

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

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 23rd OF OCTOBER, 2024

WRIT PETITION No. 15358 of 2023

HARIOM YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Rameshwar Singh Thakur - Advocate for petitioner.

Shri B.D.Singh - Advocate for respondents/State.

Shri Varun Jain - Advocate for respondent no.6

ORDER

Per: Justice Sanjeev Sachdeva

1. Petitioner seeks modification in his order of appointment and seeks appointment as per his respective choice in a school of School Education Department, Harda.

2. An advertisement was issued by respondent no.6 i.e. Professional Examination Board for 7429 posts of Directorate of Public Instructions and about 11,000 posts for Tribal Welfare Department. Petitioner filled his application and submitted his candidature for the post of Prathmik Shikshak. Petitioner had applied in OBC category. When the result was

declared it transpired that petitioner has scored marks which was much higher than marks obtained by candidates in the unreserved category and accordingly petitioner was migrated to unreserved category.

3. Clause 15 of the subject advertisement dated 27.10.2022 provided for stages of selection and Clause 15.6 of the stages of selection *interalia* provides as under:-

(15.6)"अंतिम चयन सूची में चयनित अभ्यर्थियों को पोर्टल पर दर्शाई गई रिक्तियों के आधार पर पदस्थापना हेतु विकल्प च्वाइस फिलिंग करनी होगी। पदस्थापना हेतु रिक्त पदों की सूची में स्कूल शिक्षा विभाग एवं जनजातीय कार्यविभाग दोनों की शालाएं सम्मिलित होंगी। स्कूल के आगे (TWD) अथवा (SED) लिखा होगा। अभ्यर्थी दोनों विभागों की शालाओं अथवा किसी एक विभाग की शाला का चयन कर सकता है किन्तु संबंधित विभाग की प्रवर्गवार रिक्तियों के आधार पर मेरिट कम में उसे जो विद्यालय आवंटित होगा, वह विद्यालय जिस विभाग का होगा उसे उसी विभाग द्वारा नियुक्ति दी जाएगी। किसी भी स्थिति में विभाग परिवर्तन संभव नहीं होगा। च्वाइस फिलिंग के आधार पर अभ्यर्थी यह दावा नहीं कर सकेगा कि उसे विकल्प अनुसार ही पदस्थापना दी जाए। अतः अभ्यर्थियों को सलाह दी जाती है कि वे न्यूनतम 50 अथवा अधिक से अधिक विकल्पों का चयन करें अन्यथा मेरिट एवं जिलावार प्रवर्गवार विभाग वार रिक्तियों के कम में उन्हें विकल्प न मिलने पर विभाग द्वारा रिक्त पदों पर उनकी पदस्थापना की जाएगी।"

4. Clause 15.6 stipulated that out of the final select list, the candidates would be placed in terms of the choice of posting that they will have to choose. The candidates were required to give options against the school. It was indicated as to whether the school belongs to a Tribal Welfare Department (TWD) or School Education Department (SED). The candidate would be required to choose school of Tribal Welfare Department(TWD) or School Education Department(SED) however, allocation of seats would be based on the merit of the candidate.

5. As per the petitioner, petitioner had opted for GPS Gomgaon, Harda, a school of School Education Department as his choice no.71. Petitioner contends that the school opted by the petitioner was not allotted to the

petitioner, but he was allotted a school in TWD and the choice which was filled by the petitioner has been given to a person who is lower in merit to the petitioner.

6. It is pointed out that the rank that petitioner has secured is 1439 and the GPS, Gomgaon school of School Education Department in District Harda has been allotted to the candidate who has secured a rank of 2185. Learned counsel submits that merit has proved to be a demerit for the petitioner and he has been allotted a school in the Tribal Welfare Department whereas he opted for a school of School Education Department which has been allotted to a candidate lower in merit.

7. Learned Deputy Advocate General appearing on behalf of respondents/State submits that since the petitioner was treated as unreserved candidate based on his merit, his allocation of seat was done as per the unreserved category and thereafter, the left over seats were allotted in order of merit to the reserved category. He further submits that the posts have already been filled and it would now be very difficult to give the petitioner his choice.

