

THE HON'BLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION No.25991 of 2023

ORDER:

This Writ Petition is filed questioning the action of respondents 1 to 3 in treating the woman reservation as the vertical reservation instead of treating it as horizontal reservation and selecting and appointing 4th respondent, who is less meritorious candidate than the petitioner, for the post of Programmer Trainee, E-1 Grade (Internal) (for short 'Programmer Trainee'), pursuant to the notification issued in Circular Ref. No.CRP/PER/R/2023/240, dated 01.03.2023, for selection of the posts through Internal Candidates, insofar as the Programmer Trainee, is concerned, under the guise of implementing the 33.33% of Women Reservation, as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and contrary to the Dicta laid down by the Hon'ble Supreme Court in ***Rajesh Kumar Daria v. Rajasthan Public Service Commission and others***¹, ***Public Service Commission, Uttaranchal v. Mamta Bisht and others***², ***K. Venkatesh and another v. Government of AP and others***³ and consequently to read down the Notification dated 01.03.2023 insofar as 33.33% of women reservation is concerned, set aside the 100 point roster insofar as women reservation roster points are

¹ AIR 2007 SC 3127

² 2010 (12) SCC 204

³ 2009 (6) ALT 483

concerned and consequently to direct respondents 1 to 3 to follow the principle of Horizontal Reservation for the women reservation, without earmarking any roster points for them duly following the judgments of the Hon'ble Supreme Court in **Rajesh Kumar Daria** and **Mamta Bisht (referred supra)**, by counting the meritorious Women Candidates also against the 33.33% of Women Reservation quota posts and set aside the selection and appointment of 4th respondent for the post of Programmer Trainee and consider the case of the petitioner for appointment, based on his higher merit, against the notified posts of Programmer Trainee pursuant to notification dated 01.03.2023 for selection of posts through internal candidates insofar as Programmer Trainee is concerned.

2) Facts of the case, which are necessary for disposal of the case, are that the petitioner belongs to BC-B Community, passed B.Tech. (CSE), and a local and internal candidate. He was initially appointed as Junior Assistant on 04.05.2016 and thereafter promoted as Senior Assistant and has been working as such in the Corporate Office, Kothagudem, Bhadradri-Kothagudem District, and eligible for the post of Programmer Trainee (IT), E1 Grade, as an Internal Candidate, based on his qualification and experience. While so, the third respondent has issued the notification dated 01.03.2023 for filling up the vacancies of (6) Executive cadre and (4) Non-Executive cadre posts through Internal candidates. Among

the 6 Executive Cadre posts, Programmer Trainee (IT), E-1 Grade (Internal)-4 posts under local category were notified at Sl.No.4, out of which OC-2, OC-1 and ST-1 were earmarked. In response to the said notification, the petitioner has applied for the post of Programmer Trainee. Petitioner, 4th respondent and others have appeared for the written test held on 27.08.2023, results were published on the same day i.e. on 27.08.2023, provisional merit list was published on 27.08.2023, final merit list and selection list was published on 09.09.2023 wherein the petitioner got 66.83 marks, stood at 3rd place and the 4th respondent got 65.28 marks and stood at 4th place. It is the grievance of the petitioner that though he stood at 3rd place, the respondents have not selected him and selected the 4th respondent contrary to the Rules. Hence, the petitioner is before this Court.

3) Heard Sri Chandraiah Sunkara, learned counsel for the petitioner, Sri P. Sri Harsha Reddy, learned Standing Counsel for The Singareni Collieries Company Limited (SCCL), appearing for respondents 1 to 3 and Ms. B. Rachana Reddy, learned Senior counsel, appearing for Sri Basid Riaz, learned counsel for respondent No.4.

