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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 191 of 2021

1. Vice Chancellor, Pt. Sunder Lal Sharma Open University Koni Birkona Marg, District Bilaspur Chhattisgarh
2. Registrar Pt. Sunder Lal Sharma Open University Koni, Birkona Marg, District Bilaspur Chhattisgarh

---- Appellants

Versus

1. State of Chhattisgarh Through Its Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Naya Raipur District Raipur Chhattisgarh
2. Veena Singh W/o Rahul Singh Aged About 33 Years R/o Near H. D. F. C. Bank, Behind Narendra Yadav House, Village And Post Office Birkona Thana Koni, Tahsil And District Bilaspur Chhattisgarh
3. Shilkant Tiwari S/o Ram Sahni Tiwari Aged About 39 Years Working As Peon In Vice Chancellor Office Pt. Sunder Lal Sharma, Open University, Koni Birkona Marg, District Bilaspur Chhattisgarh
4. Hardeep Sahu S/o Alakhram Sahu Aged About 37 Years Working As Peon In Confidential Department, Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh
5. Mohd. Imran S/o Mohd. Riyaz Khan Aged About 37 Years Working As Peon In Press Department, Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh
6. Smt. Nanda Raikwar D/o Prahlad Raikwar Aged About 38 Years Working As Peon In Reception Department Under Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh
7. Rohit Kumar S/o Buddhu Singh Aged About 29 Years Working As

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Peon In Examination Department Under Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh

8. Deleted Ram Sahai Porte As Per Hon'ble Court Order Dated 22/08/2016

9. Dhan Singh Markam S/o Shri Baiyaram Markam Aged About 40 Years R/o Nehru Chowk, Near Judev Singh Banglo, Vice Chancellor R/o Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh

10. Rajesh Uikey S/o Shri Radheshyam Uikey Aged About 35 Years Working As Peon In Press Department In Pt. Sunder Lal Sharma, Open University, Koni, Birkona Marg, District Bilaspur Chhattisgarh

11. Laxmi Kant Yadav S/o Shri Jethuram Yadav Aged About 36 Years R/o Devendra Nagar, Near Hanuman Timber, Sector-2, Raipur District Raipur Chhattisgarh

---- Respondents

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For Appellant : Mr. Vinod Kumar Deshmukh, Advocate.

For Respondent No. 1 : Mr. H.S.Ahluwalia, Deputy Advocate General.

For Respondent No. 2 : Mr. Prateek Sharma, Advocate.

For Respondents No. 4, 6 and 9 : Mr. Rupesh Shrivastava, Advocate.

For Respondents No. 7, 10 and 11 : Mr. Neeraj Choubey, Advocate.

WA No. 216 of 2021

Veena Singh W/o Rahul Singh Aged About 40 Years R/o Near HDFC Bank, Behind Narendra Yadav House, Village And Post Office- Birkona, P.S.- Koni, Tahsil And District- Bilaspur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, General Administration Department, Mahanadi Bhavan, Mantralaya, New Raipur, District-Raipur, Chhattisgarh

2. Vice Chancellor, Pt. Sunder Lal Sharma (Open) University, Koni, Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

3. Registrar, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District- Bilaspur, Chhattisgarh

4. Smt. Sukrita Rani Tiwari W/o Late Shri Shilkant Tiwari, working as peon in Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District Bilaspur, Chhattisgarh.

5. Hardeep Sahu S/o Shri Alakhram Sahu Aged About 44 Years Working As Peon Confidential Department, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

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6. Smt. Sabiha Khan W/o Mohd. Imran, working as peon in Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

7. Smt. Nanda Raikwar D/o Prahlad Raikwar Aged About 45 Years Working As Peon In Reception Department, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

8. Rohit Kumar S/o Shri Buddhu Singh Aged About 36 Years Working As Peon In Examination Department, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

   Deleted Ram Sahai Porte S/o Kanwal Singh Porte, aged about 36 years, working as Peon in Examination Department, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

   (Deleted as per Hon'ble Court's order dated 22.08.2016)

