



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA**

**&**

**HON'BLE SHRI JUSTICE VINAY SARAF**

**ON THE 12<sup>th</sup> OF NOVEMBER, 2024**

**WRIT APPEAL No. 1304 of 2024**

***BHUPENDRA LODHI AND OTHERS***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

Shri Dinesh Singh Chauhan, learned counsel for the petitioner.

Shri S.S. Chouhan, learned Government Advocate for the respondent/State.

Shri Rahul Diwakar, learned counsel for the respondent no.2.

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**ORDER**

***Per: Justice Sanjeev Sachdeva***

1. Appellants impugn order dated 17.05.2024 whereby the writ petition filed by the Appellants has been dismissed. Appellants who are 49 in number had applied for being recruited as Madhya Pradesh Police Constable in the M.P. Police Constable Test, 2023 both under the Other Backward Class (*OBC for short*) as well as the unreserved category. During the



selection process, all candidates have to qualify a Written Examination and then progress to a Physical Proficiency Test and then are subjected to medical examination and completion of other formalities. The final selection is based on the consolidated result of both the Written and the Physical Proficiency Test.

2. Appellants applied for the post of Constable (General Duty). The examination procedure stipulates a Written Examination and a Physical Proficiency Test. Clause 9 of the advertisement stipulates that seven times, the number of vacancies in order of vertical reservation would be declared qualified for the second stage i.e. for Physical Proficiency Test.

3. Contention of the Appellants is that since consolidated result of both the written and Physical Proficiency Test is the determinative factor for determining the merit of a candidate, Respondent should not make any selection based on the Written Examination and only after the Physical Proficiency Test is conducted only person high in merit of the consolidated result have to be selected.

4. Further, contention of the Appellants is that respondents have published three lists after the Written Examination i.e. one list comprising of seven times 87% of the seats and second list comprises of seven times the 13% in the unreserved category and seven times in 13% in the OBC category.

5. For the purpose of completeness, we may note that there is dispute pending with regard to the percentage of reservation for the OBC category.



Initially in the State, there was reservation of 14% for the OBC category which was sought to be enhanced by the Government from 14% to 27%. Several petitions were filed impugning the decision of the State Government in enhancing the reservation. Interim orders have been passed restraining the State Government from giving effect to the 13% enhanced reservation.

6. Reference may be had to orders passed in *W.P.No.5901/2019 (Ashita Dubey & Ors. Vs. State of M.P. & Ors.)* and other connected petitions wherein this Court directed that the State Government shall not appoint aspirants considering reservation of more than 14% for OBC category. Said petitions now stands transferred to the Supreme Court and are pending consideration before the Supreme Court. However, there is no stay by the Supreme Court of the interim directions issued by this Court imposing a restriction on giving effect to the enhanced reservation.

7. Clause 9 (kha) of the advertisement stipulates that as against the vertically reserved advertised posts, seven times the number of candidates shall be selected for the physical proficiency examination, based on their cut-off marks obtained in the Written Examination.

8. In view of the dispute pending with regard to the extent of reservation for the OBC category i.e. whether it would be 14% or 27%, there is no clarity with regard to 13% seats in the OBC category. However, with regard to 87% seats there is no dispute. Said 87% comprises of 14% reservation for the OBC category and 73% for the unreserved and other reserved categories. For the remaining 13% seats the dispute is as to whether they belong to the unreserved category or are to be treated as reserved for the OBC category.



9. In view of the embargo imposed by this Court in giving effect to the 13% enhanced reservation, Respondent no. 2 has prepared three lists based on the result of the Written Examination. First list comprises of seven times the candidates for 87% undisputed seats. Said candidates qualify for the second stage of the examination, i.e. Physical Proficiency Test. The second list is of seven times the 13% belonging to the OBC category and third list is 13% belonging to the unreserved category.

10. There is logic in the preparation of separate second and third list at this stage and not deferring the preparation of a consolidated OBC list based on the result of the Written Examination and the Physical Proficiency Test as contended on behalf of the Appellants.