4) It has been contended by the learned counsel for the petitioner that the third paragraph of the notification dated

01.03.2023 deals with general conditions, sub-paragraph (19) thereof deals with Rule of Reservation and sub-paragraph (20) thereof deals with Rule of Reservation for local candidates. After placing the original list in the website of the first respondent Company by the third respondent, the petitioner has made a representation dated 01.09.2023 to the second and third respondents requesting them to consider his case for selection for the post of Programmer Trainee by implementing the Rule of Women Reservation as Horizontal reservation wherein he has categorically stated that the second ranker with 66.88 marks is satisfying the women reservation adequacy, and therefore as per the directions of the Hon'ble Apex Court, the petitioner has requested the official respondents to consider his case for selection by implementing horizontal reservation for women category. It is further contended that the action of the respondents in implementing the women reservation as vertical reservation is arbitrary, illegal and contrary to the law laid down by the Hon'ble Apex Court. It has been further contended that on 09.09.2023, the third respondent has issued the selection list for the post of Programmer Trainee and selected the fourth respondent with 65.28 marks (4th ranker) against roster point No.55-OC (W) Local category. Further, the first ranker (Mohd. Abdul Muzeeb) with 68.60 marks was selected against roster point No.56 (OC-Local);

the second ranker (Bandela Sumalatha) with 67.88 marks was selected against roster point No.57 (OC-Local); the tenth ranker (Bhukya Ravi Kumar) with 61.88 marks was selected against roster point No.58-ST (Local) and the petitioner, who is the third ranker, was not selected and not appointed. On enquiry, the petitioner came to know that respondents 1 to 3 have followed the Women Reservation as the vertical reservation and fixed the roster points treating the Women Reservation as the vertical reservation and appointed the 4th respondent who is less meritorious than the petitioner. It is further contended that as per the notification only one post is reserved for OC-Women, two posts are reserved for OC and one post is reserved for ST. As Bandela Sumalatha, Women candidate, was already selected as Programmer Trainee, she satisfies one post of OC-Women Reservation quota i.e. 33.33%. Therefore, the other two OC posts have to be filled up based on merit only without earmarking any roster points for women candidates and the petitioner being the third ranker has to be selected against one OC vacancy instead of the 4th respondent, who is less meritorious than the petitioner. Therefore, the action of respondents 1 to 3 in applying the woman reservation also as vertical reservation and fixing the roster points is illegal and arbitrary. Learned counsel has further contended that the respondents have arbitrarily selected and appointed two woman

candidates though they have notified only one post for woman candidate, which practically amounted to 50% reservation in the four notified posts, and the same is illegal, arbitrary and against the judgments of the Hon'ble Supreme Court in **Rajesh Kumar Daria, Mamta Bisht (referred supra), R.K. Sabharwal v. State of Punjab**⁴ and also **Indra Sawhney v. Union of India**⁵. It is further contended that as per the ratio laid down in **R.K. Sabharwal case (referred supra)**, the reservation has to be implemented on 'Post based' but not on 'Vacancy based' in the form of running account from year to year indicating roster reserved points. The reserved candidates, who were selected based on their merit in general category posts, cannot be counted against the reserved posts. Learned counsel has brought to the notice of this Court that the Government of India issued Office Memorandum No.36012/2/96-Estt (Res), dated 02.07.1997, for the purpose of replacing the vacancy based rosters with that of posts based rosters. Annexure-II thereof stipulates the Model Roster of Reservation with reference to posts for direct recruitment on all India basis by open competition and as per the existing policy of reservation, the percentages of reservations are that for i.e. SC @15%, ST @7.5%, OBC @27% and balance posts are unreserved for general. Hence, the respondents also ought to have

⁴ AIR 1995 SC 1371

⁵ 1992 Supp. (3) SCC 217

adopted the above method while preparing the roster points, but they failed to follow the law declared by the Hon'ble Supreme Court and the model roster prepared by the Government of India. Learned counsel has further contended that in **Rajesh Kumar Daira's case (referred supra)**, the Hon'ble Supreme Court has held that the persons belonging to reserved category, but appointed to non-reserved posts based on their own merit, cannot be counted against the reserved quota in case of vertical (Social) reservations, but would be so counted in case of horizontal (Special) reservation. It was further clarified as to how the horizontal (Special) reservation in favour of physically handicapped and women, etc. have to be implemented and the same was reiterated in case of **Mamta Bisht (referred supra)**. Therefore, as per the decisions of the Hon'ble Apex Court, woman candidate selected on merit basis within the vertical reservation quota will be counted against horizontal reservation for woman. Hence, it is not open for the respondents to operate the vacancy based woman reservation roster points contrary to the decisions of the Hon'ble Supreme Court. As such, the action of respondents 1 to 3 in selecting and appointing woman candidates providing for woman roster points pursuant to the notification dated 01.03.2023 and the further action of respondents in following the 100 roster points under Rule 22 and 22-A of the Telangana State and Subordinate Service Rules,

