

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 13.10.2021

Pronounced on: 27.10.2021

WP(C) No.1402/2021  
CM No.4776/2021

SOFIYA SHAFQAT

...PETITIONER(S)

Through: - Mr. Jahangir Iqbal Ganai, Sr. Adv. with  
Mr. Murfad Nasim, Advocate.

Vs.

CENTRAL UNIVERSITY & OTHERS

...RESPONDENT(S)

Through: - Mr. Arshid Ahmad, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The reliefs sought in the instant writ petition are reproduced as  
under:-

- I. *Issue an appropriate writ, order or direction in the nature of Mandamus, the decision to exclude the petitioner from the process of Presentation / Interview for admission to PhD Programme in Media Studies on the ground that the Petitioner has not obtained qualifying marks as 50% in the Entrance Test, be declared as illegal and Unconstitutional and there to be quashed.*
- II. *Issue a writ, order or direction in the nature of Mandamus, respondents be directed to allow the petitioner to participate in the process of Presentation / Interview for admission to PhD Programme in Media Studies, to be conducted by the respondents on 28<sup>th</sup> July 2021 and 29<sup>th</sup> July 2021.*

*III. Issue a writ, order or direction in the nature of Mandamus, the respondents be directed to grant admission to the petitioner for undergoing PhD in Media Studies for the academic session 2020-21, against the one (1) vacancy required to be reserved for members of Economically Weaker Sections (EWSs).*

2) The case set up by the petitioner is that on 26.02.2021, respondent No.2 issued an admission notice regarding conduct of Admission Test for admission to various Ph.D. programmes during academic session 2020-21. The admission notice was accompanied by instructions governing the process of admission. As per these instructions, qualifying marks are 50% (45% in case of reserved category candidates).

3) In response to the above admission notice, petitioner being eligible for seeking admission to Ph.D. in Media Studies submitted her online application form along with all requisite documents seeking her consideration under Economically Weaker Section (EWS) category. The petitioner appeared in the entrance test conducted by the University and she secured 47 points. According to the petitioner, she had qualified the entrance test and, therefore, she submitted her research proposal to respondent No.3. However, the name of the petitioner did not figure in the notice dated 15.07.2021, issued by respondent No.3, whereby candidates were called for presentation/interview. She, accordingly, submitted a representation with respondent No.1. In response to the said representation, she was orally informed that she has not secured qualifying marks of 50% (50

points) in the entrance test. It is this action of the respondents which has been challenged by the petitioner by way of instant writ petition.

4) It is contended in the writ petition that in the case of reserved category candidates, there was a relaxation of 5% and petitioner being a candidate belonging to EWS was entitled to aforesaid relaxation in her qualifying marks in the entrance test and, as such, she could not have been excluded from being admitted to the process of presentation/interview.

5) The writ petition has been contested by respondents by filing reply thereto. In their reply respondents have admitted the fact that the petitioner belongs to EWS category. The respondents have also admitted other factual aspects mentioned by the petitioner in her writ petition. It is, however, contended by respondents that in the admission notice it was clearly indicated that only the candidates belonging to reserved categories are required to obtain qualifying marks of 45% whereas rest of the candidates are required to obtain 50% marks. The respondents have further relied upon notification dated 27.08.2021 issued by Ministry of Human Resources Development, which provides for relaxation in criteria in various reserved categories which include SC/ST/OBC (Non-creamy layer)/Differently-abled but the same does not provide for relaxation in criteria for EWS category. Thus, according to respondents, though the petitioner is entitled to seek her admission in the quota reserved for EWS category yet so far as relaxation in qualifying criteria is

concerned, the same is not applicable to her case. The respondents contend that the petitioner has secured only 47% marks in qualifying entrance test as against the requirement of 50% and, as such, she was rightly excluded from the zone of consideration.

6) Heard and considered.

7) So far as the factual aspects of the case are concerned, the same are not in dispute. The only question which is involved in this writ petition is as to whether relaxation of 5% in qualifying marks for entrance examination can be extended to the case of the petitioner who falls under the EWS category.