9. Dhan Singh Markam S/o Shri Baiyaram Markam Aged About 47

Years R/o Nehru Chowk, Near Judev Singh Bunglow, Vice Chancellor R/o Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

10. Rajesh Uikey S/o Shri Radheshyam Uikey Aged About 42 Years Working As Peon In Press Department, Pt. Sunder Lal Sharma (Open) University, Koni Birkona Marg, Bilaspur, District-Bilaspur, Chhattisgarh

11. Laxmi Kant Yadav S/o Shri Jethuram Yadav Aged About 43 Years R/o Devendra Nagar, Near Hanuman Timber, Sector-2, Raipur, District-Raipur, Chhattisgarh

12. Smt. Sunita Porte W/o Late Shri Ram Sahai Porte Working As Peon In Pandit Sunderlal Sharma (Open) Universtiy, Koni Birkona Marg, Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

(Cause Title taken from Case Information System)

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For Appellant	:	Mr. Prateek Sharma, Advocate.
For Respondent No. 1	:	Mr. H.S.Ahluwalia, Deputy Advocate General
For Respondents No. 2 and 3	:	Mr. Manoj Paranjpe and Mr. Shreyansh Agrawal, Advocates
For Respondents No. 4, 6 and 12	:	Mr. Rupesh Shrivastava, Advocate
For 5, 7, 8, 9, 10 and 11	:	Mr. Neeraj Choubey, Advocate

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon’ble Mrs. Rajani Dubey, Judge

Judgment on Board

***Per* Arup Kumar Goswami, Chief Justice**

03/02/2023

Heard Mr. Manoj Paranjpe, learned counsel, appearing for the appellants (in WA No. 191/2021) and respondents No. 2 and 3 (in WA No.

216/2021), Mr. H.S.Ahluwalia, learned Deputy Advocate General, appearing for the respondent No. 1 (in both the appeals), Mr. Prateek Sharma, learned counsel, appearing for the appellant (in WA No. 216/2021) and respondent No. 2 (in WA No. 191/2021), Mr. Neeraj Choubey, learned counsel, appearing for the respondents No. 7, 10 and 11 (in WA No. 191/2021) and respondents No. 5, 7, 8, 9, 10 and 11 (in WA No. 216/2021) as well as Mr. Rupesh Shrivastava, learned counsel, appearing for the respondents No. 4, 6 and 9 (in WA No. 191/2021) and respondents No. 4, 6 and 12 (in WA No. 216/2021).

2. Pursuant to the order of this Court dated 02.02.2023, Dr. Indu Anant, Registrar, Pt. Sunder Lal Sharma Open University, is also present.

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3. WA No. 191/2021 is preferred by the appellant-Pt. Sunder Lal Sharma Open University (for short, the University) and WA No. 216/2021 is preferred by the appellant/writ petitioner, against an order dated 05.01.2021 passed by the learned Single Judge in WPS No. 6693/2014.

4. The appellant in WA No. 216/2021, Veena Singh, was the writ petitioner. Besides being a woman, it is an undisputed position that she is physically handicapped with disability to the extent of 80%. She was working from 08.11.2005 as a temporary peon on honorarium basis. Presently, the honorarium is about Rs. 15,000/- per month. The respondent No. 2-University had issued an advertisement dated 23.09.2013 for filling up 9 posts of peon on contingency basis. The salary of the contingency peon is fixed on the basis of the recommendation of the Seventh Pay Commission, which according to the Registrar, is about Rs. 22,000/- per

month. It is also admitted by the learned counsel for the parties and endorsed by the Registrar that these 9 posts of contingency peon were approved by the State Government and the recruitment process was started for the first time to fill up the said posts. The writ petitioner belongs to the general category. In the advertisement, it was indicated that 4 posts were meant for the unreserved candidates, 3 posts for the Scheduled Tribes (ST), 1 post for the Scheduled Caste (SC) and 1 post for the Other Backward Class (OBC) category. It was also indicated that the extant rules relating to reservation would be followed. In the selection process, no woman candidate was selected on merit against the 4 posts and as a result, applying the reservation to the extent of 30% of 4 posts, 1 woman candidate was appointed against the 4 posts.