1996, in respect of women reservation roster points is arbitrary and illegal. The action of the respondents in treating the horizontal and vertical reservation alike and selecting the women candidates by providing more than 50% reservation and their action in selecting the 4th respondent, who is less meritorious than the petitioner, is illegal and arbitrary. As such, the action of respondents 1 to 3 in treating the woman reservation as vertical reservation instead of treating it as horizontal reservation within the vertical reservation, is liable to be declared as illegal and arbitrary. Learned counsel has further contended that as per the dicta laid down by the Hon'ble Supreme Court, the respondents can select woman candidates to the extent of 33.33% wherever woman candidates are available, if necessary by deleting the male candidates in respective social reservation groups. Otherwise, those posts which were vacant due to non-availability of women candidates can be filled by up by the male candidates. Therefore, the action of the official respondents in not adhering to the ratio laid down by the Hon'ble Supreme Court, is illegal and arbitrary. It is further contended that as per the decisions of the Hon'ble Supreme Court in ***Rajesh Kumar Daria (referred supra)*** as reiterated in ***Mamta Misht (referred supra)***, the woman reservation has to be followed as horizontal reservation and the procedure for following the horizontal reservation was also

indicated in the above said judgments. Duly following the above dicta, the Government of Andhra Pradesh has issued G.O.Ms.No.40, Women & Child Welfare, Differently Abled and Senior Citizens (Prog.II), Department, dated 25.07.2016, and the principle applicable to the vertical (social) reservations will not apply to horizontal (special) reservations. Therefore, where a women reservation is provided within the social reservation for SCs, the proper procedure is first to fill up the quota for SCs in order of merit and then find out the number of candidates among them who belong to the Women Reservation group of ‘Scheduled Caste Women’. If the number of women in such list is equal to or more than the number of women reservation quota, then there is no need for further selection towards the women reservation quota. Only if there is any shortfall, the requisite number of Schedule Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Caste. Following the same, the Government of Andhra Pradesh has issued G.O.Ms.No.63, GAD, dated 17.04.2018 amending Rule 22-A (2) of A.P. State and Subordinate Service Rules, 1996, by providing special representation to women candidates. It is further urged that the law declared by the Hon’ble Supreme Court is binding on all Courts within the territory of India in terms of Article 141 of the Constitution of India. Similarly

it is equally binding on the State Governments too. Therefore, the action of the respondents in not issuing similar amendment and not following the dicta settled by the Hon'ble Supreme Court is arbitrary and illegal. If the women reservation is not implemented as horizontal reservation and implemented as if it is a vertical reservation, the total reservation would come to 87.33%, which would exceed the 50% ceiling limit prescribed by the Hon'ble Apex Court in ***Indra Sawhney case (referred supra)***. In similar circumstances, a Division Bench of erstwhile High Court of Andhra Pradesh in ***K. Venkatesh's case (referred supra)*** held that women reservation under Rule 22-A of the A.P. State and Subordinate Service Rules, 1996, has to be implemented only as horizontal reservation so that total percentage of reservation would not exceed 50% ceiling limit. It is further contended that the other Recruitment Agencies in the State of Telangana, including Telangana State Public Service Commission, have been following the woman reservation as horizontal reservation. Further, in respect of Medical Admissions, the Government of Telangana has issued G.O.Ms.No.27, Health, Medical and Family Welfare (C1) Department, dated 10.04.2017, and G.O.Ms.No.114 Health, Medical and Family Welfare Department, dated 05.07.2017 wherein the Women reservation and Physically Handicapped Reservation were specified as Horizontal reservations. Thus, the

learned counsel has contended that the action of the official respondents in implementing the women reservation as vertical reservation is illegal, arbitrary and contrary to the law laid down by the Hon'ble Supreme Court. At the cost of repetition, the judgments relied by the learned counsel are listed hereunder, for the purpose of convenience:

