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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 30th OF APRIL, 2024

WRIT PETITION No. 9692 of 2021

BETWEEN:-

1. **PUSHPENDRA SINGH RAJPOOT S/O THANE RAM SINGH, AGED ABOUT 25 YEARS, R/O NANHWARAKALA NO.2 WARD NO.3 BHADAURA DISTT. KATNI (MADHYA PRADESH)**
2. **SUNIL SHARMA S/O KESHAV SHARMA, AGED ABOUT 28 YEARS, OCCUPATION: NOT MENTION 128 BATERA N.H. 12 BARELLI, RAJWADA, RAISEN (MADHYA PRADESH)**
3. **SATYENDRA KUMAR TIWARI S/O SHIVANAND TIWARI, AGED ABOUT 37 YEARS, OCCUPATION: NOT MENTION WARD NO. 9, SATPURA ROAD NEAR BIJLI KHAMBA, PANDAPURVA, AMIL KONI, DISTT. REWA (MADHYA PRADESH)**
4. **RAHUL TIWARI S/O VISHNU PRASAD TIWARI, AGED ABOUT 26 YEARS, OCCUPATION: NOT MENTION VILLAGE AND POST KHAJURI AND KOKUL, TEH. KHILCHIPUR, KHAJURI GOKUL, RAJGARH, DISTT. RAJGARH (MADHYA PRADESH)**
5. **PRADEEP KUMAR SINGH S/O KAMLESHVAR SINGH, AGED ABOUT 31 YEARS, OCCUPATION: NOT MENTION POST PIPROHAR, DIST. SIDHI (MADHYA PRADESH)**
6. **YOGESH TIWARI S/O SAHASHRAM TIWARI, AGED ABOUT 36 YEARS, OCCUPATION: NOT MENTION NEW ABADI, EIDGAH ROAD, AMARWARA, DISTT. CHHINDWARA (MADHYA PRADESH)**

.....PETITIONERS

(NONE)

AND

1. **THE STATE OF M.P. THR. ITS SECRETARY**

DEPARTMENT OF HEALTH AND FAMILY WELFARE VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. COMMISSIONER HEALTH DIRECTORATE HEALTH SERVICES SATPURA BHAWAN BHOPAL, DISTT. BHOPAL (MADHYA PRADESH)
3. DIRECTOR PROFESSIONAL EXAMINATION BOARD CHAYAN BHAWAN, MAIN ROAD NO. 1 CHINAR PARK EAST BHOPAL (MADHYA PRADESH)
4. DIRECTOR NATIONAL HEALTH MISSION, M.P. 8 ARERA HILLS, OLD JAIL ROAD, BHOPAL (MADHYA PRADESH)
5. GENERAL ADMINISTRATION DEPARTMENT (GAD) THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR - PANEL LAWYER)

WRIT PETITION No. 10154 of 2022

BETWEEN:-

ANKUSH MISHRA S/O SHRI RANGNATH MISHRA, AGED ABOUT 24 YEARS, OCCUPATION: STUDENT WARD NO. 5 PANDHAVNAGAR SHAHDOL DISTRICT SHAHDOL M.P. (MADHYA PRADESH)

....PETITIONER

(BY SHRI ANIL KUMAR DWIVEDI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY DEPARTMENT OF HEALTH AND FAMILY WELFARE VALLABH BHAWAN BHOPAL M.P. (MADHYA PRADESH)
2. THE COMMISSIONER (HEALTH) DIRECTORATE HEALTH SERVICES SATPURA BHAWAN BHOPAL M.P. (MADHYA PRADESH)
3. THE DIRECTOR PROFESSIONAL EXAMINATION BOARD, CHHAYA BHAWAN MAIN ROAD NO. 1

CHINAR PARK (EAST) BHOPAL M.P. (MADHYA PRADESH)

4. THE DIRECTOR NATIONAL HEALTH MISSION M.P. (PUBLIC HEALTH AND FAMILY WELFARE GOVERNMENT OF M.P.) DEPARTMENT 8 ARERA HILLS OLD JAIL ROAD BHOPAL M.P. (MADHYA PRADESH)
5. GENERAL ADMINISTRATIVE DEPARTMENT THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR - PANEL LAWYER)

This petition coming on for admission this day, the court passed the following:

ORDER

Petitioners' contention is that they were candidates for appointment to the post of Laboratory Technician. Professional Examination Board had issued an advertisement for 219 posts of Laboratory Technician.

2. It is submitted that 10% quota for EWS category, if would have been applied, then 22 posts should have been earmarked for EWS category but, respondents have earmarked only 4 posts under EWS category, as a result of which, petitioners despite of merit, could not get selected on the post of Laboratory Technician under the EWS category.

3. Though Shri Bhatnagar, learned Panel Lawyer, prays for time to file reply and the respondent No.3 has filed a reply, saying that they have nothing to do with it, but it is a sad story about the affairs of the State that they are not able to address the basic issue promptly and such lethargy and indifference on the part of the State results in dragging of frivolous litigation.

4. Provisions contained in Article 16(6) of the Constitution of India, which deals with Reservation for Economically Weaker Section, reads as under :-

"16(6). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category."

5. Thus, the reservation for economically weaker sections of citizens is only available in those classes which are not covered in clause (4) of Article 16.

Clause (4) and (4A), reads as under :-

"(4). Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

(4A) Nothing in this article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

6. Thus, it is evident that plain reading of Article 16(6) leaves no iota of doubt that reservation for economically weaker section excludes SC, ST and OBC category.

7. Thus, it is evident that EWS reservation is available only for General category and is not extendable to OBC, SC or ST. Thus, when examined from this perspective, then total posts available under the unreserved category in the cadre of Laboratory Technician is 34, then earmarking 4 posts under the EWS

category cannot be said to be arbitrary, because there could not have been 10% reservation of total number of posts of 219 out of which 122 are for the OBC, 46 for ST and 13 for SC category.

8. In view of such facts, since earmarking of 4 posts under the EWS category is in consonance with the constitutional provision, petition is devoid of merit and is hereby **dismissed**.

(VIVEK AGARWAL)
JUDGE

A.Praj.

