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**(2014) 12 SHI CK 0157**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 6864 of 2014**

Praveen Bharti and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

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**Date of Decision :** 03-12-2014

**Acts Referred:**

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

**Citation :** (2014) 12 SHI CK 0157

**Hon'ble Judges :** Rajiv Sharma, J;Sureshwar Thakur, J.

**Bench :** Division Bench

**Advocate :** Adarsh K. Vashishta, Advocate, for the Appellant; M.A. Khan, Addl. A.G. and P.M. Negi, Dy. A.G., for the Respondent

**Final Decision :** Disposed off

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## Judgement

Rajiv Sharma, J.?Respondent No. 3 issued an advertisement No. 25/2013 dated 20.5.2013 whereby applications were invited for filling up the posts of Junior Engineers in IPH/HIMUDA. The last date of receipt of applications was 20.6.2013. Petitioners also participated in the selection process. They belonged to scheduled caste category. Written test was held on 10.1.2014. They qualified the written test and were called for interviews on 24.3.2014 and 25.3.2014, respectively. The result was declared on 20.4.2014. Petitioners were declared successful/suitable by respondent No. 3. However, fact of the matter is that appointment letters were not issued to the petitioners purportedly on the basis of instructions issued on 9.6.2014.

2. Mr. Adarsh Vashistha, learned counsel for the petitioners, has drawn the attention of the Court to page 228 of the Handbook on Personnel Matters Volume-II (Second Edition). It reads as under:

"From 8.11.1994 there is Vertical Reservation in favour of Scheduled Castes, Scheduled Tribes and the Other Backward Classes under Article 16(4) of the Constitution. The reservation provided to Ex-servicemen, children/grand children

of freedom fighters, physically handicapped persons, antodaya/IRDP and outstanding sportsmen under Article 16(1) of the Constitution is treated as Horizontal Reservation. The Horizontal Reservation is to be dovetailed with vertical reservation in the following manner:-

"The persons concerned have to be first selected against the respective quotas in favour of Ex-servicemen, physically handicapped persons etc. provided by Horizontal reservations under Article 16(1) and thereafter depending upon the fact as to which of the reserved categories under Article 16(4) (whether scheduled castes, scheduled tribes or other backward classes) or the residuary general category, they belong to, they have to be suitably adjusted against the said categories."

3. In continuation to this, the State Government has also issued suitable instructions on 23.10.2010. The text of instructions dated 23.10.2010 read as under:

"I am directed to refer to your letter No. H.P.SSSB-B(2)-392/06-17:86 dated 7th September, 2010 on the subject cited above and to say that the horizontal reservation is dovetailed with the vertical reservation. In the event of nonavailability of suitable candidate(s) for appointment against the vacancy under horizontal reservation, the said vacancy can be filled up from the candidate of respective category to whom this vacancy/post originally belong/ earmarked by following proper procedure. This Department (Appointment-III) has issued detailed instructions on the subject from time to time and case to case viz. Per (AP.II) B (19)-3/85 dated 14.7.1988 (appearing at page 802 of HB on personnel Matter Vol-II), No. Per (AP) C-F (4)-4/96 dated 12.5.1997 and No. 2-11/72-DP (A.II) dated 28.5.1999 vide letter dated 28th May, 1999, a photocopy each of these letters is annexed. It is requested that the matter may please be examined and decided accordingly."

4. Mr. M.A. Khan, learned Additional Advocate General has drawn the attention of the Court to instructions Annexure R-II. These instructions are dated 14.7.1998. The crux of the instructions is that in cases where it is obvious that ex-servicemen will not at all be available for appointment to any category of posts, the posts so reserved for ex-servicemen may be filled by dependent sons, daughters and wives of ex-servicemen in the first attempt with the prior concurrence of the ex-servicemen cell in the Labour and Employment Department, Himachal Pradesh, Shimla. In case, sons, daughters and wives of ex-servicemen for posts authorized to be filled in the first attempt are not available then the reservation would be carried forward to four calendar years, as at present.

5. We have gone through these instructions quoted hereinabove. Petitioners have been declared successful/suitable as per result declared on 20.4.2014. The instructions on the basis of which petitioners have been denied the appointment are dated 9.6.2014. The selection process has commenced vide advertisement

No. 25/2013 dated 20.5.2013. Written test was held on 10.1.2014. Interviews were held on 24.3.2014 and 25.3.2014. The result was declared on 20.4.2014. The reservation of the ex-servicemen is horizontal in nature. From 8.11.1994 onwards, the persons concerned have to be first selected against the respective quotas in favour of Ex-servicemen, physically handicapped persons etc. provided by horizontal reservations under Article 16(1) and thereafter depending upon the fact as to which of the reserved categories under Article 16(4) (whether scheduled castes, scheduled tribes or other backward classes) or the residuary general category, they belong to, they have to be suitably adjusted against those categories.

6. Similarly, as per instructions dated 23.10.2010, in the event of non-availability of suitable candidate(s) for appointment against the vacancy, under horizontal reservation, that vacancy can be filled up from the candidate of respective category to whom the post originally belonged/earmarked by following proper procedure. According to advertisement, six posts of scheduled caste (wards of ex-serviceman) were advertised. No ward of scheduled caste ex-serviceman was available. In the event of non-availability of candidate belonging to scheduled caste (wards of ex-servicemen), the post was to be filled up from the respective category, i.e. ex-servicemen scheduled caste (unreserved) and if candidates of ex-servicemen scheduled caste (unreserved category) were not available, then from scheduled caste category. The primary reservation as stipulated under Article 16(4) to scheduled caste, scheduled tribe and other backward classes is vertical in nature whereas the reservation provided to ex-servicemen, physically handicapped persons, sportsmen etc. is horizontal reservation. In the present case, there was no need to carry forward the posts reserved for wards of ex-servicemen. The posts were to revert back in the eventuality the candidates belonging to scheduled caste (wards of ex-servicemen) were not available to scheduled caste ex-servicemen (unreserved) and if this category was not available to scheduled caste category. The general principle is that the horizontal reservation is required to be dove-tailed with the vertical reservation. The action of the respondents not to offer appointment letters to the petitioners is legal. Moreover, the selection process has commenced vide advertisement No. 25/2013 on 20.5.2013 and Annexure R-III was issued on 9.6.2014. This would apply prospectively.

7. Accordingly, in view of the analysis and discussion made hereinabove, the writ petition is disposed of. Respondents are directed to fill up the posts of Junior Engineer from the category of scheduled caste ex-servicemen (unreserved) within a period of four weeks from today as per advertisement No. 25/2013 dated 20.5.2013 and if the ex-servicemen scheduled caste candidates are not available, the posts are permitted to be filled up from the candidates belonging to scheduled caste category. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.