- 1) ***Rajesh Kumar Daria's case (referred supra);***
- 2) ***Mamta Bisht's case (referred supra);***
- 3) ***R.K. Sabharwal's case (referred supra);***
- 4) ***Indra Sawhney's case (referred supra);***
- 5) ***K. Venkatesh's case (referred supra);***
- 6) ***M. Reddi Bhaskar Reddy v. State of Andhra Pradesh***⁶.

5) Per contra, the learned Senior counsel appearing for the fourth respondent has contended that the writ petition is not maintainable on the ground that multiple reliefs are sought in the writ petition. It is further contended that paragraph III of the notification deals with general conditions, Rule of Reservation for the local candidates for the post of non-executive cadre and executive cadre. However, the notification does not state with regard to horizontal reservation being followed in the said recruitment. Respondent-Singareni Collieries Company Limited

⁶ AIR Online 2021 AP 34

(SCCL), being an Autonomous Body, will have its own Regulations for providing Women Reservation and thereby issued the present notification by following women reservation and accordingly allotted vacancies for the post of Programmer Trainee-Local (4) vacancies out of which OC-2, OCW-1 and ST-1 are earmarked. Therefore, the general Rule of Reservation cannot be made applicable to the respondent-SCCL unless the same is ratified by the Board of SCCL. Hence, any law or Regulation of State/Central Government are not binding on the SCCL *per se*. Learned senior counsel has further contended that the petitioner failed to produce any material of the SCCL which categorically show that horizontal reservation is being followed by it in the notification. If the petitioner had been really aggrieved by the reservation policy being followed in the present notification, he ought to have challenged the said notification dated 01.03.2023 itself before it is coming under execution. However, the same is challenged on 15.09.2023 i.e. after completion of selection process, only because of the fact that the petitioner is not selected as he failed to obtain merit, which cannot be a reason/ground for questioning the reservation policy and challenge the appointment of other meritorious candidate i.e. respondent No.4 herein. According to the learned senior counsel, once the notification is released and it is set into motion, selection list and appointment orders are issued, the

selection process undertaken based on reservation policy adopted by the SCCL cannot be challenged in view of the fundamental law laid down by the Hon'ble Supreme Court in various cases that "the Rules of the game cannot be changed once the game has begun". It is further contended that the present notification categorically allotted the vacancy position i.e. OC-02, OCW-01, ST-1 and accordingly following roster, the SCCL has rightly considered respondent No.4 under the head OCW-1 as the respondent No.4 is the next immediate women candidate under merit after the vacancies are filled under Open Competition. The roster description was clearly specified indicating the vacancies reserved for women and the 100 points roster is followed by SCCL for filling up of vacancies through recruitment. The starting roster point in the present notification is 55 and ending roster point is 58. Among those 4 roster points, point No.55 belongs to OC-Women, 56 and 57 belong to OC and 58 belongs to ST. Therefore, among the first four candidates in the order of merit, 2 candidates are female, who stood at rank Nos.2 and 4. Further, the first women candidate who stood at 2nd rank got selected under OC quota and the next women candidate who stood at 4th rank was selected under OC-Women quota. Therefore, there is no illegality or infirmity with regard to roster and respondent No.4 being the first women under merit deserves to be selected in accordance with the roster

