

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No. 34792 of 2017

ORDER:

This writ petition is filed seeking the following relief:-

“....to pass an order or orders one in the nature of Writ of Mandamus declaring the Memorandum of rejection dated 13.10.2017 without considering the recruitment in NCC-C Certificate – Grade-C as per the notification RC.No.01/ Rect./ Adm.1/ 2016, dated 06.02.2016 violating 18 (A) and 18 (B)(V) Percentage of Quotas in Special Categories for the post of Code No.11 & 14 for 2%for Meritorious Sports persons (MSP), 3% for NCC, instead of the 2nd Respondent recruited in post of Code No.11 out of 2 selected only 1 (one) person under the NCC-B Certificate and in the post of Code No.14 selected only 5 persons, out of 6 which are under Certificate of NCC-C the remaining eligible Candidates are not recruited and violating the recruitment procedure....”.

Heard M.Sinivasa Rao, learned counsel for petitioner and Sri M.V.Rama Rao, learned Standing Counsel for the 2nd respondent.

It has been contended by the petitioner that he is a student and he is fully qualified and eligible to be appointed to the post of Sub-Inspector of Police (Civil) (Men & women) Code No.11 and Reserve Sub-Inspector of Police (TSSP) (Men) Code No.14 in Home Department. The respondents have issued a Notification for filling up the vacancies of Sub-Inspector of Police on 06.02.2016 and he has responded to the said Notification. The posts of Sub-Inspector and Reserve Sub-Inspector of Police were included under post Code Nos.11 and 14 respectively. In all, 208 and 205 vacancies were notified in Sub-Inspector and Reserve Sub-Inspector cadres respectively. As per the Notification dated 06.02.2016, 3% of the vacancies are earmarked for NCC and since the petitioner is

having NCC-C Certificate issued by the Deputy Director General, National Cadet Corps (NCC), his case is entitled to be considered against the said 3% reservation for NCC, as provided in the Notification. The petitioner has participated in the selection process and fared decently well. In spite of petitioner securing sufficient marks in the NCC Category, his case was not considered for appointment to the post of Sub-Inspector of Police against Post Code No.11 or Reserve Sub-Inspector of Police against Post Code No.14. Pursuant to the representation made by the petitioner to the respondents to consider his case for appointment to the post of Sub-Inspector of Police or Reserve Sub Inspector of Police, the 2nd respondent has issued orders of rejection dated 13.10.2017 (through online), rejecting the case of the petitioner by stating as follows:-

“The selection of special categories which include NCC has been made following the Apex Court judgment in Rajesh Kumar Dharia Vs. Rajasthan Public Service Commission. The candidates who belong to NCC quota and got selected on merit amounts to fulfilling the NCC quota irrespective of the Grade of NCC Certificate. The NCC quota has to be calculated for the vacancies notified for each category i.e., OC, BC-A, BC-B, BC-C, BC-D, BC-E, SC & ST and not on the total vacancies. Hence, your claim is not correct”.

Learned counsel for the petitioner submits that as per Clause 18 (B) (v) of Notification dated 06.02.2016, wherein it is stated that “Candidates who possess NCC ‘C’ Certificate will be preferred and if sufficient candidates are not available, then the candidates who possess NCC ‘B’ Certificate will be considered. If vacancies still remain unfilled, then the Candidates who possess NCC ‘A’ Certificate will be considered”.

Instead of prioritizing the above said NCC'C' Certificate holders, the respondents have selected the candidates with NCC'B' certificates, which is below NCC'C' Certificate, contrary to the notification dated 06.02.2016 and contrary to the spirit of NCC Reservation.

Therefore, the learned counsel submits that the impugned rejection order dated 13.10.2017 is liable to be set aside and the respondents be directed to consider the case of the petitioner for appointment to the post of Sub-Inspector of Police or Reserve Sub-Inspector of Police in the quota meant for NCC'C' Certificate holders with all consequential benefits.

In support of his contention, learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Supreme Court in *Gaurav Pradhan and others Vs. State of Rajasthan and others*¹ which has dealt with the issue and held as under :-

“On the question of existence of vacancies, although learned counsel for the appellant submitted that vacancies are still lying there, which submission however has been refuted by the learned counsel for the State of Rajasthan. However, neither appellants had produced any details of number of vacancies nor the State has been able to inform the Court about the correct position of the vacancies. We thus for adjusting the equity between the parties issue following directions :

- (1) The writ petitioners/ appellants who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ ST/ BC candidates who had taken relaxation of age should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit

¹ 2017 (8) Supreme 561

belonging to general category candidates entitled for appointment which exercise shall be completed within three months from the date copy of this order is produced.

(2) The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.”

Learned counsel for the petitioner contends that if there are vacancies, the petitioner is entitled for consideration of his case and even if there are no vacancies, since injustice has been done to the petitioner due to the faulty procedure adopted by the respondents, and his case can be considered by creating a supernumerary post in the said category.

