
(2002) 02 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5347 of 2001

Shruti Sharma

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Citation : (2002) 4 MPLJ 380

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Ajay Raizada, For respondent Nos. 1 and 4 B.N. Dubey, For respondent Nos. 2 and 3 and Shashank Shekhar, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner seeks her admission in B. Tech. (Agriculture Engineering Course). Petitioner submits that respondents Nos. 5, 6 and 7 were illegally admitted in the general category female candidate by wrongly applying the horizontal reservation. The respondents Nos. 5, 6 and 7 on their own merits were not to fall in the unreserved/general category candidates in case of vertical reservation.

Petitioner submits that Pre Agriculture Test Examination was conducted by Professional Examination Board/respondent No. 4. Petitioner obtained 440.28 marks out of 900. She was called for counselling as she was to be admitted. Call letter dated 3-9-2001 (Annexure P/5) was issued to the petitioner. Petitioner appeared before the Counselling Committee on 17-9-2001. Admission was almost finalized. She was asked to deposit the fee as per challan No. 3412 dated 17-9-2001 issued by Dean, Agriculture Engineering, Jabalpur/respondent No. 3. She was then called back and informed that other female candidates having more marks than her are available on applying the horizontal reservation. In an illegal manner the petitioner was deprived of admission and against horizontal

reservation for woman of general category by wrongly applying the horizontal reservation candidates of other backward classes, respondents Nos. 5, 6 and 7 were accommodated.

Petitioner submits that question of admission is governed by rules framed by Madhya Pradesh Professional Examination Board. For admission to Pre Agricultural Tests Conduct of Examination and Admission Rules 2001 contained in Chapter-III of the brochure published by Madhya Pradesh professional Examination Board for PAT 2001. Petitioner submits that Rule 3.3.2.3 provides for horizontal reservation for the women candidates to the extent of 30% in any category while applying 30% horizontal reservation. In case women candidates are not available in that event the vacancies shall be filled by the male candidates of that category. Rule 3.3.2.3 deals with the reservation which is quoted below:--

Petitioner submits that method of 3.5.9.2 has not been applied while making the horizontal reservation which has resulted into injustice to the petitioner. Initially the list prepared was proper and subsequently the matter was unnecessarily confused by the respondents No. 2 and 3 and she has been illegally deprived of admission. Therefore, she seeks the writ of mandamus directing the respondents to grant admission and to quash the allotment of seats made to the ineligible persons.

The return has been filed by respondents No. 2 and 3. It is contended that their action is as per Rule 3.5.9.2. Since the marks of respondents No. 5, 6 and 7 were more, they were rightly admitted against unreserved category seat.

In para 3 of the return, respondents No. 2 and 3 aver that Clause 3.5.9.2 clearly lays down that those candidates of reserved category whose scoring is more than last successful candidate of unreserved category shall be counted against unreserved category and admitted as such and that number of last successful candidates in unreserved category shall be removed from the merit list of unreserved candidate and to that extent the quota of reserved category shall be treated as unfilled. But this will not be made applicable to Horizontal reservation. It has also been averred by the respondents No. 2 and 3 that the respondents No. 5 and 6 have obtained 448.40 and 456.00 marks respectively in pre-test whereas the petitioner obtained only 440.28 marks. Since the marks obtained by respondents No. 5, 6 and 7 were more they were admitted against unreserved category and that action is not illegal in any manner. respondents No. 2 and 3 also placed reliance on the above quoted rules. respondent No. 7 was added subsequently in the writ petition.

A rejoinder was filed by the petitioner. Petitioner contended that while applying the horizontal a candidate of reserved category could not be brought to that of unreserved category if he was not falling in the unreserved category seats while applying the vertical reservation. Thus the action of the respondents has resulted into gross injustice. The candidates of reserved category of other backward class

were brought in the unreserved category in an illegal manner while applying horizontal reservation.

This Court directed the production of the original forms of the petitioner and respondent No. 5 and 6. Perusal of the forms indicates that petitioner Shruti Sharma applied in unreserved category. respondent No. 5 Ku. C. Malviya applied in OBC woman category. respondent No. 6 Ku. B. Patel also applied in OBC category. It is not disputed that respondent No. 7 applied for OBC category.

