HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPS No. 1059 of 2023

Sukhmati Nag **Versus** State Of Chhattisgarh

28.03.2023	Mr. Vivek Ranjan Tiwari, Sr. Advocate with Mr. Atul Kumar Kesharwani, counsel for the petitioner. Mr. Amrito Das, Additional Advocate General and Mr. Sandeep Dubey, Dy. Advocate General for the State. Mr. Akash Pandey and Ms. Pragati Kaushik, counsel for the intervenors. The petitioner has filed petition with a prayer that merit list and selection list dated 18.01.2023 (Annexure P/5 & 6) be quashed. This Court has passed the interim order dated 06.02.2023 staying the selection process which has been initiated in pursuance of advertisement dated 05.01.2022, till the next date of hearing. The State has filed I.A. No. 03/2023 for vacating/ modification of the order dated 06.02.2023 mainly contending that vide advertisement dated 05.01.2022 for appointment to various posts for Government Medical College Kanker has been issued. The selection process has been stayed in pursuance of the order passed by this Court on 06.02.2023 is causing difficulties for smooth function of medical college. Learned Dy. Advocate General would also submit that in pursuance of the stay, the appointment of various posts are withheld which may cause difficulties for the state to get approval from the National Medical Council. As such, prayed for modification/vacation of the order. He would further submit that the selection process was issued initiated speedy on the basis of direction passed by the Hon'ble Court in WPS No. 50/2023 passed on 13.01.2023 wherein this Court considering the submission of the learned State counsel that "**respondents authorities are in process of issuing appointment orders**" this Court has passed the following

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order:-

> "Considering submission of the counsel for the respondents/State, the respondents are in process of issuing appointment order, writ petition stands disposed of directing respondent No. 1 to take appropriate steps in the matter at the earliest."

The intervention applications have already been filed who have stated that in pursuance of their selection, the appointment orders have been issued by the respondents on 19.01.2023.

Learned senior counsel for the petitioner would submit that the amendment made in Chhatisgarh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and Other backward Classes) 1994 by Chhattisgarh Lok Seva (Anusuchit Jatiyo, Anusuchit Janjati Sanshodhan) Adhiniyam, 2011 (in short "the Act") whereby ratio of reservation has been increased from 50 to 58%, was put to challenge in WPC No. 591/2012 and other connected cases, which has been decided by Hon'ble Division Bench of this Court on 19.09.2022 and the Act, 2011 has been held to be unconstitutional and in the said order, appointment already made prior to passing of the order, were protected. He would further submit that the selection and appointments were made in pursuance of amendment made in the Rule, 2011 which has already been stuck down by this Court, therefore, the selection process and appointment are against the law laid down by this Court, as such, the application for vacating the interim order, deserves to be rejected.

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Learned State counsel would submit that the judgment passed by Hon'ble Division Bench is subject to challenge before Hon'ble the Supreme Court by filing SLP (Civil) No. 18816-18817/2022, therefore, the interim order deserves to be vacated.

Learned counsel for the petitioner would submit that the Hon'ble Supreme Court has not granted the stay to the judgment passed by the Division Bench, therefore, the rules prior to the amendment will be applicable, as such, the entire action taken by the respondent providing reservation more than 50% is illegal. He

would further submit that though the SLP has been filed, but no stay has been passed, therefore, the contention of learned counsel for the State that the limitation of reservation of 58% can be granted is incorrect submission of fact.

Learned Sr. counsel for the petitioner would submit that merely filing of the appeal does not amount to stay of the judgment as per Order 41 Rule 5 of CPC and the same analogy is available to the present facts of the case and to substantiate his submission, he would refer the judgment rendered by Hon'ble the Supreme Court in case of **Sanjiv Kumar Singh Vs. The State of Bihar & others** reported in **2023 LiveLaw(SC) 63** and also referred **Atmaram Property Pvt. Ltd. Vs. Federal Motors Pvt. Ltd.** reported in **(2005) 1 SCC 705**. He would further submit that the reservation beyond 50% even for the tribal district is not permissible in view of constitutional bench judgment reported in **(2021) 11 SCC 401** in case of **Chebrolu Leela Prasad Rao & others Vs. State of Andhra Pradesh & others**.

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From the records, it is evident that all the appointment orders were issued on 19.01.2023 after the amendments made in the Rules, 2011, have already been stuck down by the Division Bench, even the Coordinate Bench of this Court in WPS No. 50/2023 has also directed the State to take steps for appointment in accordance with law, it means it is incumbent upon the State to examine it as per the reservation rules, which prima facie does not reflect from the reply submitted by them, therefore, the application for vacating stay cannot be considered at this juncture. The learned counsel for the State is also directed to verify and file affidavit of the Secretary, Medical Education Department with regard to exceeding of reservation from 50 to 58% and also with regard to the appointment in the tribal district as per the law laid down by Hon'ble the Supreme Court in **Chebrolu Leela Prasad** (supra) on the next date of hearing.

List this case on **20th April, 2023**.

Sd/-

(**Narendra Kumar Vyas**)

Judge

Kishore