

(2017) 05 CHH CK 0002
In the Chhattisgarh High Court
Case No : 1336 of 2015

Dhananjay Nirmalkar & Ors	Vs	APPELLANT
State Of Chhattisgarh & Ors		RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

[Chhattisgarh Police Executive \(Non-Gazetted\) Service??Recruitment Rules, 2006](#), — Rule 12(2), Rule 11(7)

Citation : (2017) 05 CHH CK 0002

Hon'ble Judges : Prashant Kumar Mishra

Bench : Single Bench

Advocate : Prateek Sharma, Abhishek Pandey, R. K. Bhagat, Shashank Thakur, Pravesh Sharma, Yogesh Pandey

Judgement

1. Present batch of writ petitions would arise out of one and the same selection process for recruitment of Subedar/Sub Inspector/Platoon Commander, therefore, they were heard analogously and disposed of by this common order. Relief(s) sought :

2. In WPS No.1336 of 2015 the petitioner (Dhananjay Nirmalkar) has prayed for a direction to the respondents to appoint him on the post of Sub Inspector by virtue of memo dated 25-8-2014.

3. Petitioner (Priyanka Suryavanshi), in WPS No.847 of 2015, has prayed for quashment of the select list (Annexure - P/1) to the extent of non-inclusion of her name in the list of successful candidates and, thereafter, to direct the authorities to appoint the petitioner on the post of Sub Inspector in accordance with her merit together with all consequential benefits. By amending the relief clause the petitioner has further prayed for setting aside the appointment of the respondents No.5 to 9 who have been appointed against the Scheduled Caste (Woman) category candidates with further direction to appoint the petitioner as Sub Inspector in the Scheduled Caste (Woman) category with all consequential benefits.

4. Petitioner (Ku. Ramkumari Sahu), in WPS No.1283 of 2015, has prayed for a direction to the Director General of Police to issue joining letter/order as per the waiting list and reservation policy as also for cancellation of the appointment of the respondent No.6 who has wrongly been appointed as Sub Inspector on a post reserved for Other Backward Class (Woman) category though he is a male candidate.

5. In WPS No.1215 of 2015 the petitioner (Ku. Durga Dhruv) has prayed for a direction to the Director General of Police to issue appointment order/joining letter to the petitioner as per the waiting list (Annexure - P/8) and further to cancel the appointment of the respondent No.4 Makardhwaj Pradhan. Brief facts :

6. The police headquarters issued advertisement on 17-12-2011 for filling up 50 posts of Subedar, 563 posts of Sub Inspector, 28 posts of Sub Inspector (Special Branch), 90 posts of Platoon Commander, 19 posts of Sub Inspector (Radio), 6 post of Sub Inspector (Finger Print) and 2 posts of Sub Inspector (Disputed Document), in all 758 posts for which the petitioners submitted their applications. The advertisement specifically provided that the reservation rules and instructions issued by the State Government from time to time shall be applicable in the subject recruitment with further stipulation that as per the Government order 30% posts shall be reserved, however, it can be reduced up to 10% with prior approval of the cabinet. WPS No.1336 of 2015 :

7. Petitioner (Dhananjay Nirmalkar) belongs to Other Backward Class (Male) category. Out of 563 posts of Sub Inspector, 79 posts were reserved for OBC category. Out of which 8 posts were reserved for OBC (Woman) category and the rest were open for all OBC candidates.

8. Petitioner's claim is based on the memo dated 25-8-2014 wherein his name finds place amongst the candidates who have been chosen for appointment from the waiting list.

9. State's stand in this petition is that the said memo was wrongly issued on the basis of descending order roll numberwise whereas, in fact, the petitioner has secured less marks than the last selected candidate in the OBC category. It is the specific stand of the State that the last candidate in the OBC category for the post of Sub Inspector has secured 588.036 marks whereas the petitioner has secured 584.542 marks and was, thus, placed below in the merit list, therefore, he was not offered appointment.

10. It is a trite law, as held by the Supreme Court in Shankarsan Dash v. Union of India, (1991) 3 SCC 47 Union of India and Others v. Kali Dass Batish and Another, (2006) 1 SCC 779 State of Orissa and Another v. Rajkishore Nanda and Others, (2010) 6 SCC 777 and Vijay Kumar Mishra and Another v. High Court of Judicature at Patna and Another, (2016) 9 SCC 313 that the empanelment of a candidate in the select list does not create any vested right for appointment, therefore, the respondents are justified in taking the stand that the memo dated 25-8-2014, which was wrongly issued, does not create any right in petitioner's

favour. Accordingly, WPS No.1336 of 2015 deserves to be dismissed. WPS No.847 of 2015 :

11. Petitioner (Priyanka Suryavanshi) belongs to Scheduled Caste (Woman) category. Out of 563 posts of Sub Inspector, 90 posts were reserved for Scheduled Caste category out of which 10% posts i.e. 9 posts should have been reserved for Scheduled Caste (Woman) category. According to this petitioner, initially 9 Scheduled Caste (Woman) category candidates were selected, but 3 posts remained vacant because Meena Kumari (merit No.553) resigned from the post; whereas Kaushilya Amaltas (merit No.559); and Jyoti Lahre (merit No.48) did not join. The appointing authority, instead of choosing 3 Scheduled Caste (Woman) category candidates to fill up the quota of 9), appointed 4 male candidates from the waiting list.

12. It is the case of the petitioner that initially the authorities informed the petitioner about her selection vide document Annexure - P/6 to fill the form and even her medical test was also conducted, but the petitioner was not allowed to join.

13. Stand of the respondent State in this petition is that by cabinet decision dated 21-1-2012 the reservation for Woman has been reduced from 30% to 10%, therefore, the Government was obliged to reserve only 9 posts for Scheduled Caste (Woman) category. Referring to the document by which the petitioner was informed for appearing in medical test, learned State counsel would argue that the said select list was only tentative and, in fact, it was a waiting list, which was wrongly construed by the Superintendent of Police, Janjgir-Champa, as the final select list, therefore, the petitioner cannot derive any benefit out of the same. Learned counsel would further submit that the select list, which is impugned in this petition, was, in fact, issued on 20-2-2015. Referring to the circular dated 18-2-1997, learned counsel for the State would submit that if suitable women candidates are not available the post can be filled up by male candidates, therefore, there is no illegality in appointing the male candidates when sufficient number of female candidates were not available.

14. Learned counsel appearing for the respondents No.6 to 9 would submit that the said respondents belong to Scheduled Caste (Male) category, therefore, their appointment will not be effected.

15. The question which arises for consideration in this case is -- Whether male candidates can be appointed against the post reserved for Scheduled Caste (Woman) category candidates ?

16. The petitioner has not prayed for any relief that the reduction of percentage of women reservation from 30% to 10% is illegal nor has challenged the validity of sub-rule (7) of Rule 11 of the Chhattisgarh Police Executive (Non-Gazetted) Service Recruitment Rules, 2006 (for short "the Rules, 2006"), therefore, this Court shall proceed by treating that the extent of women reservation in the subject recruitment with prior approval of the cabinet is only 10%, however,

even if the categorywise horizontal women reservation is taken to be 10%, at least 9 posts have to be reserved for Scheduled Caste (Woman) category out of 90 posts of Sub Inspector thrown up for competition for Scheduled Caste candidates. It is also not in dispute that the petitioner was the tenth candidate in the list of the Scheduled Caste (Woman) category. 9 candidates were appointed in the category of Scheduled Caste (Woman), however, when 3 out of said 9 candidates either resigned or did not join the post, the same was not filled up by Scheduled Caste (Woman) category candidate, but the same has been filled up by Scheduled Caste (Male) category candidate, by taking shelter of the State Government's circular dated 18-2-1997.

17. The contents of the circular dated 18-2-1997 are reproduced hereunder :
"VERNACULAR MATTER OMITTED"

18. It is extremely unfortunate that the State Government's interpretation of this circular is not only flawed, but also impermissible. The circular nowhere provides that even if wait listed or meritorious women candidates are available in a particular category, they have to be filled up by male candidates and not by the candidates belonging to Scheduled Caste (women) category.

19. There is another reason why the subject executive instruction would have no application because Rule 12 (2) of the subject rules clearly provides that subject to these rules and the Chhattisgarh Civil Services (General Condition of Service) Rules, 1961, the candidates name shall be considered for appointment on the strength of his position in the merit list and further that out of the existing vacancy, the merit list of 25% candidates shall be prepared by following the reservation rules meaning thereby that a consolidated merit list shall be prepared and thereafter categorywise merit list for the number of vacancies advertised shall be prepared together with the waiting list of 25% posts in accordance with the reservation rules shall also be prepared. Thus, there is no occasion for application or different interpretation of the circular dated 18-2-1997. Sub-rule (2) of Rule 12 is absolutely clear in terms having no ambiguity whatsoever, therefore, the respondent State is bound to publish consolidated merit, categorywise merit together with categorywise waiting list which includes categorywise merit list of candidates covered under horizontal reservation.

20. It is settled by the Supreme Court in *Richa Mishra v. State of Chhattisgarh and Others*, (2016) 4 SCC 179 that women candidates by themselves belong to a separate class and needs encouragement, to progress from weaker section to a progressive working woman.

