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**(2021) 03 JH CK 0099**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 3610, 3650 of 2017**

Ravi Shankar Kumar And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

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**Date of Decision : 10-03-2021**

**Acts Referred:**

Constitution of India, 1950 — Article 16, 16(1), 16(4), 309

**Citation : (2021) 03 JH CK 0099**

**Hon'ble Judges : Sanjay Kumar Dwivedi, J**

**Bench : Single Bench**

**Advocate : Manoj Tandon, P.A.S. Pati, Sanjay Piprawall**

**Final Decision : Dismissed**

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## **Judgement**

Heard Mr. Manoj Tandon, learned counsel for the petitioners and Mr. P.A.S. Pati, learned counsel for the respondent-State as well as Mr. Sanjay Piprawall , learned counsel for the respondent-JSSC.

These writ petitions have been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

In both the writ petitions, common question of facts and law are involved that is why both the writ petitions have been heard together with consent of parties.

W.P. (S) No.3610 of 2017

The petitioners have preferred this writ petition for direction upon the respondents to consider the case of the petitioners for appointment on the post of Constable in Jharkhand Armed Police (JAP) pursuant to Advertisement No.4 of 2015. The prayer is also made for appointment on the post of Constable in Jharkhand Armed Police for unfilled vacancies of Home Guards. The prayer for direction to fill up the unfilled vacancies of females in the respective categories

from amongst the male candidates including the petitioners are also made in the writ petition.

An advertisement was issued by Jharkhand Staff Selection Commission being Advertisement No.04 of 2015 for appointment on the post of Constable in District Force and Jharkhand Armed Police. The advertisement was issued on 14.08.2015. The original advertised vacancies were increased by the respondents which led to issuance of press release in the context of Jharkhand Combined Constable Competitive Examination, 2015. The said press release has been brought on record by way of Annexure-2. The petitioners being eligible, applied for appointment on the post of Constable in Jharkhand Armed Police (JAP) pursuant to the said advertisement. The petitioners were issued admit cards. They appeared in the preliminary test and cleared the said test. The petitioners were issued new admit card to appear in Jharkhand Constable Competitive Examination, 2015 (Main). In the main examination also, the petitioners were declared successful. The petitioners were asked to appear in the physical and medical test. The petitioners were declared medically fit in the medical test. The petitioners were called for document verification in the final merit list and the final merit list was prepared on 29.05.2017 wherein the names of petitioners did not figure. Aggrieved with non-figuring of the name of the petitioners in the final list, the petitioners have preferred this writ petition.

W.P. (S) No.3650 of 2017

This writ petition relates to appointment on the post of Constable in the District Force pursuant to the said advertisement. This writ petition is also for appointment on the post of Constable in District Force and rest of the facts are identical of earlier writ petition.

Mr. Manoj Tandon, learned counsel for the petitioners submits that in terms of advertisement contained in Annexure 1 of the writ petition in case of not filling up the post in the light of Clause 3 of the advertisement which was required to be filled up by the candidates who are not coming under the Home Guard category. He further submits that the Rule for appointment made under Article 309 of Constitution of India dated 20.10.2014 which has been brought on record by way of counter affidavit of respondent-State as well as JSSC, also stipulates about filling up the vacancies which has not been filled up of the Home Guards by the persons who are not coming under the non-category of Home Guards. He refers to Rule 5 particularly 5(iv) of the said Rules and submits that in the advertisement as well as in the Rule that criteria is there for filling up the vacancies by the persons other than the Home Guard but this has not been followed. He further submits that the stand taken by the respondent-State and JSSC and State is beyond the Rule and Circular relied by the respondent-JSSC and the stand of the State regarding carry forward of the rest of the vacancies in the next advertisement is erroneous. He further submits that there is horizontal reservation which requires to be filled up immediately. To buttress his argument, he relied in the case of *Munja Praveen v. State of Telangana* reported in the case

of (2017) 14 SCC 797. Para 9 to 14 of the judgment is quoted hereinbelow:

