

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 6693 of 2014**

1. Veena Singh W/o Rahul Singh, Aged About 33 Years R/o Near H.D.F.C. Bank, Behind Narendra Yadav House, Village And Post Office Birkona Thana Koni, Tah. And Distt. Bilaspur C.G. , Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh And Ors. Through The Secretary General Administration Department Mahanadi Bhawan, Mantralaya, New Raipur Distt. Raipur C.G. , Chhattisgarh
2. Vice Chancellor Pt. Sunder Lal Sharma Open University, Koni Birkona Marg, Distt. Bilaspur C.G. , District : Bilaspur, Chhattisgarh
3. Registrar Pt. Sunder Lal Sharma Open University, Koni Birkona Marg, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
4. Shilkant Tiwari S/o Ram Sanhi Tiwari Aged About 39 Years Working As Peon In Vice Chancellor Office Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G. , District : Bilaspur, Chhattisgarh
5. Hardeep Sahu S/o Alakhram Sahu Aged About 37 Years Working As Peon Confidential Department, Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G. , District : Bilaspur, Chhattisgarh
6. Mohd. Imran S/o Mohd. Riyaz Khan Aged About 37 Years Working As Peon In Press Department In Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G. , District : Bilaspur, Chhattisgarh
7. Smt. Nanda Raikwar D/o Prahlad Raikwar Aged About 38 Years Working As Peon In Reception Department Under Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
8. Rohit Kumar S/o Buddhu Singh Aged About 29 Years Working As Peon In Examination Department Under Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
9. Deleted Ram Sahai Porte As Per Honble Court Order Dated 22/08/16. S/o
10. Dhan Singh Markam S/o Shir Baiyaram Markam Aged About 40 Years R/o Nehru Chowk, Near Judev Singh Banglo, Vice Chancellor Residence Of Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh
11. Rajesh Uikey S/o Shri Radheshyam Uikey Aged About 35 Years Working As Peon In Press Department In Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh

12. Laxmi Kant Yadav S/o Shri Jethuram Yadav Aged About 36 Years R/o Devendra Nagar, Near Hanuman Timber, Sector-2, Raipur, Distt. Raipur C.G. , District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri, Prateek Sharma, Advocate.
For State/Res. No. 1	: Ms. Akanksha Jain, Dy. G.A.
For Res. No. 2 & 3	: Shri H. B. Agrawal, Sr. Advocate along with Shri Pankaj Agrawal, Advocate.
For Res. No. 4 to 8 and 10 to 12	: Shri Vinay Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05.01.2021

1. The respondent No. 9 has expired pending the writ petition, his name has been deleted from the petition.
2. The grievance of the petitioner in the present writ petition is the non selection of the petitioner for the post of peon under the respondent No. 2 against the advertisement that was published on 13.09.2013. The fact of the case in the present writ petition is that the petitioner was working as a daily wage employee under the respondents No. 2 & 3 since 08.11.2005 onwards.
3. Vide advertisment Annexure P/4 dated 13.09.2013, the respondents invited application for eligible candidates for filling up of the post of peon. The total number of posts advertised were 9. In the advertisement itself it was categorically mentioned that the women reservation as well as reservation for the physically handicapped person would be applicable. The petitioner in the instant case falls in both the categories i.e. the petitioner firstly is a female candidate and at the same time is also a physically challenged person. In addition to

the fact that the petitioner also is the senior most daily wage employee working under the respondents No. 2 & 3.

4. After the recruitment process was completed, the private respondents 4 to 12 were declared eligible and have been given appointment against the nine posts advertised, which has led to filing of the present writ petition.
5. The basic contention of the petitioner while assailing the action is the fact that the reservation policies have not been applied by the respondents in processing of finalization of the recruitment to the post of Peon. According to the petitioner, out of the nine posts advertised for filling up of the post of peon, 30 % of the same was to be reserved for female candidates and 6 % of the said posts was to be reserved for the physically challenged category. 30% of 9 comes to 3 as such there should have been 3 female candidates selected and 6 % of 9 comes to 0.54 and according to the petitioner since the percentage under the physically challenged candidates comes to more than 0.5 it has to be rounded off as 1 and atleast one candidate should have been filled up.
6. According to the petitioner, she was the sole physically challenged candidate who had applied for the said post and therefore she was all eligible for the said post but has been wrongly denied the same by the respondents No. 2 & 3, which led to filing of the present writ petition.
7. It would be relevant at this juncture to take note of the sole defence that the respondents No. 2 & 3 has taken in defending the writ petition. For ready reference the only paragraph in the reply of the respondents No. 2 & 3 is being reproduced here-in-under:-

