



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 11515/2016

Ashok Kumar Roy S/o Late Shri Shyama Roy, aged about 52 years, resident of O/8 Old RAC Quarters, MBC Block, Reserve Police Line, Udaipur.

-----Petitioner

Versus

1. State of Rajasthan through the Secretary, Department of personnel, Government of Rajasthan, Secretariat, Jaipur.
2. The Secretary, Department of Home Affairs, Govt. of Rajasthan, Jaipur.
3. The Director General of Police, Jaipur Rajasthan
4. Inspector General of Police, Armed Battalions, Jaipur Rajasthan.
5. Commandant, Mewar Bhil Core, Kherwada, District Udaipur.

-----Respondents

For Petitioner(s) : Mr. Lokesh Mathur

For Respondent(s) : Mr. Anil Bissa, A.G.C.

HON'BLE MS. JUSTICE REKHA BORANA

Order

03rd/07/2023

Reportable

1. The present petition has been filed with a prayer for a direction to the respondent-State to make provisions for relaxation/concession in matters of promotion for the candidates belonging to SC/ST category by adopting lesser standard evaluation or lowering the qualifying marks in terms of proviso to Article 335 of the Constitution of India.

2. The brief facts of the case are that the petitioner, who belongs to SC category, is working as a Constable with the Mewar Bhil Core (MBC) and posted at Kherwada, District Udaipur. The



services of the petitioner are governed by the Rajasthan Police Subordinate Service Rules, 1989 (hereinafter referred to as, 'the Rules of 1989'). On 02.05.2016, applications from eligible Constables for promotion to Head Constables were invited. As per Rule 29, qualifying examination for promotion comprises of two parts. Part I consists of written, practical and other outdoor test and part II comprise of interview and examination of service record along with the Annual Confidential Report. The petitioner was declared successful in part I and he scored 23 out of 75 marks in part II. As per Rule 27(2) of the Rules of 1989, 45% marks i.e. 33.75 marks in part II were essential for qualifying. The petitioner having not scored the said qualifying marks, was declared unsuccessful.

3. There were two vacancies available for promotion and qua one, the other SC candidate Mahaveer Prasad, who scored 37.5 marks in part-2 was declared successful. One seat remained vacant. Aggrieved against his non-selection, the present petition has been filed wherein it has been urged on behalf of the petitioner as under:

Firstly, in terms of proviso to Article 335 of the Constitution of India, the State is under an obligation to provide reservation for promotions and also to provide relaxation in qualifying marks to the candidates belonging to SC/ST category. **Secondly,** vide office memorandum dated 21.01.1997, the Central Government has granted the said relaxation to the SC/ST candidates for the purposes of promotion and therefore, the State is also required to adhere to the said office memorandum and while following the



same criteria ought to grant similar relaxation to the State employees.

4. In support of his contentions, learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Apex Court in the case of **Ram Bhagat Singh & Ors Vs. State of Haryana & Ors** reported in **1997 (11) SCC 417**.

5. Per contra, learned counsel for the respondents submitted that the relief as prayed for by the petitioner cannot **firstly** be entertained by this Court as the same is not within the purview of jurisdiction of this Court. **Secondly**, proviso to Article 335 of the Constitution of India does not mandate any State Authority to adhere to the same in strict sense as the same is a directory provision to be adopted/complied with by a particular State in its own discretion. **Thirdly**, the State is not under any obligation to adopt any memorandum/policy as adopted by the Central Government.

6. In support of his arguments, learned counsel for the respondents relied upon the following judgments of this Court:

1. **Ashok Nath vs. State of Rajasthan & Ors. (Civil Writ Petition No.4289/2013)** decided on 30.10.2015

2. **Satyaveer Singh vs. State of Rajasthan & Ors. (Civil Writ Petition No.3458/2017)** decided on 07.01.2022.

7. Heard learned counsel for the parties and perused the material available on record.

8. The issue whether it would be permissible for a State to prescribe lower qualifying marks or a lesser level of evaluation for the members of the reserved categories in the matter of promotions arose in the matter of **Indra Sawhney and Ors. vs.**



Union of India and Ors., AIR 1993 SC 477. After considering the provision of Article 16(4) of the Constitution of India, the Hon'ble Apex Court in the said matter held that it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories in the matter of promotions since that would compromise the efficiency of administration. The said view was again reiterated in the case of **S. Vinod Kumar and Ors. vs. Union of India and Ors., (1996) 6 SCC 580.**

9. However, the ratio as laid down in the above judgments was given a go by vide the Constitution (82nd Amendment) Act, 2000 whereby a proviso to Article 335 was inserted w.e.f. 08.09.2000 enabling the Union/State to make/frame any provision qua the members of Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in the matters of promotion. Meaning thereby, the ratio as laid down in the case of **Indra Sawhney** (supra) and reiterated in **S. Vinod Kumar** (supra) is till date applicable to the Other Backward Classes but so far as the SC/ST candidates are considered, by virtue of the proviso to Article 335, a relaxation in qualifying marks has been made permissible.

