



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 1436/2022

Ratanlal S/o Shri Kashi Ram Prajapat, Aged About 36 Years, R/o
Ward No. 15, Near Soni Nursing Home, Rajgarh, District Churu.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur Through Registrar General, Rajasthan High Court Building, Jodhpur.
2. The Registrar Examination, Rajasthan High Court, Jodhpur.

----Respondents

For Petitioner(s) : Mr. Amit Jindal
For Respondent(s) : Mr. A.K. Sharma, Sr. Adv. with
Mr. Vishnu Kant Sharma

**HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

Judgment

02/03/2022

Reportable

(Per Anoop Kumar Dhand, J)

The jurisdiction of this Court has been invoked by the petitioner by filing this writ petition under Article 226 of the Constitution of India with the following prayer:-

"It is, therefore, humbly prayed that this writ petition of the petitioner may kindly be allowed and accepted and by appropriate writ, order or direction;

(i) The respondents may kindly be directed to declare separate cut off marks for the category of persons with benchmark disability.

(ii) The respondents may further be directed to declare revised result after declaring separating cut off marks for the category of persons with benchmark disability and they may further be directed to permit the successful candidates of the category of persons with benchmark disability to appear in main examination.



(iii) Any other appropriate order, or direction which this Hon'ble Court deem fit and proper in favour of the appellant may also kindly be passed."

Brief facts of this case are that an advertisement was issued on 22.07.2021 by the respondents for appointment on the post of Civil Judge Cadre. Total 89 posts were advertised for the year 2020, out of which 4 posts were reserved for the persons with benchmark disabilities and 31 posts were advertised for the year 2021, out of which one post was reserved for this category of specially-abled persons. The advertisement clearly disclose that reservation qua persons with benchmark disability would be horizontal i.e. on their selection qua categories i.e. Scheduled Castes/ Scheduled Tribes/ Other Backward Class/ More Backward Class/ Economic Weaker Section, they would be integrated respectively in such category. The advertisement thus did not conceptualize the specially-abled persons to be a distinctly different category from those of General/Women/SC/ST/OBC/MBC/EWS and logically so according to the enjoinder of horizontal reservation.

The scheme of selection envisages a preliminary examination followed by main examination and interview. As per clause 15(1) of the advertisement:- The competitive examination for the recruitment to the post of Civil Judge shall be conducted in two stages i.e. preliminary examination and main examination. The marks obtained in the preliminary examination by the candidate who are declared qualified for admission to the main examination will not be counted for determining final merit. As per clause 15(2) of the advertisement;- The number of candidates to be admitted





to the main examination will be fifteen times the total number of vacancies (Category-wise) but in the said range all those candidates who secure the same percentage of marks on the last cut-off will be admitted to the main examination.

In pursuance of the above advertisement, the petitioner submitted his online application under the category of Other Backward non-creamy layer with benchmark disabilities and he participated in the preliminary examination conducted on 28.11.2021. The result of preliminary examination was declared on 11.01.2022 with the cut-off marks of every category mentioned in the advertisement, other than the specially-abled candidates with benchmark disabilities.

Being aggrieved with such action of the respondents, the petitioner has approached this Court with a prayer for issuing directions to the respondents to declare separate cut-off marks for this category of specially-abled persons.

Learned counsel for the petitioner argued that where separate vacancies have been advertised for the persons with benchmark disabilities in the advertisement, the respondents were under legal obligation to issue separate cut-off marks for this category. Counsel further argued that such inaction of the respondents is in contravention of the Rajasthan Judicial Service Rules, 2010 (for short "the Rules of 2010") and the same has violated the fundamental rights of the specially-abled persons contained under Articles 14 and 16 of the Constitution of India.

Per contra, learned counsel for the respondents submitted that under the Rules of 2010, there is no provision for issuing separate cut-off marks for the persons with benchmark



disabilities. Counsel for the respondents further submitted that the process has been undertaken strictly in accordance with the Rules of 2010, hence, the result of preliminary examination cannot be faulted by any means. Counsel further argued that the reservation contemplated for specially-abled persons under the Rules was horizontal in nature which is clear from the advertisement itself, hence, insistence of the petitioner for declaring separate cut-off marks for this category of candidates is not tenable in the eye of law. Counsel further submitted that as the preliminary examination is an exercise to short list the candidates, having regard to the reservation for those who are specially-abled, the challenge is even otherwise wholly misplaced.

