within the category of ST and SC

category, then such person should be considered for regularization against the post which has been advertised by Annexure-P/2.

8. All the respondents No. 3 to 11 were appointed prior to 31/12/1988, there is no dispute to this fact.

9. By virtue of their length of service, the department in pursuant to the order dated 04/07/2003 have regularized their services from among the vacancy which was available. If the Government as a policy matter in order to accommodate the Daily Wage Employee working since long with the department and who also belonged to the ST category and who also had all the minimum eligibility criteria and the respondents having regularized their services, this Court at this juncture does not feel that the said action on part of the State Government was unjustified or illegal in any manner.

10. Moreover, the status of the petitioners is only that of a participant as such no indefeasible right has accrued in their favour.

11. Moreover, what further is to be seen is that, the respondents had already appointed 33 persons in the women ST category. That means, the required percentage of women candidates were substantively taken note of by the respondents barring confusion whether the appointment should had been 33 or 35.

12. 30% of 116 posts lying vacant under the ST category comes to 34.8 which rounded off comes to 35.

13. The respondents in their reply have stated that they have filled up 33 posts from amount the ST category. No proper justification seems to be available with the respondents as to how they have arrived at 33.

14. To that extent, the instant Writ Petition stands disposed off with a direction to the respondent No.2 to revisit the record and reach to the conclusion as to whether the number of reserved women candidates to be appointed was 33 or whether it was 35 keeping the reservation at 30%. In case, if it was 35, two meritorious persons from the select list in the female category would have a right to claim appointment.

15. So far as the appointment of the respondents No. 3 to 11 are concerned, in view of the discussion this Court has made in the preceding paragraph, it does not warrant any interference.

16. The Writ Petition accordingly stands disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit