

**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.29786 of 2017**

**ORDER:**

This writ petition is filed seeking a Writ of Mandamus, declaring the action of respondent No.1 in promoting respondent Nos.3 and 4 who are non-SCs as Superintendent and Chief Medical Officer (Homeo) respectively against roster point Nos.2 and 7 earmarked for Scheduled Caste (Women) and Scheduled Caste Candidates vide impugned G.O.Rt.No.776, dated 23.08.2017, ignoring the lawful and rightful claims of the petitioners who belong to the Scheduled Caste Community, as arbitrary, illegal, unjust and contrary to the provisions of Rule 22(1)(ii), 22(2)(a)(i) r/w. Sub-rule 2(e) and Rule 6 of the T.S. Subordinate Service Rules, 1996 and is in violation of Articles 14 and 16 of the Constitution of India and accordingly set aside the same, and sought a consequential direction holding that the petitioners are entitled to be considered and promoted as Superintendent/Chief Medical Officer (Homeo) against roster point Nos.2 and 7 meant for Scheduled Caste candidates with all consequential benefits.

2. Heard learned counsel for the parties.

3. It has been contended by the petitioners that they are members of Scheduled Caste community and are working as Senior Medical Officers and they are fully eligible and qualified to be promoted to the next higher posts of Superintendent and Chief Medical Officer. The

petitioners further submit that the State Government has taken a policy decision to extend reservations even in the matters of promotions vide G.O.Ms.No.5, dated 14.02.2003 and roster point Nos.2 and 7 are earmarked for Scheduled Caste candidates. The petitioners further submit that reservations even in the matters of promotions will be extended, provided the total cadre strength of the posts are more than 5. In the instant case, as far as the Superintendent and Chief Medical Officer cadres are concerned, they are more than 5 and reservation in respect of Scheduled Caste candidates is applicable. In spite of the fact that the petitioners are fully eligible and qualified to be considered for promotion to the posts of Superintendent/Chief Medical Officer, the respondents have promoted the unofficial respondents i.e. respondent Nos.3 and 4 as Superintendent and Chief Medical Officer in the slots meant for reserved category candidates. Therefore, counsel for petitioners submits that the impugned action of respondents in promoting the unofficial respondents is liable to be set aside and the petitioners' cases deserve to be considered for promotion to the posts of Superintendent and Chief Medical Officer in tune with the policy of the State Government i.e. reservations even in the matters of promotions. Counsel appearing for petitioners has relied upon a judgment rendered by the Hon'ble Supreme Court in **R.K.Sabharwal and others v. State of Punjab and others**<sup>1</sup> and contended that if the reserved category candidates are selected by virtue of their merit, such candidates cannot be counted against the

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<sup>1</sup> AIR 1995 SC 1371

quota of reserved category candidates, but the next reserved category candidates alone should be considered for reservation in the slots meant for reserved category candidates. Therefore, the counsel appearing for petitioners submits that appropriate orders be passed in the writ petition by setting aside the impugned G.O.Rt.No.776, dated 23.08.2017 and issue appropriate directions to the official respondents to consider the case of petitioners for promotion to the posts of Superintendent/Chief Medical Officer against the roster points earmarked for Scheduled Caste candidates.

4. The learned Government Pleader has contended that the total cadre strength of Superintendent/Chief Medical Officer is 7 and reservations are applicable in the matters of promotions also, but however, the Government Pleader has contended that the seniormost person in the seniority list i.e. Dr.B.Prameela Devi, who is also a member belonging to Scheduled Caste Community, was promoted. The learned Government Pleader has relied upon G.O.Ms.No.2, dated 09.01.2004, which was issued as a clarification to certain issues pertaining to the policy of reservations in promotions to the Scheduled Caste and Scheduled Tribe candidates. The said G.O.Ms.No.2, dated 09.01.2004 makes it abundantly clear that reservations in promotions should be implemented in favour of Scheduled Castes and Scheduled Tribes in all categories of posts in the State Government Departments, if they are not adequately represented to the extent of 15% and 6% respectively. The said G.O. also makes it clear that while computing

the adequacy of representation, the persons belonging to Scheduled Castes and Scheduled Tribes who have been promoted on the basis of seniority/merit without applying the rule of reservation, should also be counted for judging the adequacy or otherwise of the representation of Scheduled Castes and Scheduled Tribes. The learned Government Pleader has drawn the attention to the counter affidavit in the vacate stay petition, wherein, it is stated that the cadre strength of Regional Deputy Directors/Chief Superintendent (Homeo)/Superintendent of Hospitals/Chief Medical Officer/Research Officer (Homeo) (Non-teaching), are all allied posts and the total cadre strength of these posts is 7, as such, the rule of reservation is applicable. According to the cadre strength, there must be one post earmarked for Scheduled Caste candidates (15% out of cadre strength of 7) and the adequacy has been fulfilled by promoting Dr.B.Prameela Devi, who is a member belonging to Scheduled Caste community and was at Serial No.1 in the seniority list. Since the adequacy has already been achieved in respect of representation of Scheduled Caste community in the matters of promotions, the reservation was not extended to the petitioners while effecting promotions. Since the adequacy has already been achieved by promoting Dr.B.Prameela Devi, who is a member belonging to Scheduled Caste community, the next persons in the seniority list i.e. respondent Nos.3 and 4 are considered for promotion. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

5. Sri Grandhi Gopalakrishna Murthy, learned counsel appearing for respondent Nos.3 and 4 has also filed counter affidavit, reiterating the very same facts as has been contended by the learned Government Pleader. The learned counsel has contended that this Court, vide order dated 04.09.2017, was pleased to grant interim suspension of G.O.Rt.No.776, dated 23.08.2017 and though respondent Nos.3 and 4 were promoted, the official respondents have issued G.O.Rt.No.47, dated 29.01.2019, suspending the promotion orders issued in favour of respondent Nos.3 and 4 and reverted them to lower category post of Senior Medical Officer with effect from 23.08.2017 and the service rendered by them in the cadre of Regional Deputy Director/Chief Superintendent/Superintendent/Chief Medical Officer shall be counted till the writ petition pending before this Court is decided. Learned counsel further contended that respondent No.3 has retired from service in the promoted category of Superintendent/Chief Medical Officer on 31.01.2018 and respondent No.4 had retired in the promoted post on 31.07.2018. The State Government had issued G.O.Rt.No.47, dated 29.01.2019 after retirement of respondent Nos.3 and 4, and consequently, the official respondents are not settling the terminal/pensionary benefits of respondents 3 and 4 in the promoted category. Therefore, counsel appearing for respondents 3 and 4 submits that since adequacy has already been achieved in respect of representation of Scheduled Caste candidates, the petitioners are not entitled for promotion in terms of promotion policy of the State Government.

6. The counsel appearing for respondents 3 and 4 further contended that now that respondents 3 and 4 have retired in the promoted post, all the service benefits of respondents 3 and 4 should be released in the promoted category without reference to G.O.Rt.No.47, dated 29.01.2019. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

7. This Court, having heard the rival submissions of the parties, is of the considered view that adequacy has been achieved in respect of representation of Scheduled Caste candidates with the promotion of Dr.B.Prameela Devi, and once the adequacy has been achieved, the official respondents need not follow reservations in the matters of promotions. Paragraphs 3 and 4 of G.O.Ms.No.2, dated 09.01.2004, read as follows :

“3. *Reservation in promotions shall be implemented in favour of Scheduled Castes and Scheduled Tribes, in all category posts in all State Government Departments, if they are not adequately represented to the extent of 15% and 6% respectively. Crucial date for implementing the rule of reservation in promotions shall be 14.02.2003 i.e., date of issue of G.O. 1<sup>st</sup> read above i.e.G.O.Ms.No.5, dated 14.2.2003.*

4. **Computation of adequacy of representation** : *For the purpose of computing adequacy of representation of Scheduled Castes (15%) and Scheduled Tribes (6%) in various categories, the following procedure shall be followed.*

(a) *The persons belonging to Scheduled Castes and Scheduled Tribes who have been promoted on the basis of seniority, merit, i.e., without*

*applying the rule of reservation should also be counted for judging the adequacy or otherwise of Scheduled Caste/Scheduled Tribe representation.*

- (b) The adequacy or otherwise of representation should be counted in respect of each category of posts but not for the Department as a whole.*
- (c) If, in respect of any category, adequate representation already exists as on 14.2.2003 or is attained at date, the rule of reservation in promotions in favour of Scheduled Castes/ Scheduled Tribes shall not be a further.*
- (d) For the purpose of computing the adequacy in respect of Scheduled Castes (i.e. 15%), ABCD categorization will not be observed and the adequacy will be with reference to total number of employees irrespective of their ABCD categorization.”*

8. A perusal of the above referred portion of G.O.Ms.No.2, dated 09.01.2004 makes it clear that when once the adequacy has been achieved, the extension of reservation in the matter of promotions need not be followed. While computing the adequacy of representation, the persons belonging to Scheduled Caste and Scheduled Tribe communities, who have been promoted on the basis of seniority/merit without applying the Rule of reservation, should be counted for judging the adequacy or otherwise of the Scheduled Castes and Scheduled Tribes representation. Since the adequacy has already been achieved in respect of representation of Scheduled Caste candidates with the promotion of Dr.B.Prameela Devi, the petitioners

are not entitled for promotion in terms of reservation policy as set out in G.O.Ms.No.5, dated 14.02.2003.

9. For the aforesaid reasons, there are no merits in the writ petition and the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

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**ABHINAND KUMAR SHAVILI, J**

25<sup>th</sup> July, 2019

ajr