The counsel for the petitioner submits that rules have not been properly applied while making the horizontal reservation. Overlapping is not permissible as respondents No. 5, 6 and 7 were not falling within the unreserved category. While making horizontal reservation, the seats have to be confined to the concerned category. Firstly they are to be filled by the women of that category and if they are not available in that case remaining vacancies is to be filled by the male candidate of that category. The respondents No. 5, 6 and 7 were not able to secure the admission in unreserved category as per the merit list of unreserved category which was having only 20 seats out of which 6 seats were reserved for female candidate and one for freedom fighter candidate. The submission of the counsel for the petitioner is that respondent No. 5, 6 and 7 did not fall within first 20 candidates as per vertical merit list. Thus they could not be brought in first 20 while applying horizontal reservation.

A statement has been supplied by respondents No. 2/3 of the marks obtained by the different candidates admitted to unreserved, SC/ST and OBC category which is quoted as below:--

A

Unreserved/Nil (Total Seat 13) Name

PAT marks

Remark

Rajeev Yadav

60

-

Sarvesh Kr. Mishra

38

-

Mobeen Ahmed Monsoori

39

-

Akhil Kr. Chanderia

47

-

Sunil Kumar Sen

53

-

Raj Kumar Leve

27

-

Hemant Kumar Hedau

20

-

Kailash Patel

40

-

KedarilalDhakar

76

—

PankajPandya

04

-

AwadheshShukla

72

-

Amit Kumar Jain

00

-

Rajeev Agnihotri

45

-

B.

Unreserved/Female (Total Seat 06)

Ku. Krishna Tiwari

53

-

Ku. NidhiMishra

90

-

Ku. PriyankaDani

23

-

Ku. VijushAgrawal

61

-

Ku. Bharti Patel

00

-

Ku. Chandra RekhaMalviya

40

-

C.

Unreserved/Freedom Fighter (Total Seat 01)

Ku. AnjaliBhargava

28

-

D.

SC/Nil (Total Seat 03)

Mahendra Kr. Khobragade

50

-

HarishPatil

35

-

Rakesh Kr. Meshram

06

-

E.

SC/Female (Total Seat 02)

Ku. SeemaRangare

27

-

Ku. MohiniAhirwar

01

-

F.

SC/Krishak (Total Seat 01)

SandeepChoudhary

56

Converted to SC/Nil

G.

ST/Nil (Total Seat 05)

Ku. RajeshwariUikey

13

-

Harish Kr. Ahirwar

11

Converted to SC/Nil

Chandra Gupta Rangare

78

-do-

Prosenjit Kr. Bala

47

-do-

Vikram Singh Yadav

43

Converted to SC/Nil to OBC/Nil

H.

ST/Female (Total Seat 02)

AnupShakya

87

Converted to ST/Nil to SC/Nil

Ajay Ahirwar

12

-do-

I.

ST/Krishak (Total Seat 01)

Devi Saran Bagri

35

-

J.

OBC/Nil (Total Seat 04)

I.

ShamdasBairagi

86

-

RamakantNiranjan

08

-

SachinSoni

10

-

AryabhusanArya

82

-

K.

OBC/Female (Total Seat 02)

Ku. Arti Patel

18

-

Ku. Sarada Patel

26

-

TOTAL SEAT ADMITTED - 40

Dean College of Agricultural of Engineering J.N. Krishi Vishwa Vidyalaya
JABALPUR (M.P.) 482004

Learned counsel for the respondents No. 2 and 3 submits that since respondent No. 5, 6 and 7 have obtained higher marks, they have been rightly admitted in unreserved category.

Learned counsel appearing for the Professional Examination Board submits that the stand taken by the petitioner appears to be sound while applying horizontal reservation. A person who was not falling in the merit list of unreserved category as per vertical reservation could not be brought from other category to accommodate them against horizontal quota of unreserved category or vice-versa to other categories. The stand taken by the Professional Examination Board is right for the reasons to be discussed hereafter.

The counsel for the respondent No. 7 has supported the action and submits that respondent No. 7 has pursued the studies and appeared in one semester, if any fault is found they should not be saddled with any penalty as they could have been accommodated in the female candidates of their category. Shri Shashank Shekhar, learned counsel further submits that since the respondent No. 7 was admitted, a direction be given to the respondent to create an additional seat.

Question is of interpretation of the rules and how the reservation has to be worked out. The matter is no more res integra. The Apex Court has considered the question in Anil Kumar Gupta and Others Vs. State of U.P. and Others, . In para 18 Their Lordships held as under:--

"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 per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of "OBC, SC and ST quotas). 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 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 OC quota."