9. According to us, the High Court has totally misconstrued the above GOMs. The portion of the GOMs quoted above clearly lays down that there shall be no waiting list and the selection shall be made equal to the number of posts notified. The purpose was that the vacancies arising due to people leaving the posts must be filled up by subsequent selection and not on the basis of a waiting list. It was clarified that after selection of the candidates and after issue of appointment orders, if the candidate fails to join within the stipulated period, that vacancy should be notified again. This portion of the GOMs admits of only one interpretation that after appointment order is issued and the person appointed does not join, then the vacancy cannot be filled up on the basis of the waiting list or by operating the merit list downwards. This is also clear from Clause 9 of the GOMs, which also clarifies that fallout vacancies due to relinquishment or non-joining of the selected candidates may be notified in the next recruitment. This obviously means that the clause will apply after issue of letter of appointment. There can be no relinquishment and non-joining unless an appointment letter is issued.

10. The position before us is totally different. As pointed out earlier, some of the candidates, who got selected in more than one of the Corporations, were called for verification of their certificates. No appointment order had been issued till this stage. In the meantime, the State issued a clarification, as set out in the Letter dated 1-6- 2016, relevant portion of which reads as under:

"... I am to invite attention to the above subject and reference cited and inform, that the Government after careful examination of the matter hereby relaxes the provision, as a special case under the circumstances, of calling for the candidate on basis for verification of certificates as contained in their notifications as one-time option and permits TSTRANSCO, TSSPDCL and TSNPDCL to fill up the left over notified (advertised) vacancies of Assistant Engineers of their respective utility duty operation the merit list downwards for each category by following other rules prescribed in their respective notification...."

11. We see nothing wrong in this letter. In fact, this is in consonance with the GOMs dated 22-2-1997. The State and the Corporations have supported the case of the appellants. Their stand is that a large number of posts are lying vacant and if fresh selections have to be made, the filling up of the posts shall be delayed. We may also note that the original writ petitioners are obviously below the appellants in the merit list. They cannot be selected in this selection even if the merit list is operated downwards. They cannot be permitted to urge that persons, who are more meritorious than them should not be selected and fresh selection should be made. When the entire GOMs of 1997 is read as a whole, it is amply clear that it will have application only after appointment orders are issued and the posts not filled up after issue of appointment letters shall be notified in the next recruitment.

12. Even otherwise also, we are of the view that this is the only logical way to interpret the GOMs. The GOMs obviously has been issued, keeping in mind a single selection process. Here, we are dealing with a multiple selection process for different Corporations. The more brilliant candidates were selected in more than one of the Corporations. They obviously cannot join in more than one Corporation. Therefore, if the top four candidates have been selected in all four Corporations, they could only join one of the Corporations and twelve posts would remain vacant, if the interpretation given by the High Court is accepted. This would lead to a position where large number of vacancies would not be filled up.

13. On a conjoint reading of Clauses 8 and 9 of the GOMs dated 22- 2-1997, we are clearly of the view that this was not the purpose of the GOMs. According to us, the GOMs would come into operation only after appointment letters were issued and, therefore, if a person, who is at number one position, goes to one of the Corporations and is given the appointment letter, he may not go to other three Corporations for verification of the certificate. That does not mean that the first post in all the Corporations should now lie vacant.

14. We may also add that the High Court did not note an earlier Division Bench judgment of the Andhra Pradesh High Court in *State of A.P. v. Bhagam Dorasanamma*, wherein the High Court had correctly interpreted the GOMs in the following manner: "19. The process of recruitment starts from the date of notifying the vacancies and attains finality with the act of issuing appointment order, offering the post to the selected candidate. In the absence of reaching the said finality of issuing appointment order in respect of subject vacancy, the question of either relinquishment or non-filling of the same does not arise. The interpretation sought to be given by the authorities for denying appointment to the applicant/1st respondent herein is contrary to the very spirit and object of service jurisprudence and we find total lack of justification on the part of the petitioner authorities and such action undoubtedly tantamounts to transgression of Part III of the Constitution of India in the event of testing the same on the touchstone of Article 16 of the Constitution of India."

