

CASE NO.:
Appeal (civil) 3132 of 2007

PETITIONER:
Rajesh Kumar Daria

RESPONDENT:
Rajasthan Public Service Commission & Ors

DATE OF JUDGMENT: 18/07/2007

BENCH:
K. G. Balakrishnan & R. V. Raveendran & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3132 of 2007
(Arising out of Special Leave Petition (Civil) No.22510 of 2003)
With
Civil Appeal No 3773/2007
(Arising out of SLP(C) No.20652 of 2003)

Hari Om Awasthi & Ors. \005 Appellants

Vs.

Rajasthan Public Service Commission & Ors. \005 Respondents

K. G. Balakrishnan, CJI.

Leave Granted.

The appellant in this appeal, as also the appellants in the connected appeal, were candidates for selection to the posts of Munsiff - Magistrate, in the Rajasthan Judicial Service. Rajasthan Public Service Commission (for short 'RPSC'), entrusted with the responsibility of selection, issued an advertisement dated 17.5.2001 inviting applications for filling up 116 vacancies of Munsiff - Magistrates. The details of the vacant posts were shown as under :

Total
No.
of
Posts
General Category Posts
Reserve Posts

S.C.
S.T.
O.B.C.

Men (M)
Women(W)

M
F
M
F
M
F
116
48
11

15
4
11
3
19
5

The RPSC conducted the written examination followed by interviews. 261 candidates were successful. Only 97 of them could be appointed, as some vacancies earmarked for SC and ST categories could not be filled for want of suitable candidates.

2. The appellant in this appeal (Rajesh Kumar Daria) and the third appellant in the connected appeal (Mohan Lal Soni) were OBC candidates. The other five appellants in the connected appeal were general category candidates. They were not selected. According to them, women candidates were selected in excess of their reservation quota, contrary to the Rules. They contended that though the Rules provided for horizontal reservation of 20% for women categorywise, RPSC while preparing the selection list, had wrongly applied the principles of vertical reservation and had selected women in excess of the quota, thereby denying selection of the appellants and other male candidates. It was contended that they had secured higher marks than the selected women candidates and but for the excess selection of women candidates, they would have been selected. The appellants in these appeals along with some other aggrieved candidates therefore filed W.P. No.4150/2002 seeking a declaration that the selection list dated 30.12.2001, was bad in law to the extent of excess selection of women candidates and for a consequential direction to fill those vacancies with male candidates. They (writ petitioners) also sought a direction that they should be appointed if it was found that they had secured the necessary marks.

3. The said writ petition was resisted by RPSC. It contended that the process of listing the selected candidates, was in accordance with the provision for reservation. The High Court dismissed the writ petition by holding that the principles of reservation were correctly followed and applied by RPSC. The decision of the Division Bench of the High Court of Rajasthan is challenged before this Court. We have heard learned counsel for the appellants as well as learned counsel for the RPSC.

4. Rule 9(3) of the Rajasthan Judicial Service Rules, 1955 ('Rules' for short) which is relevant, reads as follows :

"Reservation for women candidates shall be 20% category-wise in the direct recruitment. In the event of non-availability of the eligible and suitable women candidates in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year and the reservation treated as horizontal reservation, i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidate belongs."

5. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney vs. Union of India* [1992 Supp.(3) SCC 217], the principle of horizontal reservation was explained thus (Pr.812) :

"\005 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 the quota 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."

A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta vs. State of U.P. [1995 (5) SCC 173] thus :

"\005\005 The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; 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.) [Emphasis supplied]

6. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be : "For SC : 30 posts, of which 9 posts are for women". We find that many a time this is wrongly described thus : "For SC : 21 posts for men and 9 posts for women, in all 30 posts". Obviously, there is, and there can be, no reservation category of 'male' or 'men'.

7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social)

reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category - Women'. There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos.2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl.Nos.54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category-Women'. This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

10. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.

11. The appellants' grievance that the selection process adopted by RPSC was contrary to the reservations policy contained in Rule 9(3) is justified. But the question is whether the entire selection should be set aside and whether all appellants should be granted relief. On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as Judicial Officers for more than five years. There has also

been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the appointments already made in pursuance of it. We will only consider whether the appellants before us are entitled to relief. We find that even if the selection list had been prepared by applying horizontal reservation properly, only the appellant (Rajesh Kumar Daria) in this appeal, and appellant Nos.3 and 6 in the connected appeal (Mohan Lal Soni and Sunil Kumar Gupta) will get selected. The other appellants were not eligible to be selected.

12. In view of the above and in view of available vacancies, we deem it just and proper to accommodate those three candidates without disturbing the selections and appointments already made, to do complete justice, in the following manner :

12.1) Sunil Kumar Gupta (general category candidate with 184 marks) and Mohan Lal Soni (OBC candidate with 169 marks), who ought to have been selected in the 2001 selection list, and who were denied appointment in view of excess selection of women candidates, shall be deemed to have been selected by RPSC. As a consequence, necessary letters of appointment shall be issued to them. Their seniority for all purposes will however be counted only from the date of actual appointment.

12.2) Rajesh Kumar Daria (OBC candidate with 171 marks) was also not selected because of the selection of excess women candidates. He ought to have been selected and appointed in the 2001 selection. We are told that Rajesh Kumar Daria got selected in the subsequent 2005 examination and was appointed in the Rajasthan Judicial Service on 12.2.2005. Considering the above fact, we direct that he should be given his position in the 2001 selection list. Interests of justice would be served if he is placed as the last candidate in the 2001 selection list. As he worked from 12.2.2005, we make it clear that such retrospective seniority will not entitle him to any monetary benefits, but will only be counted for promotions and pensionary benefits.

13. The appeals are allowed accordingly in part and the order of the High Court is set aside insofar as the said three appellants.