
(2023) 02 OHC CK 0192
In the Orissa High Court
Case No : Writ Petition (C) No. 14758 Of 2015

Prangya Paramita Harichandan	Vs	APPELLANT
Orissa University Of Agriculture And Technology & Others		RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Constitution of India, 1950 — Article 15(3), 16(1), 16(4) 226, 227

Citation : (2023) 02 OHC CK 0192

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Soma Pattnaik, S.C.Rath, Ashutosh Mishra

Final Decision : Dismissed

Judgement

Sashikanta Mishra,J

1. The Petitioner has filed this Writ Petition with the following prayer;

"Under the facts and circumstances stated above this Hon'ble Court may be graciously pleased to issue RULE NISI calling upon the Opp.Parties as to why;

(i) The appointment of Opp.Party Nos.3 and 4 shall not be quashed as illegal,

(ii)The petitioner shall not given appointment in the post of Assistant Professor, Animal Reproduction Gynecology with effect from 5.8.2015 with all consequential benefits;

(iii)The entire selection process shall not be quashed being made without following the reservation of law."

2. Pursuant to an advertisement issued on 18th November, 2014 by the Orissa University of Agriculture and Technology (OUAT) for appointment to various posts, the Petitioner applied for the post of Asst. Professor, Animal Reproduction Gynecology as S.E.B.C. category candidate. As per the advertisement, four posts were advertised with the following breakup;

$$U.R. = 1 + 1(W) = 2$$

$$S.E.B.C. = 1(W)$$

$$S.T. = 1(W)$$

3. The Petitioner was called upon to attend the meeting of the Standing Selection Committee on 20th July, 2015 along with her testimonials. She attended the said meeting and fared well. On 5th August, 2015 the result was published, but her name did not find place. On the contrary, she found that two male persons were selected under the U.R. category even though one of the posts belonging to such category was reserved for woman. According to the Petitioner, the Opposite Party-authorities followed a wrong procedure by not preparing the select list of all candidates on merit basis at the first instance. As result, Dr. Basanti Jena, who secured 37 marks could have been adjusted against unreserved vacancy for woman and in such event the Petitioner could have been adjusted against the only vacancy available for S.E.B.C.(W) category. Thus, challenging the selection as above, the Petitioner has approached this Court with the prayer as mentioned above.

4. A Counter Affidavit has been filed on behalf of Opposite Party Nos.1 and 2 wherein the facts relating to advertisement, number of vacancies etc. have been admitted. The claim of the Petitioner has, however, been refuted by stating that the selection of candidates was made in order of merit in respect of unreserved and reserved categories as per total marks secured by them in the interview. The Opposite Parties have filled up the posts first in merit for S.E.B.C.(W) category candidate and then Unreserved candidates.

The Petitioner filed a rejoinder stating that the method adopted by the Opposite Party-authorities is entirely wrong inasmuch as they should have first prepared the merit list of all candidates and thereafter applied the horizontal reservation of women.

5. The person placed at Sl. No.2 of the list and selected as Unreserved candidate (Opposite Party No.3) has also filed a counter. He has referred to the provision in the advertisement that in the event of non-availability or availability of insufficient number of women candidates belonging to any particular community, the vacancies shall be filled up by the male candidates of that community. Since in the instant case, there were no women candidates in the Unreserved category, the male candidate, who was next placed on the merit list, was appointed. The Petitioner cannot claim double benefit of reservation, i.e. both as S.E.B.C. candidate and woman candidate.

6. The person selected and placed at Sl. No.1 of the merit list (Opposite Party No.4) has also filed a counter affidavit. He has mainly stated that there being no prayer made by the Petitioner against him, his impletion as a party to the Writ Petition is entirely misconceived and unnecessary. On merit, it is contended that the Petitioner claims appointment entirely on misconception and erroneous

understanding of the process of selection and therefore, is not entitled to any relief.

7. Heard Ms. Soma Pattnaik, learned counsel appearing for the Petitioner, Mr. S.C. Rath, learned counsel appearing for Opposite Party Nos.1 and 2 and Mr. Ashutosh Mishra, learned counsel, appearing for the Opposite Party No.3.

8. Ms. Pattnaik has argued that the methodology adopted by the Opposite Party-authorities is entirely erroneous and contrary to the principles of vertical and horizontal reservations laid down by the Apex Court. Referring to the observations of the Apex Court in the case of *Rajesh Kumar Daria v. Rajasthan Public Service Commission and others*; reported in (2007) 8 Supreme Court Cases 785, she has argued that the Opposite Party-authorities ought to have prepared a merit list of all candidates and thereafter applied the principle of reservation as per the social reservation quotas. Had such an exercise been done, Dr. Basanti Jena, who is placed at Sl. No.3 of the merit list, could have been adjusted against the U.R. (W) category post. Instead, the Opposite Party-authorities have appointed a male person against the category reserved for women for U.R. candidates. It is further submitted by Ms. Pattnaik that in such event, the Petitioner being the only S.E.B.C.(W) candidate left, could have been appointed against such quota.

9. Mr. S.C.Rath, learned counsel appearing for OUAT, has referred to the relevant clause of the advertisement, which states that in the event of non-availability of women candidates or insufficient number of women candidates, the male candidates belonging to the particular community may be appointed. In the instant case, Dr. Basanti Jena being a S.E.B.C. (W) candidate was rightly selected for the said category while there were no women candidates in the U.R. category for which the next available male candidate was given appointment.

10. Mr. Ashutosh Mishra, learned counsel appearing for Opposite Party No.3, also supports the argument made by Mr. Rath and adds that the Petitioner's claim is entirely based on misconception and wrong understanding of the principle to be followed in the matter of application of horizontal reservations.