He further relied in the case of *Jitendra Kumar Singh v. State of U.P.* reported in (2010) 3 SCC 119. Para 40, 83, 84 and 85 of the judgment is quoted hereinbelow:-

40. The Division Bench in the impugned judgment has traced the history of reservation at considerable length. It has also distinguished between vertical and horizontal reservations. It has also correctly concluded that in case of horizontal reservation, the carry-forward rule would not be applicable. All these issues are no longer res integra, in view of the authoritative judgment rendered in *Indra Sawhney*. It can also be no longer disputed that reservation under Article 16(4) of the Constitution of India aims at group backwardness.

It provides for group right. Article 16(1) of the Constitution of India guarantees

equality of opportunity to all citizens in matters relating to employment. However, in implementing the reservation policy, the State has to strike a balance between the competing claims of the individual under Article 16(1) and the reserved categories falling within Article 16(4).

83. We have considered the submissions made by the learned counsel. It is accepted by all the learned counsel for the parties that these vacancies had to be filled by applying the principle of horizontal reservation. This was also accepted by the learned Single Judge as well as by the Division Bench. This is in consonance with the law laid down by this Court in Indra Sawhney case: (SCC pp. 735-36, para 812) "812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all 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. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

The aforesaid principle of law has been incorporated in the Instructions dated 26-2-1999.

84. Paras 2 and 4 of the aforesaid Instructions which are relevant are hereunder:

"2. The reservation will be horizontal in nature i.e. to say that category for which a woman has been selected under the aforesaid reservation policy for posts for women in public services and on the posts meant for direct recruitment under the State Government, shall be adjusted in the same category only;

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4. If a suitable woman candidate is not available for the post reserved for women in public services and on the posts meant for direct recruitment under the State Government, then such a post shall be filled up from amongst a suitable male candidate and such a post shall not be carried forward for future;"

The learned Single Judge whilst interpreting the aforesaid, has observed that it does not specifically provide for posts which are not filled up by women candidates to be filled up from the male candidates. This view is contrary to the specific provision contained in Para 4. The aforesaid provision leaves no matter of doubt that any posts reserved for women which remain unfilled have to be filled up from amongst suitable male candidates. There is a specific prohibition that posts shall not be carried forward for future. Therefore, the view expressed by the learned Single Judge cannot be sustained.

85. We may also notice here that in view of the aforesaid provisions, the State has not carried forward any of the general category posts reserved for women and outstanding sportspersons. Furthermore, all the posts remaining unfilled in the category reserved for women have been filled up by suitable male candidates, therefore, clearly no post has been carried forward. Therefore, the mandate in Indra Sawhney and G.O. dated 26-2-1999, have been fully complied with. We are also of the opinion that the conclusion recorded by the Division Bench is without any factual basis. The factual position was brought to the notice of the Division Bench in the Recall/Modification Application No. 251407 of 2007. However, the recall/modification application was rejected. We are, therefore, of the opinion that the Division Bench erred in issuing the directions to the appellants to fill in the unfilled vacancies reserved for women candidates from suitable male candidates. This exercise had already been completed by the appellant State.

By way of referring these two judgments, he submits that the law is well settled and in the light of the advertisement and the Rule, the respondent-State is required to fill up the vacancies by the other persons. He submits that the case of the petitioners are fit to be considered by the respondents for rest of the vacancies which has not been filled up. He refers to page 39 of the counter affidavit filed by respondent-JSSC and submits in that documents unfilled vacancy is shown and that is required to be filled up.