11. Candidates who comprise seven times of 87% would, undisputedly, based on their merit qualified for the second stage of the selection process. If the preparation of the list for OBC candidates is deferred to the second stage i.e. on the basis of the combined result of stage one and stage two, then there is a likelihood that candidate who is ineligible (i.e. does not figure in seven times the 87% in stage one) may qualify in the 14% undisputed reserved seats based on the combined merit.

12. For example, if there are say, 14 reserved seats for OBC, then for the OBC reserved seats,  $13 \times 7 = 98$  OBC candidates, based on their cut-off in the Written Examination, qualify for the Physical Proficiency Test. Out of these 98 candidates, top 14 candidates, based on their combined merit in the Written Examination and Physical Proficiency Test, are to be selected.



13. On the other hand, if there are 27 reserved seats for OBC, then for the OBC reserved seats,  $27 \times 7 = 189$  OBC candidates, based on their cut-off in the Written Examination, qualify for the Physical Proficiency Test. Out of these 189 candidates, top 27 based on their combined merit in the Written Examination and Physical Proficiency Test are to be selected.

14. The first list published by the Respondents comprise of seven times the 87%, which include 98 OBC candidates (i.e.  $14 \times 7$ ). The second contingent list of OBC candidates comprise of  $13 \times 7 = 91$  OBC candidates i.e. those ranking between 99 to 189, as per their cut-off based on the first stage Written Examination. The third contingent list is of unreserved candidates similarly comprising  $13 \times 7 = 91$  candidates. Both the second and third list are to be kept on hold pending the decision on the dispute pertaining to the enhancement of reservation for the OBC category.

15. What the appellants seek is that in the first instance all 189 OBC candidates should be permitted to participate in the second stage, Physical Proficiency Test and then based on their combined performance top 14 should be selected and the next 13 candidates result should be kept on hold and their result be declared after the dispute is settled.

16. Clearly this procedure would militate against the scheme of the examination. If ultimately it is held that the reservation is 27% then there would be no problem and the top 27 have to be selected. However, if it is held that the reservation is only 14% then the candidates from 15-27 from the OBC list cannot be selected and top 13 candidates from the unreserved list have to be selected.



17. If the segregation is not done immediately after stage one, and the reservation is restricted to 14%, then there is a possibility that the OBC candidates who rank between 99 to 189 as per their cut-off, based on the first stage Written Examination may rank in the top 14 based on the combined merit of the two stages. We must note that if reservation was in the first instance was only 14%, then only candidates ranking 1 to 98 were eligible to participate in stage two and candidates ranking 99 to 189 were ineligible, thus they cannot be adjusted against vacancies 1 to 14 and can only be adjusted against vacancies 15 to 27 if available. Therefore to identify them a separate list is prepared.

18. Learned Single Judge has rightly held that State is keeping the grey area open subject to outcome of the said litigation and with a view not to cause any prejudice to the members of any community, a provisional list has been issued. If the validity of 27% reservation is upheld in favour of the OBC category, then persons who have been placed in the provisional list, their merit would be assessed against the post reserved for OBC category and in case the reservation is restricted to 14% then the provisional list of unreserved category candidates would be considered.

19. The State Government has adopted a correct procedure in preparing the three separate lists and keeping on hold the candidates figuring in the second and third lists so as not to prejudice any candidate belonging to either the OBC category or otherwise.



20. It is an admitted position that all the Appellants are in the 13% category i.e. the second list and would have been ineligible in case the reservation in the first instance would only have been 14%.

21. We do not find that the respondents have committed any error in preparing the three lists rather the preparation of the three lists protect the interest of all individuals and categories. We do not find any infirmity or error in the view taken by the learned Single Judge or any error in the action taken by the respondents in preparing the three lists and keeping the appointment of the second and third list on hold.

22. In view of the above, we find no merit in the appeal, consequently, the appeal is dismissed.

**(SANJEEV SACHDEVA)**  
**JUDGE**

**(VINAY SARAF)**  
**JUDGE**