
(2014) 12 UK CK 0018

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 208 of 2012

Meenakshi Sharma

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2014) 12 UK CK 0018

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : K.N. Joshi, Advocates for the Appellant; Pradeep Joshi, Standing Counsel, Advocates for the Respondent

Judgement

K.M. Joseph, C.J.—Petitioner has approached this Court on the following brief allegations: Respondent No. 2 (The Uttarakhand Public Service Commission) (hereinafter referred to as the Commission) issued an advertisement dated 10.04.2009, by which 58 posts of Homeopathic Medical Officers were advertised inviting the applications from eligible candidates. The number of posts was increased from 58 to 70. Petitioner is a woman; she was present for the interview; according to her, she secured 60 percent marks; according to her, the following is the manner, in which the posts are to be filled up in terms of the advertisement:

"6. That it is relevant to point out here that advertisement specifically provides that the horizontal reservation to the women candidates were available. The aforesaid advertisement further contemplates that as per the reservation policy out of 70 posts, $70 \times 19/100=13$ posts were reserved for schedule caste candidates as per 19% reservation, out of 70 posts, $70 \times 14/100 = 10$ posts were available to the OBC candidates as per 14% reservation, out of 70 posts, $70 \times 4/100=3$ posts were available to ST category candidates as per 4% reservation, out of 70 posts, $70 \times 30/100=21$ posts were reserved for women candidates as per 30% reservation.

7. That as per the horizontal reservation to the women candidates, out of the total 44 posts of general category, $44 \times 30/100 = 13$ posts were to be filled by general women candidate. Similarly out of 13 posts of SC category, $13 \times 30/100 = 4$ posts were to be filled by women SC candidate and, out of 10 posts of OBC category, $10 \times 30/100 = 3$ posts were to be filled from OBC women candidate and out of 3 posts of ST, $3 \times 30/100 = 1$ post was to be filled from ST women candidate."

It is the further complaint that out of 21 posts, which were reserved for women candidates, 13 posts are to be filled up by general women candidate, but the petitioner came to know that inspite of her having secured 60 percent marks, she could not make it. It is the party respondents, on the other hand, who belong to the reserved categories. It appears that they have secured higher marks than the petitioner and they were selected. It is feeling aggrieved by the same, the petitioner is before us seeking the following prayers:

"I. Issue a writ order or direction in the nature of Certiorari quashing the impugned result/select list dated 13.10.2010 so far as relates to appointment/selection of respondent No. 4, 5 & 6.

II. Issue a writ order or direction in the nature of Mandamus directing the respondents to give appointment to the petitioner on the post of Homeopathic Medical Officer, on the basis of her marks (60%) secured in the said recruitment process."

2. Pleadings have been exchanged.

3. We have heard learned counsel for the petitioner, learned counsel for the Commission as well as learned counsel for the party respondents.

4. Learned counsel for the petitioner would submit that there is a distinction between vertical reservation and horizontal reservation. According to him, the case in question is one of horizontal reservation, that is to say, out of 44 posts, which were to be filled up from among the general candidates, there was a horizontal reservation to the extent of 30 percent. In short, 13 posts were to be filled up from among the general women candidates. The petitioner belongs to the general women category. According to her, even though the party respondents may have secured higher marks, since they belong to reserved categories and since there is a separate reservation for them inasmuch as five posts are to be filled up from among Scheduled Caste women and three posts are to be filled up by selecting women from OBC community, the party respondents should have been accommodated or adjusted against those quota, and if that had been done, the petitioner would have secured selection.

5. Per contra, learned counsel for the Commission would point out that actually from among the 70 posts, which were advertised, 44 posts were to be filled from among the General Category candidates, 15 posts were reserved for the Scheduled Castes, one for the Scheduled Tribe and 10 for the OBC. There was 30

percent reservation from among the General Category for women. There was a further reservation from the Scheduled Caste candidates, posts reserved for Scheduled Caste candidates and thus five posts were reserved for Scheduled Caste women, also three posts were reserved for OBC candidates. According to him, all that has happened is the party respondents, who are also women, secured higher marks than the petitioner, who is also a woman. When that was the position, the party respondents were adjusted against 13 posts, which were reserved for women. As far as the filling up of the reserved categories is concerned, he would submit that four women Scheduled Caste candidates were selected from out of five; one was carried forward and as far as OBC is concerned, two were carried forward and one was filled up.

6. Learned counsel for the party respondents also would reiterate that her clients secured higher marks and they were entitled to be accommodated against the 13 posts reserved for the women from out of the 44 posts, which were reserved for the General Category.

7. Learned counsel for the petitioner referred us to the following decisions:

Anil Kumar Gupta and Others Vs. State of U.P. and Others, .

Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, .