specified in the notification. Learned senior counsel has vehemently contended that undisputedly two types of reservations i.e. horizontal and vertical reservations are being followed. Further, the rule laid down by the Hon'ble Supreme Court in the judgments relied by the petitioner was in the context of direct recruitment. But, in the present case, the notification issued is an internal notification, in which case, the SCCL has its own rules and procedure, based on which, the recruitment process will be carried out. Further, the GOs, Circulars, Memos issued by the Central or State Government are not binding on the SCCL unless they are specifically adopted/ notified by SCCL. Therefore, the present set of facts are not similar with the case laws cited by the petitioner. It is further contended that had the petitioner found illegality in the roster being followed by the SCCL, he ought to have challenged the roster in a separate Writ Petition, which he has not done. The petitioner is alleging illegality in the roster and in the reservation policy being adopted by the SCCL in the present notification, only after he was not selected for the post of Programmer Trainee. It is further contended that the respondent SCCL followed vertical reservation in the present notification and there is no whisper with regard to horizontal reservation neither in the present notification nor in any of the Recruitment Rules of SCCL. Therefore, the entire notification is carried based on vertical

reservation. While drawing the attention of this Court to the categorical assertions made by the Hon'ble Apex Court in ***Rajesh Kumar Daria's case (referred supra)***, the learned Senior Counsel has contended that in the present notification, the posts are notified as OC-2, OCW-1, ST-1 and it is categorically notified as OCW (open competition Women) and it is nowhere stated in the notification that under OC-2, one post is reserved for women, in which case, if one woman is filled under OC-2, the other reserved post would be left for OC. In the absence of such scenario, the petitioner cannot question that the post allotted to respondent No.4 has to be treated under Open Competition as one Women is already filled under open competition. Learned Senior counsel has strenuously contended that in the case on hand, the SCCL itself has carried the recruitment process by way of internal recruitment and followed vertical reservation duly notifying separate post categorically for women. Therefore, the general recruitment rules cannot be made applicable for the internal recruitment and the SCCL will follow its own rules of recruitment. It is further contended that the provisional offer of Appointment order dated 13.09.2023 was already issued to respondent No.4, who in turn, has also underwent Initial Medical Examination (IME) on 19.09.2023. Therefore, the recruitment process is deemed to be completed. Once the appointment process has begun, the same

cannot be disturbed in view of the law settled by the Hon'ble Supreme Court. Hence, it is prayed to dismiss the writ petition.

6) On the other hand, the learned Standing Counsel for SCCL while adopting the arguments advanced by the learned Senior Counsel has further contended that SCCL is undertaking both external and internal recruitment from time to time as per the recruitment rules of the Company and implementing the rule of reservations and local reservations as per the Presidential Order, 2018, as adopted by the Board of Directors of SCCL. Further, the SCCL formulates Rules and Policies suitable to the needs of the Mining Industry with approval of the Board and the Government Rules and policies are applicable to the extent they are adopted by the Board. It is further contended that State and Subordinate Service Rules issued by Telangana State Government are being used as guiding factors for conducting direct recruitment in SCCL. Women reservation is being implemented in direct recruitment as per Rule 22-A of Telangana State and Subordinate Service Rules, 1996. As per the policy of the SCCL, the principle of vertical reservation is being followed in respect of filling up women reserved vacancies. Further, the principle for filling up women reserved vacancies only in horizontal reservation was not specified in the Telangana State and Subordinate Service Rules, 1996. Therefore, the notification is issued well in accordance with the Rules in

vogue, the Writ Petition is devoid of merits and accordingly prayed to dismiss the same.

7) This Court has taken note of the rival submissions made by all the parties and perused the entire material available on record.

8) Respondents 1 to 3 have issued notification dated 01.03.2023 inviting online applications from the eligible candidates for filling up the vacancies of Executive and Non-Executive cadre posts, in which, 4 vacancies were notified for the post of Programmer Trainee (Internal) under local category. Out of those four vacancies, 2 posts were earmarked for OC, one was earmarked for OC-Women and one for ST.

9) As per Rule 22 and 22-A of Telangana State and Sub-ordinate Service Rules, 1996, the following roster points are earmarked for OC-Women candidates : 1, 12, 17, 23, 30, 34, 38, 50, 55, 59, 65, 71, 78, 84, 90, 96.

