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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
WP No. 18105 of 2021**

(YOUTH FOR EQUALITY Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated : 04-08-2023

Shri Anshuman Singh and Rohan Harne - Advocate for the petitioner.

*Shri Ashish Anand Barnrd - Additional Advocate General, Shri
Darshan Soni and Shri Piyush Jain - Government Advocate for the State.*

*Shri Rameshwar Singh Thakur and Shri Vinayak Prasad Shah -
Special Advocates for the State.*

Shri Rahul Diwakar - Advocate for the M.P. Professional Board.

1. Learned counsel for petitioner prays for interim relief and submits that this PIL has been filed raising a larger public issue of fraud played on the Constitution and the law laid down by Apex Court to the extent that respondents by issuance of impugned letter (Annexure P/2) have directed that all such recruitment process commenced by the State or its instrumentalities, which are not restrained by any interim judicial order of this Court restricting the extent of reservation to 50%, can be conducted and concluded by applying the enhanced 27% of reservation to OBC category, despite the same breaching 50% ceiling of reservation fixed by the law laid down by Apex Court under Article 141 of Constitution by various decisions starting from *Indra Sawhney and others Vs. Union of India and others, 1992 Suppl.(3) SCC 217* down to *Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and others, (2021) 8 SCC 1*. Reliance for this purpose is placed on decision of Apex Court in *Indra Sawhney and others Vs. Union of India and others, 1992 Suppl.(3) SCC 217*, decision of Bombay High Court in *Dr. Jishri Laxmanarao Patil Vs. Chief Minister of State of Maharashtra and another, (2019) 4 AIR Bom R*

684 and Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and others, (2021) 8 SCC 1.

1.1. Learned counsel for the State has objected to the maintainability of this petition on the ground that the issue herein essentially relates to service matter which ought not to be agitated in PIL. It is further objected to by State that petitioner has no locus to raise the issue herein. It is also urged by State that interim relief as per order dated 20.09.2021 has already been granted and, therefore, there is no question of praying for interim relief. Reliance is placed on the decision of *State of Uttaranchal Vs. Balwant Singh Chauhal and Ors., AIR 2010 SC 2550 (para 198.3 and 198.8)* to emphasise that PIL ought not to be entertained casually without verifying the credentials of petitioner and genuineness of the cause shown.

2. It is seen from the first order passed in this case on 16.09.2021 that notices were directed to be issued and since the learned Advocate General accepted notice, no further direction was passed for payment of process fee. Thereafter this case came up on 20.09.2021, when it was directed to be listed alongwith W.P. No.5901 of 2019 with further direction that interim relief granted earlier shall continue till the next date of hearing. Since no interim relief was granted earlier i.e. on 16.09.2021, the question of continuance of the same on 20.09.2021 does not arise and, therefore, in actuality, the prayer for interim relief has neither been considered nor granted in this case till date. Thus, this Court proceeds to decide the question of interim relief based on the pleadings and arguments of learned counsel for rival parties.

2.1. As regards objection of locus of petitioner raised by State is concerned, this Court in the face of the fact that the decision in the case of *Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and others, (2021) 8 SCC 1* had

originated from number of PILs and the fact that the cause raised in this PIL *prima facie* appears to relate to the breach of 50% cap fixed for reservation affects a large number of persons, it *prima facie* appears that the public cause raised herein is genuine, however, this Court leaves it open for the State to raise this objection at the final stage.

2.2. It is not disputed at the Bar by learned counsel for rival parties that large number of petitions in regard to various recruitments commenced by different departments of the State and its instrumentalities have been entertained by this Court and interim orders have been passed to the extent of restraining the State from exceeding the limit of 14% of reservation in favour of OBC.

2.3. The challenge herein is to Annexure P/2 dated 02.09.2021 which is based on the opinion of learned Advocate General of State of M.P. that reservation to OBC category candidates can be provided to the extent of 27% in cases which are not covered by interim orders passed by this Court.

2.4. Since, there is no interim order in the present petition, the prayer for interim relief is sought by petitioner to the extent contained in Para 8 of the petition

2.5. The Apex Court right from *Indra Sawhney and others Vs. Union of India and others, 1992 Suppl.(3) SCC 217* and even prior thereto down to the decision in the case of *Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and others, (2021) 8 SCC 1*, has repeatedly held in one voice that maximum limit of vertical reservation should not exceed 50%. These judgments are law of the land under Article 141 of the Constitution and are binding upon all including the State and its functionaries.

2.6. As such the impugned instructions dated 02.09.2021 issued by GAD,

Government of M.P., Bhopal allowing reservation to OBC category to the extent of 27% instead of 14% in cases where interim orders by this Court are not granted, *prima facie* comes in direct conflict with the law of the land.

3. Accordingly, petitioner has made out case for interim relief.

3.1. By way of interim relief, it is directed that operation and effect of impugned executive instructions dated 02.09.2021 issued by GAD, Government of M.P., Bhopal permitting 27% of reservation to OBC, shall remain stayed till the next date of hearing.

4. List the case alongwith W.P. No.5901 of 2019 in the first week of September, 2023.

(SHEEL NAGU)
JUDGE

Sateesh

(AMAR NATH (KESHARWANI))
JUDGE