21. It is extremely sad and unfortunate that the police headquarters of the State of Chhattisgarh has deliberately chosen to advert to an interpretation which is in conflict with sub-rule (2) of Rule 12 and thereby denied the horizontal reservation to Scheduled Caste (Woman) category candidates.

22. The Supreme Court in *Richa Mishra* (supra) held thus at paras 24 to 28 : 24. In the first instance, it is to be borne in mind that Rules, 1997 are specific Rules,

specially meant to give benefit of age relaxation to women in public service and post in connection with the affairs of the State. These Rules are statutory in nature framed under proviso to Article 309 of the Constitution of India. Such a special provision is made in favour of females in consonance with the Constitutional spirit contained in Article 15(3) of the Constitution of India which empowers the State to make any special provision for women and children. The salutary purpose and objective behind promulgating Rules, 1997 is manifest and can be clearly discerned. It is to encourage women, hitherto known as weaker section, to become working women, by taking up different vocations, including public employment. It would naturally lead to empowerment of women, which is the need of the hour.

25. Women in this world, and particularly in India, face various kinds of gender disabilities and discriminations. It is notwithstanding the fact that under the Constitution of India, women enjoy a unique status of equality with men. In reality, however, they have yet to go a long way to achieve this Constitutional status. It is now realised that real empowerment would be achieved by women, which would lead to their well-being facilitating enjoyment of rights guaranteed to them, only if there is an economic empowerment of women as well. Till sometime back, the focus was to achieve better treatment for women and for this reason, the concentration was mainly on the well-being of women. Now the focus is shifted to economic empowerment. Such objectives have gradually evolved or broadened to include the active role of women when it comes to development as well. No longer the passive recipients of welfare-enhancing help, women are increasingly seen, by men as well as women as active agents of change: the dynamic promoters of social transformation that can alter the lives of both women and men.

26. It is now realised that there is a bidirectional relationship between economic development and women's empowerment defined as improving the ability of women to access the constituents of development, in particular health, education, earning opportunities, rights, and political participation. This bidirectional relationship is explained by Prof. Amartya Sen by propounding a theory that in one direction, development alone can play a major role in driving down an equality between men and women; in another direction, continuing discrimination against women can hinder development. In this scenario, empowerment can accelerate development. From whichever direction the issue is looked into, it provides justification for giving economic empowerment to women. It is, for this purpose, there is much emphasis on women empowerment (as it leads to economic development) by United Nations World Bank and other such Bodies.

27. Interestingly, the 2012 World Development Report (World Bank 2011) adopts a much more nuanced message. While it emphasizes the "business case" for women empowerment, it mainly takes it as given that the equality between women and men is a desirable goal in itself, and policies should aim to achieve

that goal. Poverty and lack of opportunity breed inequality between men and women, so that when economic development reduces poverty, the condition of women improves on two counts: first, when poverty is reduced, the condition of everyone, including women, improves, and second, gender inequality declines as poverty declines, so the condition of women improves more than that of men with development.

28. Economic development, however, is not enough to bring about complete equality between men and women. Policy action is still necessary to achieve equality between genders. Such policy action would be unambiguously justified if empowerment of women also stimulates further development, starting a virtuous cycle. Empowerment of women, thus, is perceived as equipping them to be economically independent, self-reliant, with positive esteem to enable them to face any situation and they should be able to participate in the development activities.

23. Applying the law laid down by the Supreme Court in Richa Mishra (supra) in the case at hand, it would be apparent that the petitioner Priyanka Suryavanshi being ranked at S.No.10 in the merit list of Scheduled Caste (Woman) category, she should have been offered appointment when 3 Scheduled Caste (Woman) category candidates either resigned or did not join the post. The circular dated 18-2-1997 has wrongly been invoked because the petitioner having been positioned at S.No.10 it is not a case where suitable Scheduled Caste (Woman) category candidates are not available. Accordingly, this petition deserves to be allowed. WPS No.1283 of 2015 :

24. Case of the petitioner (Ku. Ramkumari Sahu) is that out of 563 posts of Sub Inspector, 79 posts were reserved for Other Backward Class (non-creamy layer) category. Thus, for OBC (Woman) category candidates 8 posts were reserved, which is 10% of 79 posts. When the results were declared on 11-5-2013 the petitioner's name was not included and in her place male candidate, the respondent No.6, has been selected, therefore, the petitioner is entitled for appointment as a OBC (Woman) category candidate.

25. It is the categorical stand of the State that the last candidate selected in the OBC (Woman) category has secured 535.253 marks whereas the petitioner has secured 534.470 marks under the OBC (Woman) category candidate, therefore, the petitioner, being less meritorious, was not selected.

