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W.P.No.14094 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.14094 of 2020 and
W.M.P.No.17500 of 2020

R.Kathiroli

... Petitioner

Vs.

1.The Chairman,
Teacher Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
DPI Campus, College Road,
Chennai 600 006.

2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to consider the petitioner for selection to the post of P.G. Assistant (Tamil) under SCW category based on the marks secured by the petitioner in the selection in pursuant to Notification No.10/2019 issued by the first respondent, by following the principles of selection adopted for the post of Computer Instructor by the first respondent for implementation of Women Quota for Scheduled Caste category, by considering the representation submitted by the petitioner dated 03.02.2020, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.



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For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.P.Gurunathan, AGP for R2
Mr.R.Siddharth for R1

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus, to direct the respondents to consider the petitioner for selection to the post of P.G. Assistant (Tamil) under SCW category based on the marks secured by the petitioner in the selection in pursuant to Notification No.10/2019 issued by the first respondent, following the principles of selection adopted for the post of Computer Instructor by the first respondent for implementation of Women Quota for Scheduled Caste category, by considering the representation submitted by the petitioner dated 03.02.2020, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

2. Heard Mr.S.Nedunchezhiyan, learned counsel for the petitioner, Mr.P.Gurunathan, Additional Government Pleader for R2 and Mr.R.Siddharth, learned counsel for R1.



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3. The first respondent has issued notification in the year 2019 for direct recruitment to the post of B.T.Assistant (Tamil). The petitioner had applied for the said post in the reserved category of SC(Women) and written the examination. The petitioner has secured 93 marks. However, the cut-off is 94 marks for the SC General category and SC Women category. The contention stated by the learned counsel for the petitioner is that the cut-off mark for SC General and SC Women category is fixed at 94 only because the SC General category candidates have also been included in SC Women category.

4. The petitioner has lost her opportunity in the appointment. As per the notification, total number of vacancies earmarked against SC candidates for B.T.Assistant (Tamil) is 25. In the notification, 11 posts have been earmarked for SC Women. Now the contention of the petitioner is that the petitioner being SC Woman, if one Sadhana who stands in S.No.178 and who had secured 97 marks was placed under SC General category against 25 vacancies, she would get her chance for appointment.



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5. However, the learned Additional Government Pleader for the second respondent submitted that the reservation for SC Women within the total posts of SC General category is a horizontal reservation and hence the petitioner cannot claim the benefit of vertical reservation. He also relied upon the judgment of the Full Bench of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria Vs. Rajasthan public Service Commission and Others, reported in 2007 8 SCC 785.***

6. The above case is a classic case which explains what can be falling under vertical reservation and how horizontal reservation have to be considered for special reservations made within the horizontal reservation. For e.g. social reservations like SC, ST and OBC under Article 16(4) are considered as vertical reservation. Within the vertical reservation some special reservations in favour of physically handicapped, women etc., would fall under horizontal reservation. In the instant case, 11 posts for SC Women is not a horizontal reservation which is exclusive of 25 posts earmarked for SC General category. Among 25 posts, 11 posts have to be reserved for SC Women that is exactly how the



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horizontal reservation works. The Hon'ble Supreme Court has made a distinction between vertical reservation under Article 16(4) and the horizontal reservation made in favour of physically handicapped and women under Article 16(1) and 15(3) of the Constitution of India.

7. The procedure of allocation has also explained by giving an example. For a better understanding, the relevant paragraph of the judgment of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria Vs. Rajasthan public Service Commission and Others, reported in 2007 8 SCC 785*** is extracted hereunder:

"9. 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



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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



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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



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selected in excess of the prescribed internal quota of four.]

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.



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11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.

12. The appellants' grievance that the selection process adopted by RPSC was contrary to the reservations policy contained in Rule 9(3) is justified. But the question is whether the entire selection should be set aside and whether all appellants should be granted relief. On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as Judicial Officers for more than five years. There has also been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the



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appointments already made in pursuance of it. We will only consider whether the appellants before us are entitled to relief. We find that even if the selection list had been prepared by applying horizontal reservation properly, only the appellant (Rajesh Kumar Daria) in this appeal, and appellant Nos.3 and 6 in the connected appeal (Mohan Lal Soni and Sunil Kumar Gupta) will get selected. The other appellants were not eligible to be selected.

13. In view of the above and in view of available vacancies, we deem it just and proper to accommodate those three candidates without disturbing the selections and appointments already made, to do complete justice, in the following manner :

13.1) Sunil Kumar Gupta (general category candidate with 184 marks) and Mohan Lal Soni (OBC candidate with 169 marks), who ought to have been selected in the 2001 selection list, and who were denied appointment in view of excess selection of women candidates, shall be deemed to have been selected by RPSC. As a consequence, necessary letters of appointment shall be issued to them. Their seniority for all purposes will however be counted only from the date of actual appointment.

13.2) Rajesh Kumar Daria (OBC candidate with 171 marks) was also not selected because of the selection of excess women candidates. He ought to have been selected and appointed in



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the 2001 selection. We are told that Rajesh Kumar Daria got selected in the subsequent 2005 examination and was appointed in the Rajasthan Judicial Service on 12.2.2005. Considering the above fact, we direct that he should be given his position in the 2001 selection list. Interests of justice would be served if he is placed as the last candidate in the 2001 selection list. As he worked from 12.2.2005, we make it clear that such retrospective seniority will not entitle him to any monetary benefits, but will only be counted for promotions and pensionary benefits.

8. The above judgment is squarely applicable to the facts of the case. The petitioner has also addressed his grievance that the respondents did not follow the rules of reservation and that it had deprived her opportunity of getting appointment under SC Women quota. Since the petitioner squarely falls under special reservation within vertical reservation which can otherwise be called as horizontal reservation, she cannot claim that the reservation for SC Women altogether constitute a separate reservation apart from SC General. After fixing the minimum cut-off mark of 94 for SC General and 25 posts reserved for SC category,



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posts are allotted to whoever had obtained marks more than 94. In the result, out of 25 posts so given, 11 posts are seen to be filled up the women candidates and the exercise stops there. Only in the event of total number of candidates placed against 25 vacancies fall below 11 vacancies, the last person among 25 would be deleted and the next top marks obtained by the female candidates under SC category will be replaced in this place. The petitioner has not made out such a case before the Court in order to conclude that the respondents did not follow the rules of reservation.

9. Whenever the notifications are given in future, it is desirable that the respondents adopt the method of showing the table of vertical column for whatever categories reservation given under Article 16(4) and make a horizontal as a sub-column in order to show how horizontal reservation is given and works. So that the applicants will not imagine that the reservations are made for SC candidates and separate reservation is given for SC Women candidates apart from what is already given for SC General.



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10. In view of the above stated reasons, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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R.N.MANJULA, J.

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To

1.The Chairman,
Teacher Recruitment Board,
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DPI Campus, College Road,
Chennai 600 006.

2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

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