Per contra, Mr. P.A.S. Pati, learned counsel appearing for the respondent-State submits that in the light of Rule framed under Article 309 of Constitution of India dated 20.01.2014, Rule 5(ii) is crystal clear wherein 33% reservation for the female have been made. He submits that so far post of female candidates are concerned, in the Rule it is silent about filling of the said post. He submits that, that is why vacancies of female candidates are required to be carry forwarded in terms of resolution dated 27.11.2012. Vacancy is required to be filled up in the next advertisement. He refers to the Clause XV and submits that in the vacancy, female candidates have not been fulfilled in terms of this Rule that required to be filled up by way of another advertisement. He distinguishes the judgment relied by Mr. Tandon in the case of Munja Praveen (supra) and submits that in the case of Munja Praveen, the Rule was there on that line, however, in the case in hand, the Jharkhand Government has already made a Rule for filling of the vacancy of the female candidates. He submits that identical position is also shown in the

case of Jitendra Kumar Singh (supra). On these facts, these judgments are distinguishable. He further submits that this aspect of the matter has been considered by the Division Bench of this Court in L.P.A. No.308 of 2015. He submits that the writ petition is fit to be dismissed in the light of the judgments rendered by the Division Bench in L.P.A. No.308 of 2015.

Mr. Sanjay Piprawall, learned counsel appearing for the respondent-JSSC submits that pursuant to the advertisement, the vacancies have been filled up in terms of the advertisement as well as Rule framed by the Government of Jharkhand. In this regard, he also refers to the Rule 5(ii) and submits that in the light of this Rule, vacancy of female candidates are required to be filled up by way of another advertisement. He further submits that the candidates were not available under trained Home Guard under different categories and as such in terms of Rule 5(iv) of the Appointment Rules and Clause 3 of the advertisement, the unfilled vacancies of trained Home Guard category were included in vacancies of other categories candidates and accordingly the recommendation for appointment on the post of Constable in District Armed Police Force and Jharkhand Armed Police was made by the JSSC. By way of referring para 20 of the supplementary counter affidavit, he submits that the figures have already been disclosed about the appointment pursuant to that advertisement. He also relied on the judgment of Division Bench of this Court in L.P.A. No.308 of 2015. On this ground, he submits that there is no merit in the writ petition and writ petition is fit to be dismissed.

In the light of above facts and considering the submission of learned counsel appearing for the parties, the Court has ventured to go through the materials available on record and on perusal of advertisement, it transpires that in Clause 3, it has been disclosed that in case of non-availability of the candidates under the Home Guard category, the vacancy will be filled up by the persons who are not coming under the Home Guard category. Rule 5 (iv) of the Rule dated 20.10.2014 made under Article 309 of the Constitution of India is also on the same line. Rule 5(ii) stipulates of the said Rules about the 33% reservation for the female candidates. In the advertisement, there is no disclosure of the fact that in case of unfilled vacancy of female candidates how that will be filled up. In that view of the matter, the Rule 5(ii) will apply which shows that 33% vacancy is there and the filling of that vacancy is silent in the advertisement. On perusal of Rule dated 27.11.2012, particularly Rule XV which stipulates that in a case of issuance of appointment letter in favour of any candidate and if did not join on the post, the same will be carry forward in the next vacancy. It also speaks of carry forward with regard to other reasons also. This aspect of the matter has been considered by the Division Bench of this Court in L.P.A. No.308 of 2015. In the cases relied by Mr. Tandon Munja Praveen and Jitendra Kumar Singh (supra), the Rule with regard to the female vacancies were not there and that is why the Hon'ble Supreme Court has decided the issue on the Rule of the State in those cases. The resolution dated 27.11.2012 clearly stipulates that the vacancies arising of non-joining of any candidates and otherwise and other reasons also,

will be filled by way of next vacancies. The advertisement is silent on the point of filling of vacancies of the female candidates. The page 39 of the counter affidavit of JSSC on which Mr. Tandon has put much emphasis that vacancies are there, on perusal, it is crystal clear that these vacancies are with regard to female candidates. Examination has already been completed in the year 2018.

As a cumulative effect of the aforesaid discussions, no relief can be extended to the petitioners.

Accordingly, the writ petitions are dismissed.