26. Petitioner's contention that male candidate has been selected in her place is absolutely misconceived and contrary to facts because Veena Sahu is the last and 8th candidate in the OBC (Woman) category, therefore, appointment of the respondent No.6 has not been made to accommodate a male candidate as against the quota reserved for OBC (Woman) category candidate.

27. Despite this clear stand of the State in the return, the petitioner has not rejoined to controvert this merit position. By amendment petitioner has tried to make out a new case on the pleadings that the respondent No.6 Vijay Kumar

Kaiwartya has been selected from the merit list against the OBC (Woman) category, however, as per the chart provided by the petitioner in para 3 of the rejoinder in respect of the merit position of OBC (Woman), Veena Sahu was the 8th candidate, therefore, the quota of OBC (Woman) having already exhausted, the subsequent pleading of the petitioner that the respondent No.6 has been accommodated against the OBC (Woman) category quota is incorrect.

28. The petitioner being less meritorious than Veena Sahu or for that matter the respondent No.6, who has secured 588.035 marks, the present petitioner has not made out any case for interference. WPS No.1215 of 2015 :

29. The petitioner (Ku. Durga Dhruv) belongs to Scheduled Tribe (Woman) category. As per the advertisement, out of 563 posts of Sub Inspector, 112 posts were reserved for Scheduled Tribe category candidates. Thus, 10% of the said 112 posts comes to 11 posts, which were reserved for Scheduled Tribe (Woman) category candidates. Petitioner has secured 507.386 marks and was, thus, placed at S.No.11 amongst the Scheduled Tribe (Woman) category candidates, as is clear from the merit list Annexure R/1 filed by the State read with para 4 of the rejoinder, which has not been disputed by the State by filing additional return.

30. After selecting 10 candidates from Scheduled Tribe (Woman) category the petitioner was placed as wait listed candidate No.1 under the category Scheduled Tribe (Woman), however, since 11 posts were to be reserved for Scheduled Tribe (Woman) category and the petitioner is the 11th candidate, she should have been selected from this category. This petition, therefore, deserves to be allowed.

31. As a sequel; WPS No.1336 of 2015 (Dhananjay Nirmalkar v. State of Chhattisgarh & Others), being bereft of merit, is liable to be and is hereby dismissed.

WPS No.847 of 2015 (Priyanka Suryavanshi v. State of Chhattisgarh & Others) is allowed. The respondents are directed to prepare fresh merit list of Scheduled Caste (Woman) category candidates after following the principles of horizontal reservation and if the petitioner is included in the first 9 candidates, after excluding those who have not joined or have resigned, she shall be offered appointment on the post of Sub Inspector in Scheduled Caste (Woman) category. If by drawing the fresh merit list of Scheduled Caste (Woman) category, any other previous appointee is required to be terminated, the respondent authorities would be at liberty to pass consequential orders. The petitioner having wrongly been denied the appointment she is entitled to seniority from the date the male candidate was appointed in her place on a post reserved for Scheduled Caste (Woman) category. She is also entitled for arrears of salary from such date to the date of her joining. The respondents are also directed to pay cost to the tune of Rs.25,000/- to this petitioner.

WPS No.1283 of 2015 (Ku. Ramkumari Sahu v. State of Chhattisgarh & Others), sans merit, is liable to be and is hereby dismissed.

WPS No.1215 of 2015 (Ku. Durga Dhruv v. State of Chhattisgarh & Others) is allowed. Respondent authorities are directed to prepare fresh merit list of 11 Scheduled Tribe (Woman) category candidates on the basis of horizontal reservation and if the petitioner secures position in the select list of 11 Scheduled Tribe (Woman) category candidates, she shall be offered appointment for the post of Sub Inspector. If on such re-drawing of the merit list of Scheduled Tribe (Woman) category any previous appointee is required to be terminated, it will remain open for the respondents to pass necessary consequential orders. The petitioner is entitled to seniority from the date the Scheduled Tribe (Woman) category candidates have been appointed. She is also entitled for arrears of salary from such date to the date of her joining. The respondents are also directed to pay cost to the tune of Rs.25,000/- to this petitioner.

32. Before parting with this batch of petitions, one important issue which deserves consideration and issuance of direction to the State is that Rule 12 (2) of the Rules, 2006 provides for preparation of categorywise merit list as well as waiting list, therefore, whenever recruitment takes place the State should always issue (i) a consolidated merit list; (ii) categorywise merit list and waiting list; (iii) horizontally reserved categorywise merit list, waiting list containing 25% of the total vacancy for each of the category; and (iv) the merit list so prepared shall be published in the official website of the concerned Department and shall also be published in at least four widely circulated Hindi daily newspapers and one English daily newspaper. This will ensure fairness and transparency in the recruitment and the candidates would be aware of their position in the select list/merit list/waiting list, which may also avoid unnecessary litigation.