What is gatherable that reservation has to be worked out in following manner:--

- (i) Unreserved quota has to be filled on the basis of merit;
- (ii) then filled up each of the social reservation quotas i.e. SC and ST and OBC;
- (iii) then step would be to find out how many candidates belong to the said reservation have been selected on the above basis. If the quota for horizontal reservation is already satisfied- in case it is horizontal reservation - no further question arises;
- (iv) in case the horizontal reservation is not satisfied 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.
- (v) The process of horizontal reservation has to be applied separately to each of the vertical reservation.

In para 15 of Anil Kumar Gupta's case (Supra), Their Lordships held that in view of the ambiguous language employed in the notification, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalized reservations. Their Lordships observed that where the seats for reserved horizontal reservations are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalized reservations. Their Lordships emphasized the

special reservation would be a watertight compartment in each of the vertical reservation classes. In para 15, Supreme Court held as under:--

"15. On a careful consideration of the revised notification of 17-] 2-1994 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 intertransferable, it would be a case of compartmentalized reservations."

In the instant case if the merit list of unreserved category is taken into consideration, the persons shown in the unreserved category above from S. No. 1 Rajeev Yadav to S. No. 3 Rajeev Agnihotri fall in the unreserved category as per merit and as per marks obtained by the candidates of OBC category Shamdas Bairagi, Ramakant Niranjana, Sachin Soni and Aryabhusan Arya all male candidates given admission against OBC category mentioned at serial J of the admission list quoted above would have obtained admission in unreserved category without horizontal reservation in addition to Ku. Krishna Tiwari and Ku. Nidhi Mishra so as to complete 19 seats of unreserved candidate category. One seat of freedom fighter in unreserved category is not in dispute on which admission was given to Ku. Anjali Bhargava.

It is clear that as per vertical merit list of unreserved (general category) Ku. Priyanka Dani, Ku. Vijush Agrawal, Ku. Bharti Patel and Ku. Chandra Rekha Malviya mentioned in admission list category B at serial No. 3 to 6 could not have given admission. They came in only due to horizontal reservation.

As the horizontal reservation was applied and 30% reservation i.e. six seats are reserved for women, unreserved category, male candidates having higher marks falling in vertical merit list were taken out namely Shamdas Bairagi, Ramakant Niranjana, Sachin Soni and Aryabhusan Arya they incidentally were of OBC category mentioned at serial No. J as their marks were 497.86, 492.08, 489.10 and 488.82 respectively. Thus, they were having higher marks than all the candidates of unreserved female category who were admitted. These persons of OBC category could not be admitted against unreserved category seats owing to application of horizontal reservation for woman. It is thus clear that as per vertical reservation, none of the respondents No. 5, 6 and 7 were to be admitted against unreserved merit category.

The question is when respondents No. 5, 6 and 7 were not to be admitted as per vertical reservation in the unreserved category whether respondents No. 5, 6 and 7 who were of OBC category (OBC woman) could be brought to the unreserved female quota. The Rule 3.3.2.3 in the instant case is clear and unambiguous and in the application of horizontal reservation if 30% women of that category are

not available in that case the seat has to be filled by the male candidates of that category. The Supreme Court in Anil Kumar Gupta's case (Supra) has laid down if the quota fixed for horizontal reservations is already satisfied by the vertical reservation - in case it is an overall horizontal reservation, no further question arises of doing further exercise of applying the horizontal reservation. 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. The Rule 3.3.2.3 does not provide that OBC category woman can be brought to General category in case they are not falling within the vertical reservation into the unreserved category merit list. Further clue is provided that while applying horizontal reservation intermixing of the categories is not to be done as was done in the instant case by removing four male candidates of higher merit. OBC category women were brought to unreserved category seats of woman which exercise was impermissible as per Rule 3.3.2.3 and prohibited specifically in the case of horizontal reservation as per Rule 3.5.9.2 quoted above.

Learned counsel for respondent No. 2 and 3 has placed reliance on a decision of Division Bench of this Court in Subrat Singh vs. Director, Medical Education and others. (W.P. No. 5724/2000 decided on 31-1-2001). In that case petitioner Subrat Singh applied in general category. He opted for Freedom Fighter Class. Six candidates including the petitioner secured 928 marks out of 1200 marks. On the basis of inter se merit the petitioner was placed at serial No. 4 in the waiting list of the General Category. In class of Freedom Fighter, the petitioner had secured 5th position. petitioner wanted admission against freedom fighter class. petitioner claimed that he should have been admitted against General not against Freedom Fighter quota. This Court considered the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., and also Anil Kumar Gupta's case (supra). In para 13 this Court answered the question.