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5. The learned Single Judge held that 30% reservation for woman category ought to have been based on the total of 9 posts and not out of 4. Accordingly, it was worked out that 3 posts of women category should have been reserved as against the 9 posts. The learned Single Judge also observed that 6% towards physically challenged category should have been worked out of the total of 9 posts and accordingly, it was also observed that 1 post (on being rounded off) should have been reserved for the physically handicapped category. The petitioner was the only physically handicapped candidate in the aforesaid recruitment process.

6. The learned Single Judge, at paragraphs 12, 13, 14 and 15, observed as follows:

“12. Given the said fact that again one seat for the physically challenged category ought to had been filled up by the Respondents no. 2 & 3 from among the physically challenged candidates who had applied, thus from the aforesaid factual matrix of the case, it is evidently clear that the respondents have clearly violated the reservation policy by carrying out the recruitment process and the petitioner seems to have been deliberately denied her rightful claim for being considered against the said post. The action on the part of the respondents therefore is not acceptable, the recruitment process therefore stand vitiated and the petitioner deserves to be appointed against a female category or against a physically challenged category, as the case may be.

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13. Coming the consequential relief that the petitioner could be granted, this Court at this juncture would not like to disturb the appointments that have been given to private respondents 4 to 12. Considering the fact, they have put in about more than 6 years of service, however for the reason that the respondent No. 9 has in between expired admittedly there has fallen a vacancy, which according to the petitioner and also the learned counsel for respondents has till date not been filled up and still lying vacant. The case of the petitioner can be considered to be filled up against the said fallen vacancy without disturbing the appointments made in favour

of the respondents No. 4 to 12 except 9 who has since expired.

14. At the same time, since there is a deliberate denial of an appointment to the petitioner clearly violating the reservation norms prescribed by the State Government, by allowing the writ petition this Court also direct that the petitioner should be given appointment from a retrospective date i.e. from the date the other respondents were appointed on 25.09.2014 but however the petitioner would be entitled only for notional benefits from the period 2014 till date and all actual benefits would only be prospect one. This view of the court is relying upon the judgment of the Supreme Court in the case of Richa Mishra Vs State of Chhattisgarh 2016 (4) SCC 179

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15. It is expected that the respondents shall act upon the order of this Court within a period 60 days from the date of receipt of copy of this order."

7. As noticed from the above, though the learned Single Judge held that selection process undertaken by the University was vitiated, in view of the submission of the learned counsel for the parties that respondent No. 9 having died and the said post having remained vacant, direction was issued to accommodate the writ petitioner against the said vacant post without disturbing the appointments already made.

8. But in reality, which has come to light during the course of proceedings before this Court, that the aforesaid submission was not correct.

9. A review petition, being REVP No. 46/2021 was filed by the appellant-University seeking review of the order dated 05.01.2021 passed in WPS No. 6693/2014, which was dismissed by the learned Single Judge vide order dated 23.03.2021.

10. Four persons who were appointed against the unreserved category are: Shri Sheelkant Tiwari, Shri Md. Imran and Shri Hardeep Sahu and Ms. Nanda Raikwar. Md. Imran died on 16.08.2019 and Sheelkant Tiwari died on 23.04.2019. Respondent No. 9 was Ram Sahai Porte. On his death, his wife, namely, Smt. Sunita Porte was appointed on compassionate ground on 16.08.2019 i.e. almost one year and three months prior to the date of passing of the order by the learned Single Judge. On the death of Sheel Kant Tiwari and Md. Imran, their wives had been appointed on 19.03.2021 and 16.08.2019, respectively, on compassionate ground. Death of the aforesaid persons were not brought on record and as a result, no substitution had taken place after their death. An attempt was made to substitute the legal heirs of Ram Sahai Porte, respondent No. 9 in this appeal. In this connection, the order of the Court dated 13.08.2021 goes to show that the prayer made for substitution of Sheelkant Tiwari and Md. Imran was rejected holding that as the compassionate appointments granted on their demise were not subjected to challenge, legal heirs of Sheelkant Tiwari and Md. Imran were neither necessary nor proper party.

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11. Appearing for appellant-University, Mr. Paranjpe contends that the learned Single Judge is not correct in holding that 30% reservation ought to have been worked out as against 9 posts. He submits that it should have been on the basis of 4 posts. It is also submitted by Mr. Paranjpe that 6% reservation towards physically handicapped category would not be admissible as against 9 posts and 2% in each of the categories, namely, blind, deaf and dumb and physically handicapped, has to be worked out. Accordingly, he submits that the order of the learned Single Judge is liable to be interfered with.

12. Mr. Prateek Sharma submits that the WA No. 216/2021 is filed on the ground that by terminating the services of one of the selected general category candidates, the writ petitioner ought to have been appointed.

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13. Mr. Sharma has placed reliance on the judgments of the Hon'ble Supreme Court in ***Ashok Kumar Giri v. Union of India & Others,*** reported in ***(2016) 6 SCC 511*** and ***State of Kerala & Others v. Leesamma Joseph,*** reported in ***(2021) 9 SCC 208***, in support of his contention that 30% has to be worked out qua the total vacancies in the cadre, which in the instant case is 9 in the post of peon.

14. In ***Ashok Kumar Giri*** (supra), the question that had fallen for consideration was in respect of 3% reservation for differently-abled persons. In paragraph 5, it was held that 3% reservation for differently-abled persons will have to be computed on the basis of total vacancies of the cadre and not on the basis of the vacancies available in the identified post, namely, at the time of notification calling for applications to fill up the

available vacant vacancies.

15. In ***Leesamma Joseph*** (supra), at paragraph 16, the Hon'ble Supreme Court laid down that operation of reservation and the computation has to be made with reference to the total number of vacancies in the cadre strength and no distinction should be made between posts to be filled by direct recruitment and by promotion.

16. There is no dispute that the cadre strength of the post of the contingency peon is 9 and all 9 posts being vacant, recruitment process was undertaken to fill up all the 9 posts. In view of the judgments referred to hereinabove, 3 posts ought to have been reserved for women. Admittedly, only one woman had been given appointment on the basis of reservation for woman.

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17. Because of turn of events and having regard to the factual scenario as narrated above, and particularly, the spouses of the deceased appointees who were given compassionate appointment being not on record, the appointment of other unreserved category candidates, on the touchstone of parity, can also not be interdicted.

18. Since we have come to the conclusion that three posts are to be reserved for woman category candidate, it will not be necessary for us to examine as to how many posts ought to have been reserved for the physically handicapped candidates as on the basis of finding above, the writ petitioner would be entitled to be appointed.

19. We are informed that the University authorities have already moved the State Government for creation of one contingency post of peon to accommodate the writ petitioner. According to Mr. Paranjpe, the appellant-University has requested the Secretary, Government of Chhattisgarh, Higher Education Department, vide its communication dated 29.06.2021 for sanctioning of one post of peon on contingency basis. In turn, the Under Secretary, Higher Education Department, wrote to the Commissioner, Directorate of Higher Education, seeking justification of the proposal of the University vide its communication dated 22.02.2022. Thereafter, the Additional Director, Directorate of Higher Education, referring to the letter dated 22.02.2022, sought justification for sanction of one post alongwith other details like the set-up, posts filled, posts vacant etc. from the Vice Chancellor of the appellant-University, vide its communication dated 10.03.2022. The said communication was responded to by the Vice Chancellor on 02/09.05.2022. Further, another correspondence was made by the Additional Director, Directorate of Higher Education, to the Vice Chancellor on 09.05.2022 seeking for the information as sought earlier.

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20. In the peculiar facts and circumstances of the case, we modify the order of the learned Single Judge by directing that the State respondents would consider favourably grant of one post of contingency peon only to accommodate the writ petitioner. The competent authority of the State Government will do the needful in this regard within a period of four months from the date of receipt of a copy of this judgment. The other directions of the learned Single Judge are not interfered with.

21. Resultantly, WA No. 191/2021 and WA No. 216/2021 stand disposed of with the aforesaid observations and directions.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(Rajani Dubey)
JUDGE

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Amit