In support of his contentions, counsel for the respondents has placed reliance on the decisions of the Division Bench of this Court in **D.B. Civil Special Appeal No. 445/2004 (Himanshu Kachhawaha Vs. Rajasthan Public Service Commission & Anr.) decided on 16.08.2011** and **D.B. Civil Special Appeal No.881/2002 (Bhuvnashwar Singh Vs. Rajasthan Public Service Commission & Anr.) decided on 16.08.2011**, in which the Hon'ble Court has held that the results of preliminary examination are declared strictly as per the prescription of rules and that as reservation for persons belonging to specially-abled category has been prescribed under the rules to be on horizontal basis as the same has been portrayed in the advertisement also, hence, there cannot be a separate category for whom cut-off marks are required to be declared. Lastly, counsel for the respondents argued that in exercise of the power of judicial review, this Court would not intervene having regard to framework





of the Rules and the advertisement founded thereupon qua the issue raised. The process has been undertaken strictly in accordance with the Rules.

We have heard learned counsel appearing for the parties and also analyzed the arguments raised by both the sides.

It is not in dispute that the process for appointment on the post of Civil Judge has been undertaken by the respondents as per the Rules of 2010. Rule 10 of the Rules of 2010 deals with the provision of reservation of vacancies for Scheduled Castes, Scheduled Tribes, Other Backward Classes, More Backward Classes, Economically Weaker Sections, Persons with Disabilities and Female Candidates. Rule 10(4) deals with reservation of vacancies for persons with benchmark disabilities in the recruitment to the service shall be in accordance with the rules of the State issued from time to time in this behalf.

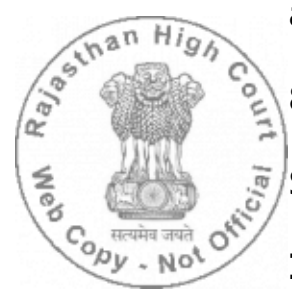
Rule 20 of the Rules of 2010 deals with the scheme of examination and syllabus. As per Rule 20(1) of the Rules of 2010, the competitive examination for the recruitment to the post of Civil Judge shall be conducted by the Recruiting Authority in two stages i.e. preliminary examination and main examination as per the scheme specified in Schedule-IV. The marks obtained in the preliminary examination by the candidate who are declared qualified for admission to the main examination will not be counted for determining their final merit. Rule 20 (2) of the Rules of 2010 says that the number of candidates to be admitted to main examination will be fifteen times the total number of vacancies (Category-wise) to be filled in the year but in the said range all those candidates who secure the same percentage of



marks as may be fixed by the Recruiting Authority for any lower range will be admitted to the main examination.

Clause 15 of the advertisement is replica of the aforesaid rules. In view of the decisive bearing of the concept of horizontal and vertical reservations, apt it would be to refer to paragraph 812 of the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of **Indra Sawhney Vs. Union of India & Ors., reported in 1992 Suppl. (3) SCC 215**, which is reproduced as under:-

"812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes (under Article 16(4)) may be called vertical reservation whereas reservations in favour of physically handicapped (under clause (1) of Art. 16) can be referred to as horizontal reservation. Horizontal reservations cut across the vertical reservations- what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category, if he belongs to SC category he will be placed in that quota by making necessary adjustments, similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains- and should remain- the same. This is how these reservations are worked out in





several States and there is no reason not to continue that procedure.”

The controversy involved in this petition is no more res-integra as the same has been decided by the Division Bench of this Court on 16.05.2014 in the case of **Vikram Singh Chauhan**

Vs. State of Rajasthan & Ors., by observing thus:-

“A plain reading of the above text would evince that reservations in favour of the Scheduled Castes, Scheduled Tribes and Other Backward Classes are under Article 16(4) of the Constitution of India and classified as vertical reservation, whereas reservations in favour of physically handicapped candidates are under Article 16(1) of the Constitution and referable as horizontal reservations. Their Lordships held that horizontal reservations cut across the vertical reservations and are thus construed as inter-locking reservations. It was clarified that 3% reservation of the vacancies in favour of physically handicapped persons would be one relatable to Article 16(1) and the persons selected against this quota would be placed in the appropriate category i.e. if he belongs to SC category he would be placed in that quota by making necessary adjustments and similarly, if he belongs to open competition (OC) category, he would be placed in that category by making necessary adjustments. Their Lordships enounced that after providing these horizontal reservations, the percentage of reservations in favour of OBC category should remain the same.

The above authoritative judicial edict thus clearly distinguishes these two types of reservations and the consequence attendant thereon. Patently, physically handicapped persons if selected against their quota of reserved vacancies, would eventually be placed in the appropriate category i.e. SC/ST/General/Women and would stand assimilated in those categories, so much so that the percentage of reservation in favour of backward class of citizens remains unaltered.

