

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P (C) No. 554 of 2019**

Monika Kumari, aged about 28 years old, daughter of Panchanand Das,  
Resident of Shivpahar, Shiv Sundari Road, P.O, P.S. & Dist-Dumka.

..... Petitioner

**Versus**

- 1.The State of Jharkhand
2. The Principal Secretary, School Education and Literacy Department,  
Government of Jharkhand, Project Building, Dhurwa, P.O. and P.S-Dhurwa,  
District Ranchi.
- 3.The Director, Secondary Education, Government of Jharkhand, Project  
Building, Dhurwa, P.O. and P.S-Dhurwa, District Ranchi.
- 4.Jharkhand Staff Selection Commission through its Secretary, Office at  
Chai Bagan, Kalinagar, P.O + P.S-Namkum, District Ranchi-834010.

..... Respondents

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

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For the Petitioner : Mr. Arshad Hussain, Adv.  
For the State : Mr. Anshuman Kumar, A.C to Sr. S.C-I.  
For the Respondent-JSSC: M/s Sanjay Piprawall & Prince Kumar, Adv.

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**5/Dated: 5<sup>th</sup> March, 2019**

This writ petition is under Article 226 of the Constitution of India whereby and whereunder direction has been sought for upon the Jharkhand Staff Selection Commission (in short JSSC) to reevaluate the answer sheet of the petitioner in a Post Graduate Trained Teacher Competitive Examination 2017 conducted for the post of Post Graduate Trained Teacher of 10+2 School as the petitioner has been granted 290.0260677367 marks which is slightly less than 290.5932703064 in EBC category-I because she has not been given marks for the question no.59 in paper Hindi in which the correct answer is different than indicated and also she has not been considered reservation under the female category which contains of provision to grant reservation to the extent of 7 %.

It is the case of the petitioner that in pursuance to the notice inviting application she has made application for consideration of her candidature to be appointed as Post Graduate Trained Teacher, in which she has been declared to be unsuccessful.

The grievance of the petitioner is that she has been declared to be unsuccessful since she has short of only fraction of marks and if the marks for the question no.59 in Hindi would have been granted she would have been selected under the EBC category. Further the petitioner belongs to the

female category and therefore she is entitled to get the benefit of reservation under the female category.

Mr. Sanjay Piprawall, learned counsel for the respondent-JSSC has submitted that there is no infirmity in the process of selection, it is for the reason that the petitioner has submitted her application form for selection in Extremely Backward Community-I, on the post of Post Graduate Trained Teacher Competitive Examination 2017 but since she has got less marks than the last selected candidate therefore she has not been selected under reserved category against 7% reservation for the EBC Category-I.

The petitioner's case is also not to be considered under the female category since the female is to get reservation on the basis of special reservation i.e. the horizontal reservation and the benefit of horizontal reservation be given if there is no candidate under the female category on its own merit but it is evident from the marks as under Annexure-6 that under the female category altogether seven candidates have been selected and therefore she has not been considered for the horizontal reservation.

So far as marks not given for question no.59 in paper Hindi for the said wrong question, marks has not been given to all and therefore no prejudice has been caused to the petitioner.

In response, learned counsel for the petitioner has submitted that the other candidates even allotted marks for question no.59 in paper Hindi but no marks has been given to the petitioner.

Having heard learned counsel for the parties and after appreciating the rival submissions, it is evident from the material available on record that the petitioner has participated in the process of selection as Post Graduate Trained Teacher by virtue of an examination conducted in pursuance to the Advertisement No.10 of 2017 known as Post Graduate Trained Teacher Competitive Examination 2017.

It is evident from the advertisement that altogether 11 posts under Extremely Background Class, Schedule-I was to be filled up. The provision of reservation has also been provided.

The petitioner has participated in the process of selection but she has not been selected since according to the case of the petitioner she has been granted 290.0260677367 marks which is slightly less than 290.5932703064 marks got by the last selected candidate in EBC category-I.

The grievance of the petitioner which led her to file this writ petition is that the question no.59 in paper Hindi she has not been allotted with any marks and only aforesaid marks would have been considered, the petitioner would have been selected having secured more marks than the last selected candidate and secondly the petitioner has not been given the benefit of special reservation since she belongs to female category.

The argument advanced on behalf of the petitioner as also the grounds have seriously been disputed by the learned counsel appearing for the Staff Selection Commission.

This Court before looking into the process of selection thinks it proper to have discussion with respect to the provision of special reservation. It is not in dispute that the special reservation is different to that of social reservation.

The special reservation is known as horizontal reservation inclusive in the vertical reservation in a particular category, meaning thereby, if the female candidates are seeking benefits of special reservation the same can only be given if no female candidate is considered and selected under a particular category. Reference in this regard may be made to judgment of the Hon'ble Apex Court rendered in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Ors.** reported in **AIR 2007 SC 3127**, wherein at paragraph 7-8 it has been held as under:

*“7-8. .... 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 women 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.)”*

Here in the instant case, the petitioner is claiming reservation under the female category which is to the extent of 7% but it is evident from the document annexed as page 47 i.e. Annexure-6, wherein it has been reflected that the horizontal reservation pertaining to the female candidates have already been filled up and therefore, the petitioner now cannot claim more than the quota of 7% on the ground of being a female candidate otherwise the quota earmarked for female candidate which is 7% will exceed.

So far as contention of the learned counsel for the petitioner that the question no.59 in Hindi paper she has not been given any marks in which correct answer is different than indicated, but if the question no.59 in Hindi paper no marks has been given to the petitioner it would not have any affect since no pleading has been made in the entire writ petition as to whether marks has been given for the question no.59 in paper Hindi to the other candidates.

The marks of the petitioner has been assessed excluding the marks for the question no.59 in paper Hindi and thereafter she has got 290.0260677367 marks while the last selected candidate got 290.5932703064 marks in EBC category-I and hence the comparative assessment on merit of other candidates under the said quota the petitioner has been found to be less securer of marks and therefore she has not been selected.

The petitioner has also raised the contention that there is fraction of difference in between the marks selected by her and the last selected candidate but it is settled position of law that in a comparative statement based upon the merit even there is fraction of difference there will be shortlisting and further there will not be rounding off of the marks as has been settled by Hon'ble Apex Court in the Judgment rendered in the case of *Orissa Public Service Commission and Anr. vs. Rupashree Chowdhary*

*and Anr.* reported in (2011) 8 SCC 108, wherein at paragraph 10 it has been held as under:

*“10. A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.”*

The aforesaid judgment rendered in the case of *Orissa Public Service Commission and Anr. vs. Rupashree Chowdhary and Anr* has been considered by the Hon’ble Apex Court in the case of *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs. G. Hemlatha and Ors.* reported in (2012) 8 SCC 568 (Para-12).

In view of the entirety of facts and circumstances of the case, this Court find no reason to pass positive direction in favour of the petitioner. Accordingly, the writ petition fails and is hereby dismissed.

**(Sujit Narayan Prasad, J.)**