8. Reference may be had to the judgment of the Supreme Court dated 24.02.2022 in *Civil Appeal No.7663 of 2021 Praveen Kumar Kurmi vs. State of M.P. and Others* wherein, the Supreme Court has held that the working out of reservation policy is in accordance with the judgment of the Supreme Court in *Indra Sawhney and Another vs. Union of India, 1992 Supp 3 SCC 217*, however, the allocation of service would be based on merit and a more meritorious candidate would not be put to disadvantage on account of working out of the reservation policy in terms of judgment

of the Supreme Court in *Indra Sawhney (supra)*.

9. The supreme Court in *Praveen Kumar Kurmi(supra)* has held as under:-

"In view of the aforesaid position, we are not required to pen down a detailed judgment but would only like to make some observations so that the problem doesn't arise in the future. There is no cavil to the proposition sought to be advanced by learned counsel for the respondent that the manner of working out of the reservation policy is in accordance with the judgment of this Court in Indra Sawhney & Anr. Vs. Union of India & Anr. 1992 Suppl. 3 SCC 2017. However, the allocation of the service is a different aspect. The appellant got selected, on merit without being required to avail of the benefit of the reservation. If he had availed of the benefit of the reservation, he would have been allotted District Police Force. He has been allotted Special Armed Force. The quibble I was only with the particular service being allocated to the appellant and the result of what the respondents did was that the person lower in merit to the appellant who in fact availed of the reservation policy benefit was entitled to the District Police Force while the appellant was denied his first preference and allotted the Special Armed Force.

This issue is really no more res integra in view of a catena of judicial pronouncements¹ for the proposition that the scenario where a person, though from the reserved category, is not required to avail of the benefit of the same on account of his merit, would be required to be adjusted against the general seat, at the same time it should not work out to the disadvantage of such a candidate and he may not be placed in a more disadvantageous position than the other less meritorious reserved category candidates.

We have penned down so to ensure that the respondents do not find themselves in a predicament as in the present case for the future.

It is directed that the appellant would be entitled to the first preference of District Police Force with all benefits of pay and seniority of that force from the date he joined the Special Armed Force.

The civil appeal is accordingly allowed, leaving parties to bear their own costs."

10. As per the Supreme Court though working out of the reservation policy is in accordance with *Indra Sawhney (supra)*, wherein a person who applies in the reserved category however secures marks more than the cut off marks for an unreserved category, is to be treated as an unreserved candidate and allotted a seat in order of merit as per the unreserved

category, the reserve seat which then falls vacant is allotted to an unreserved category person. However, in terms of the judgment of the Supreme Court in *Praveen Kumar Kurmi(supra)* a more meritorious candidate cannot be put to a disadvantage merely because he secures marks more than cut off for an unreserved candidates.

11. In the instant case, this is exactly what seems to have been done by the department. Petitioner who applied in the reserve category and secured marks more than the cut off marks of the unreserved category, has been put to a great disadvantage. Petitioner as per his merit was entitled to be placed in the School Education Department, whereas petitioner has been allotted a school in the Tribal Welfare Department. The candidate much lower in merit who has secured a seat in the reserved category has been allotted the school opted by the petitioner. The Supreme Court in *Praveen Kumar Kurmi(supra)* has categorically held that a person, though from the reserve category, who is not required to avail the benefit of reservation on account of his merit would be required to be adjusted against the general seat but at the same time that should not work out to disadvantage of such a candidate and he should not be placed in a more disadvantageous position than the other less meritorious reserve category candidate.

12. Petitioner in the instant case being more meritorious, is being put to a more disadvantageous position which cannot be countenanced.

13. Further, learned counsel for the petitioner submits that petitioner is not insisting for his first choice of school at Harda but is willing to be accommodated in any school of the School Education Department in DistrictHarda.

14. In view of the above, the petition is allowed and respondents are directed to allot the choice as per the choice filling in order of merit. In case, there is no vacancy in any school as per his first choice of District, then he shall be allocated a seat in a school of School Education Department in his other chosen districts.

15. Necessary allocation be done by the respondents within a period of four weeks from today.

16. Petition is allowed in the above terms.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE

VPA