A Single Bench of this Court in Himanshu Kachhwaha & ors. V/s Rajasthan Public Service Commission & ors. (2004(5) WLC (Raj.) 243) (S.B. Civil Writ Petition Nos.830/2004 and 384/2004





decided on 16.3.2004) was seised with the grievance of the petitioners therein that though required under Rule 15 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999, candidates fifteen times the total approximate number of vacancies (category- wise) to be filled in the year concerned were to be admitted to the main examination, it was not so done for the physically handicapped persons. The challenge based on this cavil was negated relying on the decision of the Hon'ble Apex Court rendered in Indra Sawhney (supra). The observation of the Coordinate Bench of this Court in Bhuvnashwar Singh (supra) to that effect that law does not permit that there should be a separate category for physically handicapped persons for the purpose of reservations, was also relied upon. The decision of the Hon'ble Apex Court in the case of **Chattar Singh and Ors. Vs. State of Rajasthan and Ors. reported in ((1996) 11 SCC 742)** was distinguished. This rendition in Himanshu Kachhwaha (supra) was upheld in D.B.Civil Special AppealNo.445/2004 (decided on 16.8.2011) drawing sustenance therefor amongst others from the verdicts in Indra Sawhney (supra) and Bhuvnashwar Singh (supra).

In Bhuvnashwar Singh (supra) the plea of the appellant therein that the respondent-Commission was required to draw up a separate category list for physically handicapped candidates as in the case of reservations for SC, ST and OBC candidates with reference to Article 16(4) was dismissed again principally relying on the verdict of the Constitution Bench of the Hon'ble Apex Court in Indra Sawhney (supra).

In Chattar Singh (supra) which involved recruitment to the posts in administrative and subordinate services under the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962, apart from challenging the vires of Rule 13 thereof, a contention was raised that there was a need to prepare separate list for various categories for which the recruitment was underway. Taking note of the amendment in the Rules, their Lordships of the Hon'ble Apex Court expressed their view that separate lists were required to be published in





respect of candidates in the respective categories so as to make up the number of candidates 15 times the notified or anticipated posts/vacancies so as to enable them to appear in the main examination. Not only as the contextual facts would disclose that the cardinal aspect of dissidence was relatable to the requirement of prescribing lesser cut-off marks for the OBC category candidates, noticeably, the decision of the Constitution Bench of the Hon'ble Apex Court in Indra Sawhney (supra) did not figure in course of the adjudication, more particularly qua the physically handicapped candidates. This decision, therefore, in our comprehension, does not advance the case of the petitioner in the context of the issue presently involved.

In the face of the consistent and determinative judicial pronouncements referred to hereinabove and more importantly founded on the decisive enunciation in Indra Sawhney (supra) bearing on the present debate, we are of the unhesitant opinion that no intervention in the exercise of the power of judicial review is warranted in the facts and circumstances of the case. The plea that cut-off marks for women candidates, who similarly are to avail horizontal reservation, have been declared and that omission to do so vis-a-vis the physically handicapped candidates is in apparent violation of the Rules besides being constitutionally impermissible, does not weigh with us, in view of the emphatic and unequivocal exposition in Indra Sawhney (supra) distinguishing vertical and horizontal reservations in the context of the constitutional scheme therefor as enshrined in Article 16 of the Constitution and the consequential adjustments of those availing horizontal reservations in the respective categories i.e. General/SC/ST/OBC. We find no discernible reason whatsoever to sustain the challenge as laid in the instant petition."

As per the judgment of the Constitutional Bench of the Hon'ble Apex Court in the case of Indra Sawhney (supra), the reservation in favour of the specially-abled (physically disabled) persons is horizontal reservation under Article 16(1) of the





Constitution of India. The persons selected under this quota will be placed in the appropriate category, if he belongs to SC category he will be placed in that quota by making necessary adjustments, similarly, if he belongs to Open Category, he will be placed in that category by making necessary adjustments.

Perusal of the Rules of 2010 indicates that there is no provision for declaring the cut-off for the persons with benchmark disabilities, as the preliminary examination is only a process for short listing the candidates. The result of the preliminary examination has been declared strictly as per the prescription of the Rules and as per the scheme of reservation on horizontal basis. This Court in exercise of the powers of judicial review could not intervene having regard to the framework of the Rules and the conditions mentioned in the advertisement.

In the considered opinion of this Court, the issue involved herein remains no more res-integra and stands settled by the decision of this Court in the case of Vikram Singh Chauhan (supra), it may not be necessary to re-examine the same issue urged in this petition. The ratio decided in the case of Vikram Singh Chauhan (supra) applies to the facts of this case on all force. In the result, we find no substance in this petition.

Hence, this petition fails and the same is hereby dismissed.

No order as to cost.

(ANOOP KUMAR DHAND),J

(MANINDRA MOHAN SHRIVASTAVA),J

Ritu/39