8) Vide 103<sup>rd</sup> Constitutional Amendment Act, 2019, provision for reservation for EWS category has been made. Prior to this amendment, there was provision for reservation only for Scheduled Caste (SC), Scheduled Tribe (ST) and Socially and Economically Backward Classes. Ministry of Human Resources Development, Department of Higher Education, vide its Office Memorandum dated 17<sup>th</sup> of January, 21019, decided to provide reservation in admission to educational institutions upto a maximum of 10% of total seats in each category to the candidates belonging to Economically Weaker Sections. The admission notice, which is subject matter of the instant writ petition, also notifies the fact that the seats have been reserved amongst other categories for the category of EWS. The petitioner in the instant case had applied for admission to Ph.D. programme in

Media Studies which is at serial No.2 of the Admission Notice. The relevant extract of the Admission Notice is reproduced as under:

Ph.D. Programme	Intake	Eligibility
Media Studies	10	Masters in Various Media Specialization including Electronic Media, Journalism, Development Communication, Mass Communication, Media Studies, Convergent Journalism, Broadcast Journalism etc. with 55% Marks (50% in case of SC, ST, OBC, PWD & EWS)

9) From a perusal of the aforesaid extract of the Admission Notice, it is clear that the respondent University has provided for reservation amongst others to the candidates belonging to EWS category. It also comes to the fore that even for the purposes of eligibility, relaxation of 5% marks has been extended to the candidates of EWS category.

10) The Admission Notice also contains instructions relating to filling up of forms and the criteria of selection. Instruction No.(5) is important in the context of this case and the same is reproduced as under:

5. Entrance Test shall be of qualifying nature with qualifying marks as 50% (45% in case of reserved category candidates).”

From a perusal of the aforesaid Instruction, it is clear that even for qualifying of entrance test, a provision for relaxed criteria in the case of reserved category candidates has been kept. In the case of

general category candidates, the qualifying marks are 50% whereas in the case of reserved category candidates, qualifying marks are 45%.

11) The respondents contended that the expression “reserved category candidates” in Instruction No.(5) refers to only SC, ST, OBC and PWD candidates and not to EWS candidates. To support this contention, the respondents have relied upon proviso to Clause 5.4.1 of the University Grants Commission (Minimum Standards and Procedure for award of M.Phil/Ph.D Degrees) Regulations, 2016, which reads as under:

“Provided that a relaxation of 5% marks from 50% to 45% shall be allowed for the candidates belonging to SC/ST/OBC(Non-Creamy) layers/Differently-abled category in the entrance examination conducted by the Universities.”

12) It is contended by respondents that the criteria for eligibility for admission to Ph.D. courses is governed by the aforesaid Regulations and the same cannot be relaxed by the University authorities on their own unless the Regulations are modified. Respondents contend that in the present form of the Regulations, the candidates belonging to EWS category cannot claim relaxation in the criteria for qualifying the entrance test.

13) Before proceeding to determine the merits of the aforesaid contention of the respondents, it would be necessary to understand the background and purpose for which reservation has been extended to Economically Weaker Sections of the society. The 103<sup>rd</sup> Constitutional Amendment was necessitated to benefit Economically

Weaker Sections who were not covered under the existing scheme of reservation, which, as per statistics, constitutes a large segment of Indian population. In the Country's higher education system, it was necessary that Economically Weaker Sections get access to these facilities as mandated in the Constitution. It is with this objective that the aforesaid amendment came to be effected and the benefit of reservation to Economically Weaker Sections of the society was extended even in the matter of admission to educational institutions.

14) In the above context if the benefit is limited to the extent of reservation of seats only without extending the benefit of relaxation in qualifying marks in entrance test, the objective of passing the Constitutional Amendment Act, 2019 would get defeated. In order to achieve the objective of the amendment, the benefit of relaxation in qualifying marks at par with the similar benefit extended to other reserved category candidates is required to be extended to the candidates belonging to EWS category. It is with this purpose that respondent University has, in its Admission Notice, extended the benefit of 5% relaxation in marks of qualifying examination to all reserved categories including EWS category which is specifically mentioned under the column "Eligibility". Under Instruction No.(5) of the Admission Notice, relaxation of 5% in qualifying marks of entrance test has also been extended in the case of reserved category candidates. The words used in Instruction (5) are "reserved category

candidates” which in the context of the Admission Notice, means all the reserved category candidates including “EWS” candidates.