“2. That, the petitioner has challenged the action the respondents No. 2 & 3 in not following the reservation policy of handicapped person is illegal, because total posts for peon advertise was 9 in numbers as per (Annexure P/4) having appeared in advertisement knowingly that it was for 4 unreserved, 3 scheduled tribe, 1 scheduled caste and 1 OBC cannot challenged Annexure P/4, because as per reservation policy 2% post was reserved for handicapped person and 2 % out of 9 posts comes to less than one person which is negligible, therefore it cannot be enforceable, therefore no wrong has been committed by the answering respondent, hence petition is liable to be dismissed.”

8. Apart from the said contention, there is no other defence that the respondents No. 2 & 3 have raised.
9. From the plain reading of the said contentions all that now which has to be seen is whether the defence taken by the respondents is sustainable or not. From the perusal of the advertisement it reflects that the break up of the nine posts for the peon was that four posts were for unreserved category, three posts for scheduled tribe and one for scheduled caste and one for OBC.
10. Further, from clause 10 of the said advertisement it clearly reflects that the reservation policy of the State Government so far as the reservation for the female as also for the physically challenged category would be applicable which undoubtedly means that there would be 30 % reservation for the female category and 6 % for the physically challenged category. From the selected candidates it only reflects that out of nine candidates i.e. respondents No. 4 to 12 there is only one female candidate who has been selected and as such there were still two more posts which should have been filled up from the female category. Likewise, from the candidates selected i.e. the respondents No. 4 to 12 there is none who have been selected against the physically challenged category and that the petitioner was the sole

candidate belonging to the physically challenged category who had applied for the said posts so far as rounding up of seats in case if the percentage of seat comes more .5 is well settled that it has to be rounded off as one.

11. The judgment in this regard of the Supreme Court is 2008 1 SSC 233 wherein paragraph three has been held as under:-

“3. The appellant has relied on G.O. dated 26.08.1993 which is Annexure P-1 to this appeal. That G.O. states that the U.P. Government has reserved 2 percent posts for physically handicapped persons for direct recruitment in all groups of government services. The physically handicapped persons are those who are blind, deaf and dumb and otherwise handicapped. There were altogether 30 posts for which the selection was held. 2 percent of 30 is 0.6. Since 0.6 is more than half we round it off and hold that one out of the 30 posts is reserved for physically handicapped persons. Since there was no other physically handicapped person who applied, in our opinion, the appellant was entitled to the post reserved for physicalled handicapped persons.”

12. Given the said fact that again one seat for the physically challenged category ought to had been filled up by the Respondents no. 2 & 3 from among the physically challenged candidates who had applied, thus from the aforesaid factual matrix of the case, it is evidently clear that the respondents have clearly violated the reservation policy by carrying out the recruitment process and the petitioner seems to have been deliberately denied her rightful claim for being considered against the said post. The action on the part of the respondents therefore is not acceptable, the recruitment process therefore stand vitiated and the petitioner deserves to be appointed against a female category or against a physically challenged category, as the case may be.

13. Coming the consequential relief that the petitioner could be granted, this Court at this juncture would not like to disturb the appointments

that have been given to private respondents 4 to 12. Considering the fact, they have put in about more than 6 years of service, however for the reason that the respondent No. 9 has in between expired admittedly there has fallen a vacancy, which according to the petitioner and also the learned counsel for respondents has till date not been filled up and still lying vacant. The case of the petitioner can be considered to be filled up against the said fallen vacancy without disturbing the appointments made in favour of the respondents No. 4 to 12 except 9 who has since expired.

14. At the same time, since there is a deliberate denial of an appointment to the petitioner clearly violating the reservation norms prescribed by the State Government, by allowing the writ petition this Court also direct that the petitioner should be given appointment from a retrospective date i.e. from the date the other respondents were appointed on 25.09.2014 but however the petitioner would be entitled only for notional benefits from the period 2014 till date and all actual benefits would only be prospect one. This view of the court is relying upon the judgment of the Supreme Court in the case of Richa Mishra Vs State of Chhattisgarh 2016 (4) SCC 179

15. It is expected that the respondents shall act upon the order of this Court within a period 60 days from the date of receipt of copy of this order.

With the aforesaid observation, the writ petition stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge