

J U D G M E N T

1. By this application the applicant is challenging the impugned communication dated 23.8.2024 under which the applicant's urge for his recommendation to the post of Police Constable has been declined.

2. The applicant belongs to S.E.B.C category. Precisely, it is applicant's case that in the said recruitment process two posts were reserved for Orphan category. According to the applicant, since the reserved posts are of even number, i.e., two posts, as per G.R dated 6.4.2023, they are to be divided equally into Institutional and Non-Institutional category. It means that one post each is to be filled from both categories. It is applicant's contention that Respondents No 2 & 3, who have been selected from Orphan category both, belongs to Non-Institutional category which according to him is against the G.R dated 6.4.2023. In other words, the applicant would submit that one of them being ineligible, that post would fall vacant and would go to the applicant by applying horizontal reservation policy.

3. The Respondent-State opposed this application by drawing our attention to the subsequent G.R dated 10.5.2023 by which one more clause, i.e., Sub Clause No. 5 has been added under Clause 2 of the G.R dated 6.4.2023. It is submitted that the subsequent G.R dated 10.5.2023 is of clarificatory nature which has in fact

removed the anomaly about allotment of the reserved seats in case requisite number of candidates from either of the sub category were not found.

4. Clause 2 under the Caption of 'Nature of Reservation' specifies the modalities as to how reservation from Orphan category is to be implemented. It says that if reserved posts are of even number, then that should be divided equally from the Institutional and Non-Institutional category. Then the further position about distribution of unequal reserved posts has been stated. We are not concerned with the later part since admittedly even number of posts, i.e., two posts have been reserved for Orphan category.

5. It is applicant's contention that both selected candidates from Orphan category, i.e., Respondents No 2 & 3 belongs to Non-Institutional category which according to him is against the directions. He would submit that as per sub-clause (4) of Clause 2 of G.R dated 6.4.2023, when vacancy is of even number then it should be divided equally in between Institutional and Non-Institutional category. In other words, he would submit that as there was no candidate from Institutional category, by making equal division, only one post which was for Non-Institution category ought to have been filled by leaving one vacant post which would be beneficial for the applicant.

6. The Respondent-State lays hand on clarificatory G.R dated 10.5.2023 which has remedied and answered the anomaly which may occur by earlier G.R dated 6.4.2023. If we read the earlier G.R dated 6.4.2023, it only speaks as to what should be the proportion from the Institutional and Non-Institutional category about reserved posts. It says that they should be divided equally. The said G.R does not address that, if the candidate from either of the category is not available then whether the said post can be transposed to the other category within the Orphan category posts. Exactly the same issue has been answered and clarified by the subsequent G.R dated 10.5.2023 explaining that, to meet such exigency, it is permissible to transpose category from Institutional to Non-Institutional category or vice-versa if situation arose. Herein, admittedly, both the candidates, i.e., Respondents No 2 & 3 are from Non-Institutional category have been selected as per clarificatory G.R dated 10.5.2023.

7. The learned counsel for applicant would submit that during the process of selection the conditions or rules cannot be changed. For the said purpose, he has attracted our attention to the advertisement dated 1.3.2023 with special emphasis to the clarification under Orphan category. It has been published that the reservation for Orphan category would be as per G.R dated 6.4.2023. The reserved posts would be 1% as per G.R dated 6.4.2023. It is submitted that the said advertisement does not

speak about the clarificatory G.R dated 10.5.2023 and thus the clarificatory G.R has no application in the present case.

8. We are afraid to buy the submission since the clarificatory G.R dated 10.5.2023 was issued much earlier than the issuance of the advertisement dated 1.3.2023. It is not the case that post advertisement dated 1.3.2023 some clarification has been issued. Secondly, the said note in the G.R dated 6.4.2023 is about the mechanism for filling up the post from Orphan category. Apparently, since there was ambiguity much prior to the advertisement, it has been clarified, therefore it cannot be said that during the process of recruitment, rules have been changed.

9. In the result, we see that the recommendations of both the candidates from the Orphan category i.e., from Non-Institution category are in accordance with the G.R dated 6.4.2023 and 10.5.2023. In the result, denial of applicant's claim on said count is well justified.

10. In view of the above, the application carries no merit, hence stands dismissed.

(Debashish Chakrabarty)
Member (A)

(Vinay Joshi, J.)
Member (J)

Place : Mumbai
Date : 03.12.2024
Dictation taken by : A.K. Nair.