15) If the contention of respondents that only reservation of seats and not relaxation in criteria is available to EWS category candidates is accepted, then there was no need for the University authorities to specifically provide in the Admission Notice that in the case of SC, ST, OBC, PWD and EWS, instead of 55% marks, only 50% marks are required in the qualifying examination. While giving relaxation in the marks of qualifying examination, there is no reason to deny the similar relaxation in qualifying criteria of entrance test. In the Admission Notice also, there is no specific exclusion of EWS candidates in this regard.

16) Coming to the contention of respondent University that relaxation of 5% of marks in the entrance examination is available only to other reserved category candidates and not to EWS category candidates in terms of Regulations of 2016, it has to be noted that when these Regulations were framed, the 103<sup>rd</sup> Constitutional Amendment had not come into being. The said amendment was effected only in the year 2019 and for this reason, the category of EWS is not mentioned in the Regulations of 2016 whereas all other reserved categories are specifically mentioned in the said Regulations. While, there is an urgent need to modify the said Regulations so as to comport the same with the changed Constitutional provisions, till then the benefit of 103<sup>rd</sup> amendment of Constitution cannot be denied to

the petitioner by taking a technical and narrow view of the matter. The same would amount to defeating the Constitutional provisions and its objectives. In order to avoid such situation, a purposive construction to proviso to Clause 5.4.1 of the Regulations of 2016, is required to be given so as to read the category of EWS in the said clause.

17) Although it is not permissible to read words in a Statute which are not there but where the alternative lies between either by supplying words which appear to have been omitted accidentally or otherwise or adopting a construction which deprives and defeats the objective of legislation, it is permissible to supply the words. A departure from the rule of literal construction may be legitimate so as to avoid a Statute or a Legislation working harshly.

18) The Supreme Court in the case of **Hameedia Hardware Stores vs. B. Mohan Lal Sowcar, (1988) 2 SCC 513**, has observed that while words which have not been expressly enacted should not ordinarily be read into a provision while construing the said provisions but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful. While making these observations, the Court relied upon the following observations of Lord Denning L. J. in **Seaford Court Estates Ltd. v. Asher, [1949] 2 All. E.R. 155 at 164**

*“When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of*

*Parliament ..... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature ..... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases."*

**19)** In **Union Bank of India vs. Seppo Rally Oy and another, (1999) 8 SCC 357**, the Supreme Court, while considering the provisions contained in Section 17 of the Consumer Protection Act, 1986, applied a purposive construction to the said provision and put limitations on territorial jurisdiction of State Commission on the lines provided in Section 18 with reference to District Forums with suitable modifications by reading the same into the provisions contained in Section 17.

**20)** The crux of the ratio laid down by the Supreme Court in the aforesaid cases is that wherever in the context of a case full effect to the objective of a Legislation cannot be given without supplying or reading certain words in a rule or a regulation, it is permissible for a Court to resort to purposive construction and read certain words into such rule or regulation which are otherwise not specifically mentioned therein.

**21)** In the instant case, as already noted, without including EWS category in the Regulations of 2016, the objective of granting benefit of reservation to EWS category candidates would get defeated. The EWS category was not in existence at the time when the Regulations

of 2016 were framed, obviously the framers of these Regulations could not have included the said category in the Regulations. The intention of the framers of the Regulations in incorporating Clause 5.4.1 in these Regulations was to extend the benefit of relaxation in entrance examination to the candidates belong to all the reserved categories that were in existence at the relevant time. With the addition of another class to the reserved categories, the Regulation is required to be construed in a manner so as to read into it this newly carved out reserved category, otherwise the object of the 103<sup>rd</sup> Constitutional Amendment would get defeated and it would be a case of hostile discrimination against the EWS category candidates, who by virtue of the Constitutional Amendment of 2019 are to be treated at par with other reserved category candidates. Once the benefit of reservation is extended to EW category candidates, their exclusion from the benefit of relaxation in criteria as is available to other reserved category candidates, would fall foul of Article 14 of the Constitution making the Regulations of 2016 vulnerable to unconstitutionality. To avoid such a situation and in order to make these Regulations workable, the same have to be read in harmony and in consonance with 103<sup>rd</sup> Constitutional amendment, which is at higher pedestal in the hierarchy of laws.

**22)** Once proviso to clause 5.4.1 of the Regulations of 2016 is read in the manner as discussed above by reading EWS category into it, the petitioner would fall into the consideration zone as she has secured

