

(2009) 04 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petitions No. 5007 of 2008

Ku Manju Singh

APPELLANT

Vs

State of Chhattisgarh, The Inspector General Jail, Bhupendra
Kumar Devangan and Sunil Kumar

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 04 CHH CK 0002

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Rakesh Pandey, for the Appellant; Arvind Dubey, Panel Lawyer for respondents 1 and 2, Fouzia Mirza, for the respondent No. 3 and Pravin Tulsyan, for the respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the appointment of a male candidate against the post reserved for a woman candidate on the post of "Silai Prashikshak".

2. The facts, in brief, are that pursuant to the advertisement dated 2.11.2007 (Annexure P/2), applications were invited from the candidates for appointment on the post of Silai Prashikshak. It is clearly stated in the advertisement that one seat is available in unreserved category for male and one for women candidate. Learned Counsel further submits that the petitioner, being a woman, made an application for appointment on the said post. The respondents 1 and 2 have appointed respondent No. 3 against one post under unreserved category for male member and the respondent No. 4 against the post reserved for a woman candidate under the unreserved category. Thus, the appointment of respondent No. 4 is bad and contrary to the notification as the same defeats the purpose of reservation for a woman candidate.

3. Shri Dubey, learned Panel Lawyer appearing for the respondent No. 1 and 2

submits that the respondent No. 3 and 4 secured more marks than the petitioner, accordingly, the respondent No. 3 and 4 were appointed as Silai Prashikshak even against the post reserved for a woman candidate. There was 25 minimum marks prescribed for appointment.

4. Shri Dubey further submits that as per General Administration Department's circular dated 10.02.1997, if a suitable women candidate is not available, the post shall not be carried forward, but the same may be filled up by a male candidate.

5. Shri Tulsyan, learned Counsel appearing for the respondent No. 4 submits that the minimum marks prescribed was 25 as per Clause 9 of the advertisement. Smt. Mirza submits that the respondent No. 3 has secured maximum marks, thus, the respondent No. 3 is entitled to be appointed against the post reserved for a male candidate.

6. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto. I have found that there is no minimum qualifying marks prescribed for the post. It has admittedly been made clear that out of two posts vacant under unreserved category, one post was meant for male and the second was for a woman candidate. The basic purpose of reservation is to provide assistance to the weaker section of the society who cannot compete with the general category candidates.

7. The contention of Shri Tulsyan that there is a provision of minimum qualifying marks is rejected as on bare perusal of the advertisement, there is no prescribed minimum qualification. No other document or statutory provision under rules or regulation have been produced in support of the contention that there was a minimum qualifying or cut-off marks. Since no minimum qualifying marks was fixed, the petitioner cannot be held as not suitable candidate. Thus, reliance of the State counsel on the above-stated circular is not applicable to the facts of the case. If the stand taken by learned Counsel appearing for the State is accepted that would defeat the very purpose of reservation.

8. For the reasons stated hereinabove, the appointment of respondent No. 4 is contrary to the reservation policy as well as the advertisement dated 2.11.2007. The petitioner, being a woman candidate having proper marks in her category, is entitled to be appointed against the post reserved for a woman candidate. Thus, the petition is allowed. The petitioner is entitled to be appointed in place of respondent No. 4 who has got lesser marks than the respondent No. 3.