10. Articles 16(4) and 16(4A) of the Constitution of India provide as under:

"(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

"(4A) Nothing in this article shall prevent the State from making any provision for reservation in





matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

11. Article 335 of the Constitution of India, after 82nd amendment, provides as under:

"335. Claims of Scheduled Castes and Scheduled Tribes to services and posts- *The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:*

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

12. Keeping into consideration, the above Constitutional provisions as well as the position of law as of date, this Court is not inclined to interfere in the present writ petition for the following reasons/grounds:

(i) Admittedly, the petitioner is governed by the Rules of 1989 and Rule 27(2) of the said Rules which lays down the criteria for qualifying marks for promotion is not under challenge in the present petition. In absence of any challenge to the Rule providing for the essential qualification, no relief as prayed for by the petitioner can be granted.



(ii) The relief as prayed for by the petitioner amounts indirectly to a challenge to Rule 27(2) of the Rules of 1989 and the same cannot be entertained by this Court in writ jurisdiction. The challenge to any provision of law, if any, can be laid only before a Division Bench and the same cannot be entertained by a Single Bench.

(iii) Articles 16(4) and 16(4A) of the Constitution of India providing for reservation in appointments and promotion do not confer any fundamental rights nor do they impose any constitutional duties but are only in the nature of enabling provisions vesting a discretion in the State to consider providing reservation if the circumstances mentioned in those Articles so warrant.

Clause 4(A) of Article 16 inserted w.e.f. 17.06.1995 vide 77th amendment provides that nothing in Article 16 shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services in the State in favour of the Scheduled Castes and Scheduled Tribes, which in the opinion of the State are not adequately represented in the services under the State. A bare reading of the above provision makes it clear that the same provides for two essential prerequisites: **firstly**, the caste in whose favour any provision for reservation is to be made, is not adequately represented in the services under the State and **secondly**, the State concerned is of the said opinion regarding the non-adequate representation. Meaning thereby, it is the State concerned which is to decide whether there is an adequate representation of the said caste or



not and whether any reservation in promotions is required to be made in favour of the said caste or class.

(iv) Proviso to Article 335 of the Constitution of India also is not a provision mandatory in nature. The said proviso does not provide any State to mandatorily frame/implement provisions in favour of the members of SC/ST's for relaxation in qualifying examination. The said also is a provision leaving it with the discretion of the State to make decisions such as to strike a balance between the various Constitutional amendments.

(v) The framing and adoption of any Rules by the Union/Central Government cannot *ipso facto* be binding on all States too. Even if the Union, in terms of proviso to Article 335, has framed certain Rules to provide relaxation in qualifying examinations to the SC/ST category, the same cannot *ipso facto* bind the State too to adopt the same. This is not the mandate of the proviso to Article 335.

(vi) Even if for the sake of arguments, the Office Memorandum (OM) dated 03.10.2000, issued by the Union for the purpose, is taken into consideration, the same also provides that it would come into effect on or after the date of its issuance and the selections finalised earlier were not to be disturbed. In view of the same, even if the State Government now comes up with any provisions for relaxation in qualifying marks, the same would definitely not govern the present petitioner, his non-selection having become final.

(vii) Rule 27 of the Rules of 1989 provides for a particular scheme of examination for promotion. Part II of the said qualifying examination provides for bifurcation of marks under different



heads namely APA Reports, particular of Rewards, Punishment, Training and Interview. Admittedly, the petitioner did not qualify the part II examination and obtained only 23 marks out of 75 marks in the said examination. A perusal of the heads qua which the marks were to be awarded makes it clear that the same is the prescribed criteria to evaluate the efficiency of the candidate. All the heads as mentioned pertain to the previous service record of the candidate and interview is only one of the said heads. Meaning thereby, the overall performance of a candidate during his complete past service is the basic criteria for assessment in part II examination. Evidently, the petitioner did not qualify the same meaning thereby, he did not have that good a service record so as to qualify for promotion. In the specific opinion of this Court, the non-selection of the petitioner on the said grounds cannot be said to be bad on any count and the petitioner who could not qualify in the examination based on assessment of his previous service record, cannot be held to be entitled to any relaxation in the qualifying examination.

13. So far as the judgment in the case of **Ram Bhagat Singh** (supra), as relied upon by learned counsel for the petitioner is concerned, the ratio laid down in the said judgment would not apply to the present matter as the same was a case of relaxation and reservation at the first stage of appointment. The criteria/principles for relaxation in qualifying examination for appointment and promotion are not the same and they stand on a total different footing.

14. Moreover, the issue, whether it is legal or proper for the Courts to issue directions to a State to provide reservation in



promotions to SC/ST category was dealt in by the Hon'ble Apex Court in the case of **M. Nagaraj and Ors. vs. Union of India & Ors., (2006) 8 SCC 212** and therein the Court specifically held that the State is not bound to make reservation for SCs and STs in matters of promotion. It was further held that if the State wishes to exercise its discretion, it has to collect quantifiable data showing the backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India. The Hon'ble Apex Court in the case of **Jarnail Singh and Ors. vs. Lachhmi Narain Gupta and Ors., (2022) 10 SCC 595**, held as under:

"14. It is well-established that it is neither legal nor proper for the Courts to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within their domain under the Constitution.

15.....

*16.....Moreover, in M. Nagaraj (supra), this Court made it clear that the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. **Therefore, we are of the opinion that no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation.**"*

15. In view of the ratio as laid down in the case of **M. Nagaraj** and **Jarnail Singh** (supra) and in view of the specific observations made herein above, this Court does not find any ground to entertain the present writ petition and the same is therefore, **dismissed.**



16. The stay petition as well as all the pending applications also stand dismissed.

(REKHA BORANA),J

Sachin/-