10) The Hon'ble Apex Court in ***Rajesh Kumar Daria's case (referred supra)*** has declared that the social reservations in favour of SC, ST and OBC under Article 16(4) of the Constitution of India are 'vertical reservations' and special reservations in favour of physically handicapped persons and women under Articles 16(1) or

15(3) are 'horizontal reservations'. Relevant observations of the Hon'ble Apex Court are extracted hereunder:

"7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta v. State of U.P.* [1995 (5) SCC 173] thus:

"The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e.SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)

[Emphasis supplied]

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their

own merit, their number will not be counted against the quota reserved for the respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - *Indira Sawhney vs. Union of India* (1992 Supp (3) SCC 217), *R. K. Sabharwal vs. State of Punjab* (1995 (2) SCC 745), *Union of India vs. Virpal Singh Chauhan* (1995 (6) SCC 684 and *Ritesh R. Sah v. Dr. Y.L. Yamul* (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. 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 woman 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.]

11) The above determined law was reiterated by the Hon'ble Apex Court in its subsequent judgment in ***Mamta Bisht (referred supra)*** and the said law still holds the field.

12) Further, the Hon'ble Supreme Court in ***Rajesh Kumar Daria (referred supra)*** has also explained a proper mode of description of reservation. Relevant portion of the said judgment is extracted hereunder:

“8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC should be : “For SC: 30 posts, of which 9 posts are for women.” We find that many a time this is wrongly described thus: “For SC: 21 posts for men and 9 posts for women, in all 30 posts.” Obviously, there is, and there can be, no reservation category of “male” or “men”.”

13) Following the above said proposition of law, a Division Bench of erstwhile High Court of Judicature at Hyderabad in ***K.Venkatesh's case (referred supra)***, has held as under:

“12. We, therefore have no hesitation to hold that General Rules 22, 22-A and Special Rule 10, are only intended to advance the cause of women by ensuring that 33 1/3% of vacancies in each category such as OC, SC, ST and BC, are filled in by such women candidates. Such reservation of 33 1/3% in favour of the women is a horizontal reservation, but not a vertical reservation. If we were to construe it otherwise as a vertical reservation, the total percentage of reservations would touch 79 1/3%, thus reducing the open competition vacancies to a mere 20 2/3% which is wholly impermissible. It will then, fall foul of the crystallized ceiling limit of 50%. Therefore, to save the reservation of posts/vacancies in favour of women from such a catastrophe, they are liable to be treated only as horizontal reservation. In other words, in each of the segments viz., open competition, schedule castes, schedule tribes or backward classes, the State will ensure that 33 1/3% of vacancies are filled in by women. If in the normal course of finalizing the merit lists, such number of women candidates representing 33 1/3% make their grade on their own, no further action is needed to be undertaken by the State. But, on the other hand, if there is any shortfall of women candidates, to the extent of such shortfall, from the bottom of the list, the meritorious male candidates would be replaced in the reverse order by the next most meritorious women candidates in their descending order of merit. To illustrate this by an example, if 51 open competition vacancies, 15 schedule caste vacancies, 9 schedule tribe vacancies and 25 backward class vacancies have to be filled in by the State, simultaneously providing 33 1/3 thereof to be filled in by women candidates, what all is required to be done is to arrange the names of the candidates belonging to the open category, schedule caste, schedule tribe, backward classes in the descending order of merit to the exact requisite numbers, i.e., 51-Open, 15-SC, 9-ST and 25-BC, then it

shall count as to the number of women candidates already included therein. If there are 17 women candidates in the open competition list of 51 candidates, then, **no further action is needed to be taken up.** Similarly, if 5-SC women, 3-ST women and 8-BC women are found included in those respective lists, **No further action is needed to be undertaken by the State.** On the contrary, if 15 women candidates, 3 SC-women candidates, 2-ST women candidates, and 5 BC-Women candidates alone are found included in the merit list, then the respective most meritorious 2-OC, 2-SC, 1-ST and 3 BC-women candidates will have to be picked up to make good the shortfall and the corresponding number of male candidates at the bottom of the merit list will have to be replaced by these respective numbers of women candidates. That will ensure the representation of 33 1/3% of women candidates in the respective categories of selection, without seriously compromising the overall merit of the candidates.”