Jitendra Kumar Singh and Another Vs. State of U.P. and Others, ."

8. It is apposite that we refer to the following paragraphs of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others, , which was the case under the service law and wherein, the Court, inter alia, held as follows:

"6. 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 Vs. Union of India (UOI) and Others, , the principle of horizontal reservation was explained thus:

"[A]ll 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 this quota will be placed in the appropriate category; if he belongs to SC category, he 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."

7. A 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 and Others Vs. State of U.P. and Others*, thus:

"The proper and correct course is to first fill up the OC 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.)

(emphasis supplied)

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: "For SC : 30 posts, of which 9 posts are for women". We find that many a time this is wrongly described thus: "For SC : 21 posts for men and 9 posts for women, in all 30 posts". Obviously, there is, and there can be, no reservation category of "male" or "men".

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 number will not be counted against the quota 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 that 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 and others Vs. State of Punjab and others, , Union of India and others etc. Vs. Virpal Singh Chauhan etc., and Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, . 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 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 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."

9. Therefore, on this understanding of the distinction between vertical reservation and horizontal reservation, if we apply the same to the facts of this case, we would think that the petitioner has not made out any case for interference. As already noted, the petitioner is a woman, who belongs to the General Category. She has secured lesser marks than the party respondents. The party respondents, though belonging to the reserved categories, were apparently selected on the basis of the position obtained on the inter se merit of the candidates, which included obviously the petitioner. In terms of the inter se merit, it was the party respondents, who were entitled to be selected. Therefore, this is not a case, where we are called upon to decide as to whether there is any anomaly in the matter of interplay between vertical and horizontal reservation. The question, which fell for decision in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others*, apparently was as a result of there being an illegal application of the principle of vertical and horizontal reservation, that is to say that though there was horizontal reservation provided for women, after having filled up the vacancies in terms of merit and though there was sufficient number of women, which would have satisfied the requirement of horizontal reservation, it may be an incorrect application of principle of horizontal reservation. The High Court proceeded to make further selection of women on the basis that this exercise is necessary to fulfill the demand of horizontal reservation, but that question does not arise here at all. Here we are concerned with the question as to whether when the petitioner has secured lesser marks than the party respondents, and the advertisement provided for filling up of 13 vacancies, the fact that the party respondents belong to the reserved categories, they should be denied selection in the General Category of women, we would think that it cannot be said that in preferring the party respondents to the petitioner, the fact that the party respondents belong to the reserved category would not detract from the legal and constitutional right to be considered for selection to the reserved posts of women. As far as the reservation provided for the scheduled caste or OBC is concerned, the petitioner, who admittedly does not belong to either of the said categories, cannot stake any claim.

10. No doubt, the learned counsel for the petitioner would submit that the Commission should not have carried forward the vacancies in the reserved categories of Scheduled Caste or the OBC. The petitioner does not belong either to the Scheduled Caste or to the OBC category. She has no locus at all in the said matter. She can at best have a complaint only in regard to the manner in which the 13 vacancies for women were filled up. In regard to the same, we have already found that in view of the fact that the petitioner has secured lesser marks, selection of the party respondents in preference to her cannot be found to be objectionable.

11. Learned counsel for the petitioner, no doubt, also drew our attention to Anil Kumar Gupta and Others Vs. State of U.P. and Others, . That is a case, where the Court was concerned with the admissions to the medical colleges and the manner, in which the reservations were provided. He drew our attention to Paragraphs 15 and 18 of the judgment, which read as under:

"15. On a careful consideration of the revised notification of 17.12.1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalized reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalized reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B. Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B. C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water light compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered.

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then take up the O.C. (merit)

quota (followed by filling of O.B.C, S.C and S. T. quotas). The proper and correct course is to first fill up the O.C. 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 over all 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.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the O.C. quota."

12. A perusal of paragraph 18 of the judgment would show that the Hon"ble Apex Court has, in fact, categorically held that the correct course is to fill up the OC quota on the basis of merit and, thereafter, to fill up social reservation quotas etc.

13. What the Learned counsel for the petitioner would appear to lay emphasis is on the words "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." We are of the view that question does not arise in the facts of this case. In this case, the 30 percent reservation from out of 44 posts for the purpose of horizontal reservation for women. In regard to the filling up of 44 vacancies, the only criteria can be merit. When it is filled up on the basis of inter se merit, it so happened that the party respondents secured higher marks than the petitioner and they were accommodated. All the other questions really would fade into insignificance in the facts of this case and there cannot be a question of adjusting the women belonging to the reserved categories, who on the strength of their own merit, are entitled to be appointed against the vacancies reserved for them in reserved categories. We do not see any such warrant in law for such a contention. Consequentially, we find no merit in the contentions of the petitioner. The petition will stand dismissed. No order as to costs.