Learned Standing Counsel appearing for the respondents has contended that though the NCC reservation was implemented horizontally as per the judgment rendered by the Hon'ble Supreme Court in *RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION AND OTHERS*², the women reservation was the subject matter in the said case and on the women reservation, the Hon'ble Supreme Court held as follows :-

“Rule 9(3) of the Rajasthan Judicial Service Rules, 1955 ('Rules' for short) which is relevant, reads as follows :

"Reservation for women candidates shall be 20% category-wise in the direct recruitment. In the event of non-availability of the eligible and suitable women candidates in a particular year, the vacancies so reserved for them shall be

² (2007) 8 Supreme Court Cases 785

filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year and the reservation treated as horizontal reservation, i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidate belongs."

Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney v. Union of India* [1992 Supp.(3) SCC 217], the principle of horizontal reservation was explained thus (Pr.812) :

"... all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same."

A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted

from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in [Anil Kumar Gupta v. State of U.P., 1995\(4\) SCT 403 : \[1995\(5\) SCC 173\]](#) thus:

".... The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. *If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/ accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom.* (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)

Learned Standing Counsel appearing for the respondents contends that the respondents are following the said judgment of the Hon'ble Supreme Court for implementing the NCC reservation category wise. The candidates who possess NCC and got selected on merit amounts to fulfilling the NCC quota irrespective of the grade of the NCC certificate. The NCC quota has to be calculated for the vacancies notified for each category i.e., OC, BC-A, BC-B, BC-C, BC-D, BC-E, SC & ST and not on the total vacancies, hence

the case of the petitioner could not be considered. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered view that when the respondents have extended 3% reservation in favour of NCC, 3% reservation has to be calculated for the entire posts which have been notified and based upon the said calculation for the total number of posts, the posts have to be first identified. After earmarking the posts for NCC, then the method of filling up the posts should be adopted. When the Notification clearly states that "the candidates who possess NCC 'C' Certificate will be preferred" as a condition precedent, the respondents cannot violate the same and deny its application to be extended in favour of special categories. The judgment relied upon by the learned Standing Counsel deals with the implementation of reservations meant for women. In the instant case, the question is not about implementation of reservation, it is first identifying the vacancies meant for NCC and first the respondents must do the exercise of working out the percentages as per their policy and once the posts are identified, then the procedure has to be explored for implementing the special category reservations. The special category reservations have to be worked out based upon the total number of vacancies, which have been notified, and when the vacancies are identified for special categories, then the exercise of filling up those vacancies has to be undertaken. Not adopting the procedure under Clause 18(B)(v) of Notification and

selecting the candidates for posts under code Nos.11 & 14 on the basis of marks secured and possessing only NCC irrespective of the grade of the NCC Certificate under the NCC Quota is contrary to the Rules and also contrary to the Notification issued by the respondents.

This Court also examined the special Rules of Stipendiary Cadet Trainee Rules issued in G.O.Ms.No.96 dated 31.12.2015. As per the said Rules, 3% reservation in favour of NCC is treated as a special category reservation and Rule 3 (C) (i) (b) makes it abundantly clear that the vacancies reserved for special categories referred to in Rule – 3 (D) shall be adjusted in a horizontal manner i.e., the reservation of Special Category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs.

Since the respondents have not followed the special category Quota conditions properly, the case of the petitioner could not be considered for appointment to the post of Sub-Inspector of Police or Reserve Sub-Inspector of Police even though the petitioner has secured sufficient marks amongst the NCC candidates and the petitioner is a NCC 'C' Certificate holder, which is to be preferred over NCC 'B' Certificate. The procedure adopted by the respondents in Selection of the candidates under NCC quota i.e. special category reservations itself is incorrect and the same has to be deprecated. The respondents are directed to calculate 3% reservation in favour of NCC by taking into account the overall posts, which were notified and based upon that calculation, fill up vacancy, which is reserved in favour of NCC 'C'

Certificate holders in preference to NCC'B' & NCC'A' Certificate holders and the procedure adopted by the respondents in giving preference to NCC'B' Certificate holders than NCC'C' Certificate holders is contrary to the law and the Notification and the same is found fault by this court. Therefore the respondents are directed to consider the case of the petitioner for appointment to the post of Sub-Inspector of Police or Reserve Sub Inspector of Police by duly taking into account the fact that the petitioner is possessing NCC'C' Certificate and NCC'C' Certificate holders have to be given preference over NCC'B' Certificate holders.

While giving the above directions, this Court had explored the issue about availability of vacancies. Since the respondents have not stated anything about availability of vacancies, pursuant to Notification issued on 06.02.2016, this Court specifically wanted the information from the Standing Counsel as to availability of vacancies. The Standing Counsel had orally informed the Court that there are no vacancies pursuant to Notification issued on 06.02.2016. Even, if there were vacancies, the same were included in the subsequent Notification issued on 31.05.2018. No doubt, as discussed above, injustice has been done to the petitioner due to the faulty procedure adopted by the respondents in not properly selecting the candidates possessing NCC'C' Certificate in the vacancies earmarked for NCC Quota. Therefore, the respondents are directed to consider the case of the petitioner for appointment to the post of Sub-Inspector of Police or Reserve Sub-Inspector of Police in any of the existing vacancies or by creating supernumerary post by following the law laid down by the Hon'ble

Supreme Court in *GAURAV PRADHAN's case* (1 supra). It is made clear that the relief granted in the present writ petition is confined only to the petitioner.

With the above directions, this writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

Date: 07-01-2020
Avy/Prv