14) Before dwelling into the matter further, this Court feels it apt to mention that the petitioner herein has challenged only the manner of implementation of woman reservation by the respondent SCCL and so also the 100 roster points fixed under Rule 22-A of Telangana State and Subordinate Service Rules, 1996, however, no challenge was made to Rule 22 and 22-A of Telangana State and Sub-ordinate Service Rules, 1996.

15) The petitioner is solely challenging the manner followed by the SCCL in filling the 4 vacancies without therebeing any challenge to the notification dated 01.03.2023, wherein the 4 vacancies were notified under local category earmarking OC-2, OCW-1 and ST-1. Once, one post is earmarked for OC-Woman, as per the Regulations of SCCL, and if said notification is contrary to

Rule 22 and 22-A of Telangana State and Subordinate Service Rules, 1996, as contended by the petitioner's counsel, the only remedy to the petitioner is to challenge Rule 22 and 22-A and in the absence of any such challenge he is *estopped* from challenging either the roster points prescribed under the said Rules or the recruitment undertaken based on the said roster points. In the absence of any challenge to the Rules, the grievance of the petitioner that can be looked into by this Court is limited to 'whether the selection and appointment undertaken by the SCCL is inconsonance with the notification dated 01.03.2023 or not?'

16) In the notification dated 01.03.2023 nowhere the SCCL has prescribed that recruitment exercise will be undertaken by treating the women reservation either as 'horizontal reservation' or 'vertical reservation'. However, in the counter affidavit, they have categorically asserted that SCCL has adopted the Telangana State and Subordinate Service Rules, 1996. The question as to whether the said Rules are inconsonance with the law laid down by the Hon'ble Supreme Court or not cannot be gone into by this Court as the same amounts to impermissible travel beyond the scope of the Writ Petition, since there is no challenge to the Rules.

17) Coming to the judgments relied by the learned counsel for the petitioner in **Rajesh Kumar Daria, Mamta Bisht,**

R.K. Sabharwal and **Indra Sawhney (referred supra)**, there is no dispute with regard to the law laid down by the Hon'ble Supreme Court in the said cases, but the said judgments cannot be made applicable to the facts of the present case since, in the case on hand, no challenge was made to Rule 22 and 22-A of the State and Subordinate Rules, 1996, which prescribe something otherwise.

18) Insofar as the decision in **Reddi Bhaskar Reddy' case (referred supra)** is concerned, in the said case, notification was challenged before the Court, but in the present case, the petitioner has not chosen to challenge the notification dated 01.03.2023. Hence, the said judgment is distinguishable on facts of the present case.

19) Coming to the judgment in **K. Venkatesh's case (referred supra)**, the Division Bench, even in the absence of any challenge to Rule 22 read with General Rule 22-A, has held that the reservation of 33 1/3% in favour of women shall be treated as horizontal reservation only. But, *in spite* of holding that the manner of selection and appointment of women candidates in each category of posts was not correctly followed, the Division Bench has not set aside the selection and appointment of unofficial respondents therein, instead, directed the official respondents to adjust the

petitioners therein and other similarly situated persons, against the vacancies that became available after the publication of the notification therein. But, it is pertinent to note that the Division Bench has not set aside Rule 22 or 22-A of Telangana State and Subordinate Rules, 1996, and they are still in force. Therefore, in the absence of any challenge to the notification dated 01.03.2023 and in view of the submission of the learned Standing Counsel that as of no vacancies are available, the concession granted to the petitioners in ***K. Venkatesh's case (referred supra)*** cannot be granted by this Court to the petitioner in the instant case.

20) Thus, viewed from any angle, the grievance of the petitioner cannot be attended to by this Court in the absence of challenge to Rule 22 and 22-A of Telangana State and Subordinate Rules, 1996, and also the Notification dated 01.03.2023.

21) With the above observations, the Writ Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

No costs.

PULLA KARTHIC, J

Date : 24-01-2024.
sur

**Note : 1) L.R. Copy to be marked
2) Issue C.C. in three days**