
(2015) 07 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 472/2013, 492/2013, 519/2013, 559/2013, 588/2013, 706/2013, 839/2013, 840/2013, 841/2013, 842/2013, 843/2013, 844/2013, 868/2013, 1303/2013, 1320/2013 and 516/2014, 517/2014, 518/2014, 520/2014, 521/2014, 523/2014 and 725

Neelam Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Constitution of India, 1950 — Article 15(3), 16, 16(1), 16(4)

Citation : (2015) 07 RAJ CK 0060

Hon'ble Judges : Ajit Singh, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Ashok Gaur, Senior Counsel, Ajay Chaudhary, Tanveer Ahmed and Manish Parihar, Counsels, for the Appellant; Dharamveer Tholia, AAG, Sumit Teterwal, Rajan Prajapati, Sajit Jakhar and Varun Choudhary, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.—On 21.09.2010, Rajasthan Public Service Commission (in short "RPSC") issued an advertisement inviting applications for filling up 42 posts of Lecturer (History). The details of the vacant posts were shown as under:--

2. In response to the advertisement, large number of candidates participated in the selection process where after merit list of selected candidates was prepared. For the 23 posts of general category/open category including male and women, a merit list was prepared on the basis of their marks. In the result, the women candidates belonging to OBC category were also shown selected in the open category. And the women candidates of open category despite having secured less marks felt aggrieved with the inclusion of women candidates belonging to OBC category against the quota of open category. They, therefore, challenged the select list by filing separate writ petitions on the ground that women

candidates of OBC category could not be allowed to fill-up the posts of open category irrespective of they being more meritorious. The learned Single Judge by the common impugned order dated 15.03.2013 has allowed their writ petitions. The learned Single Judge has held that women candidates belonging to reserve category cannot be migrated to general category as principle applicable to reservation under Article 16(4) is not applicable to special provision created under Article 15(3) of the Constitution. It is in this background, the selected women candidates belonging to OBC as well as the RPSC and State Government have filed the present bunch of writ appeals challenging the impugned order dated 15.03.2013.

3. The principle relating to horizontal reservation was explained by the Supreme Court in *Indra Sawhney Vs. Union of India (UOI) and Others*, (1992) 3 SCC 217 Supp as under:--

"[A]II 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."

4. A special reservation for women in respect of employment is made under Article 15(3). It is different from social reservation made under Article 16(4). The method of implementing special reservation, which is a horizontal reservation has been well explained by the Supreme Court in *Anil Kumar Gupta and Others Vs. State of U.P. and Others*, (1995) 5 JT 505 : (1995) 4 SCALE 573 : (1995) 5 SCC 173 : (1995) 2 SCR 396 Supp as under:--

" 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 compartmentalised 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.)"

5. The Supreme Court again in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others*, AIR 2007 SC 3127 : (2007) 115 FLR 10 : (2007) 10 JT 154 : (2007) 10 SCALE 50 : (2007) 8 SCC 785 : (2007) 8 SCR 972 : (2007) AIRSCW 5650 which was also a case from the State of Rajasthan has explained the method of implementing special reservation for women as under:--

"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 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 and others Vs. State of Punjab and others*, AIR 1995 SC 1371 : (1995) 70 FLR 985 : (1995) 2 JT 351 : (1995) LabIC 1618 : (1995) 1 SCALE 685 : (1995) 2 SCC 745 : (1995) 2 SCR 35 : (1995) 3 SLJ 227 , *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, AIR 1996 SC 448 : AIR 1995 SC 448 : (1995) 7 JT 231 : (1995) 6 SCC 684 : (1995) 4 SCR 158 Supp and *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, (1996) 2 AD 224 : AIR 1996 SC 1378 : (1996) 2 JT 495 : (1996) 2 SCALE 341 : (1996) 3 SCC 253 : (1996) 2 SCR 695 : (1996) 1 UJ 735]. 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.]"

6. The Division Bench of this High Court at Jodhpur in Megha Shetty (Smt.) Vs. State of Raj. and Others, (2013) 4 CDR 2226 : (2013) 4 RLW 3227 has already dealt with exactly the same issue raised in the present bunch of appeals. The Division Bench relying upon the above-referred decisions of the Supreme Court has held that in the event of woman candidate belonging to OBC category on securing more marks than the woman candidate of general category finds a position in the select list of candidates of general category, the same cannot be treated as migration. And this decision of the Division Bench is binding on us with which we also fully agree. It is also to be noted that none of the writ petitioners/respondents herein who are women of general category has secured more marks than the women candidate of OBC category selected in open category. The select list of women candidates prepared by the Rajasthan Public Service Commission is strictly in accordance with the law explained by the Supreme Court.

7. For these reasons, we are unable to agree with the view taken by the learned Single Judge. We accordingly, set aside the impugned order dated 15.03.2013. The appeals are allowed.