

(1)

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR.**

W.P. No.19727/2013

Jitendra.
Vs.
State of M.P. and others.

W.P. No.19731/2013

Smt. Deepa Mehroliya.
Vs.
State of M.P. and others.

P R E S E N T :

For Petitioners : Shri Umashankar Jaiswal, Advocate.
For Respondent No.1 to 3 : Smt. D.K. Bohare, Govt. Advocate.
For Respondent No.4 : Shri Puneet Shrotri and
Shri Akhil Singh, Advocates.

**(O R D E R)
20.07.2016**

Per : **Justice Sujoy Paul**

In these petitions, the pivotal question needs consideration is whether a reserve category candidate is entitled to be considered for compassionate appointment against a General category post ?

2. Brief facts necessary for adjudication of these matters are that the petitioners submitted their candidature for grant of compassionate appointment. In WP No.19731/2013, the petitioner was given compassionate appointment on 7.11.2012. However, this order was cancelled by order dated 30.9.2013 Annexure P/1. The sole reason for cancelling the appointment is that as per the reservation roster, no post in "SC category" was lying vacant. In WP No.19727/2013, the claim for compassionate appointment was denied on the ground that as per roster, no post in ST category is lying vacant. Thus, the only difference in both the cases is that in one case the compassionate appointment was given and then cancelled whereas in other matter, the application for grant of appointment was rejected. As noticed, reason for cancellation of

(2)

appointment and non-grant of appointment is same i.e. non-availability of reserve category post as per reservation roster.

3. Shri Jaiswal, learned counsel for the petitioner relied upon the note-sheet Annexure R-4/3 filed in WP No.19731/2013 wherein the respondents have held that against unreserved category posts, candidates of any caste/category can be considered and appointed. However, the Government counsel supported the impugned order on the basis of reason assigned in the impugned orders. No other point is pressed by the learned counsel for the parties.

4. I have bestowed my anxious consideration on the rival contentions of the learned counsel for the parties.

5. In the opinion of this court, the reserve category candidate is also entitled to be considered against a General category post. The only requirement is that such candidate should be eligible in all respect as if he is a general category candidate except the caste. In my view, the test should be that if reserve category employee is treated as General category candidate and he fulfills all eligibility, qualification, requirement, etc., he cannot be denied appointment against a General category post merely because he is a reserve category candidate. However, a General category candidate does not have any such right of consideration against a reserve category post. The note-sheet prepared by the department is in consonance with law. In 1995 (2) SCC 745 (***R.K. Sabharwal and others vs. State of Punjab and others***), the Apex Court held as under:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation."

(emphasis supplied)

(3)

This principle laid down in **R.K. Sabharwal's** case(Supra) has not been disturbed by Supreme Court till date. Thus, I find support in my view from the judgment of Apex Court in **R.K. Sabharwal's** case(Supra). For this reason, the sole ground for rejection of petitioner's appointment/candidature cannot be countenanced. Resultantly, the impugned orders in both the cases are set aside. The respondents shall consider the case for grant of compassionate appointment to the petitioner of WP No.19727/2013 within 45 days from the date of production of copy of this order. The petitioner in WP No.19731/2013 is entitled to continue in employment with all consequential benefits.

Petitions are allowed.

(Sujoy Paul)
Judge

YS/