11. Having considered the rival contentions as noted above, this Court feels that the moot question involved is the correctness of the methodology adopted by the Opposite Party-authorities. In this regard, it would be proper to first refer to the advertisement (copy enclosed as Annexure-1) whereby four vacant posts of Asst. Professor, Animal Re-production Gynecology were advertised. The category wise breakup of the said vacancies was as follows;

U.R.= 1+1(W) = 2

S.E.B.C.= 1(W)

S.T. = 1(W)

12. From the merit list enclosed as Annexure-B series to the Counter Affidavit

filed by Opposite Party Nos.1 and 2, it is seen that the candidates were placed in the following order;

General category

Sl.No.

Name of the Candidates

Total mark

secured out of 50

1

Dr.Anil Kumar Nahak

39

2

Dr. Shuvranshu Sekhar Biswal

38

3

Samir Kumar Das

36

4

Dr. Ananga Kumar Das

35

S.E.B.C. (W) Category

Sl.No.

Name of the Candidates

Total mark secured out of 50

1

Dr.(Mrs.) Basanti Jena

37

2

Dr. Prangya Parimita Harichandan

35

S.T.(W) Category

Sl.No.

Name of the Candidates

Total mark secured out of 50

1

No candidates available

13. According to Ms. Pattnaik, Dr. Basanti Jena should have been adjusted against the against the U.R.(W) vacancy instead of selecting Dr. S.S. Biswal against such post. She has relied upon the decision of the Apex Court in the case of Rajesh Kumar Daria (supra). Upon a careful reading of the decision of the Apex Court in the said case, this Court is unable to accept the contentions advanced by Ms. Pattnaik for the reasons indicated hereinafter.

14. In the case of Rajesh Kumar Daria (supra), the Apex Court referred to the following observation made by it in the case of Anil Kumar Gupta v. State of U.P.; reported in 1995 (5) SCC 173;

“ 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. SC, ST and BC; 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

there from. 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 per cent in favour of special categories, overall, may be satisfied or may not be satisfied.”

(emphasis supplied)

In Paragraph-9 of the said judgment, the Apex Court held 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 number will not be counted against the quota reserved for 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 *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ritesh R. Sah v. 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 Caste 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 woman candidates, then there is no need to disturb the list by including any further SC woman 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 woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)"

(Emphasis supplied)

15. Thus, it is evident that the principle of mobility as applicable in case of social (vertical) reservations are not applicable to special (horizontal) reservation. This implies that the special reservations like women etc. have to be confined to their respective social categories. Of course, the procedure to be followed is-first, a merit list is to be drawn up of all candidates irrespective of their categories in the order of merit. The next step would be to fill up the social reservation quota i.e. S.C., S.T., SEBC etc. It is after this stage that the adjustment of special category

candidates like women have to be considered against each social category to see whether the requirement of having a particular number of special category candidates in each social reservation category is fulfilled. If it is found that in a particular category there is a short fall of women candidates, then the requisite number of such candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories. It has been argued that Dr. Basanti Jena having secured 37 marks should have been placed at Sl. No.2 in the merit list. This is entirely fallacious inasmuch as on merit Dr. S.S.Biswal is found to have secured more marks than her i.e., 38.

16. Coming to the horizontal reservation, it is seen that there is no woman candidate available under the U.R. category. The principle that Ms. Pattnaik has harped upon is applied in case of vertical reservation but not for horizontal reservation. For instance, while preparing a common merit list, if it is found that a reserved category candidate has earned his place by dint of his own merit rather than reservation, then he is to be treated as U.R. candidate without deleting his quota from the category to which he belongs. However, as emphasized by the Apex Court in the case of Rajesh Kumar Daria (supra), this principle does not apply to horizontal reservations inasmuch as the specially reserved candidates are to be adjusted/accommodated only against the category to which they belong.

17. Coming to the facts of the case again, it is seen that Dr. S.S.Biswal secured more marks than Dr. Basanti Jena. The advertisement provides that in case of non-availability of women candidates of a particular quota, the same shall be filled up by a male candidate. If the contention of Ms.Pattnaik is accepted, it would imply not giving appointment to Dr. S.S.Biswal, who is more meritorious than Dr. Basanti Jena in terms of marks secured. The Petitioner has based her case entirely on the supposition that Dr.Basanti Jena should have been adjusted against U.R. category. For the reasons indicated, this Court is unable to accept such argument. This Court finds that Dr. Basanti Jena has been rightly accommodated under S.E.B.C(W) category. The above would be clear from the illustrations cited by the Apex Court in the case of Rajesh Kumar Daria (supra), under Paragraph-9 which is already quoted hereinbefore. If the Petitioner's case is accepted, it would imply that the authorities were bound to appoint a woman candidate belonging to any category, if there was a shortfall in the U.R. category.

18. The point of view put forth by the Petitioner would have been acceptable had Dr.Basanti Jena been a U.R. candidate. In such situation, despite scoring less marks than Dr. S.S.Biswal she could have been accommodated against the vacancy of 1 (W) U.R. quota, but Dr. Basanti Jena had applied as a S.E.B.C. candidate and therefore, she can only be considered, in so far as horizontal reservation is concerned against S.E.B.C. category and not any other category.

19. From a conspectus of the analysis of the discussions made hereinbefore, this Court finds nothing wrong in the methodology adopted by the Opposite Party-authorities in filling up the post of Asst. Professor, Animal Re-production

Gynecology, so as to be persuaded to interfere therewith.

20. In the result, the Writ Petition is found devoid of any merit and is therefore, dismissed. No order as to costs..

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