"13. The Rules in vogue are to be interpreted on the anvil of the aforesaid decision of the Division Bench. As I have stated earlier both the Rules are to be considered harmoniously. If they are read in harmony the only logical conclusion would be that if a candidate who belongs to a class but has expressed his desire not to be included in the class he would be treated in his category but if he has given an option to be treated in a particular class his case has to be considered in that class and he cannot advance a claim to be treated as a candidate in the general category. This view of mine is in consonance with the judgment rendered in the case of Ku. Priya Gupta (supra) and hence, the submission of Mr. Singh that the petitioner is entitled to the benefit to be treated in the General Category because of the note appended to Rule 2.3.1 is unacceptable.

The decision in Subrat Singh's case (supra) is of no utility to the petitioner as per the findings given in para 13 by the Division Bench of this Court.

As already mentioned above, horizontal reservation was not properly applied. Person who was not falling in unreserved category could not be brought in the

merit list of 19 candidates while applying the horizontal reservation from reserved category as that is against the rule expressly contrary to Rule 3.3 2.3 and 3.5.9.2 and the decision of the Supreme Court in Anil Kumar Gupta's case (supra).

It is clear that the petitioner was initially called for counselling. She was given call letter rightly for admission and her name was rightly included against the woman category candidate as per horizontal reservation. Challan was issued to her for depositing the requisite fee but all of a sudden view was changed and she was informed that she could not be admitted as per horizontal reservation OBC category candidates (woman) have to be accommodated. Merely obtaining the higher marks in OBC category is not enough once the vertical reservation was applied for 19 seats. respondents No. 5, 6 and 7 were not entitled to be admitted against 19 seats as per their merits in unreserved category. Thus, they were illegally brought to the unreserved category in contravention of the rules while applying horizontal reservation. May be they were having higher marks but they were not enough to accommodate them in the vertical reservation. They had not applied to unreserved woman category. In case general category woman who had applied for admission against that quota were not available in that case the unfilled seats were to be filled by male candidates as per rules. Rule in question is compartmentalized for category applied in the case of horizontal reservation no crossing of bar of category for which application was made is permissible under Rules in question of PAT.

Shri Shashank Shekhar, learned counsel for the respondent No. 7 has prayed that a direction should be given not to disturb the admission and to create the seat in case any candidate has to go. Obviously in the absence of creation of the seat, last candidate has to go. It is apparent that the petitioner has been wrongly deprived of admission to the B. Tech Course. Since the horizontal reservation has not been properly applied, respondents No. 5 and 6 as per their merit were entitled to be admitted against OBC female category, their admission is not being disturbed. respondent No. 7 Ku. Sarda Patel for whom Shri Shashank Shekhar appears, may be one of the affected person, by properly applying the horizontal reservation. Let that exercise be done for applying the horizontal reservation in OBC category by the respondent No. 2 and 3. It is not disputed that in case horizontal reservation for woman is applied category-wise in that event petitioner was entitled to admission in unreserved female category as per horizontal reservation and she was issued call letter for admission owing to her entitlement.

In the result, the writ petition is allowed. The action of respondents while applying the horizontal reservation and bringing respondents No. 5 and 6 to unreserved Female Category was clearly impermissible. Their admission is not to be disturbed. They have to be taken back to OBC/Female Category to which they applied or at such place they fall as per merit. The petitioner has been wrongfully deprived of admission in unreserved Female Category. She be given admission. Last candidate of OBC category has to go. In case there exists any vacancy, it

would be open to the respondents to consider to accommodate person who has to give a place to the petitioner. It is open to the State of M.P., respondent No. 1 and 2 and 3 to consider to create a post and to accommodate the outgoing candidate. No adjudication is made by this Court nor a positive direction can be issued to create a post but non-existence of a vacancy or noncreation of the seat is not to come in the way of the petitioner as she has been wrongfully deprived of admission. petitioner was allowed to attend classes in B. Tech (Agriculture Engineering) as per order dated 14-12-2001 passed by another Bench of this Court. She shall continue to attend the classes and be given regular admission.

Writ petition is allowed. Costs on parties.

Writ petition allowed.