

Rajasthan High Court - Jodhpur

Mr.Rajak Haidar For The vs Service Commission & Anr. ... on 16 May, 2014

1

N THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

D.B.Civil Writ Petition No.3115/2014

Vikram Singh Chouhan V/s State of Rajasthan & ors.

Date of Order::-

16.5.2014

PRESENT

Hon'ble the Chief Justice Mr.Amitava Roy  
Hon'ble Mr.Justice Vijay Bishnoi

Mr.Rajak Haidar for the petitioner.  
Mr.V.K.Mathur for the respondents.

ORDER

BY THE COURT (Per Hon'ble Amitava Roy,CJ)

The writ-petitioner, a contender for the post of Civil Judge (JD)-cum-Judicial Magistrate First Class in the Rajasthan Judicial Service (for short, hereinafter referred to as "the Service"), seeks to invoke the extra-ordinary writ jurisdiction of this Court to adjudge his perceived omission on the part of the respondents to announce the cut off marks for the physically handicapped candidates in the recently concluded preliminary examination held in course of the process of direct recruitment initiated by the advertisement dated 25.11.2013 of the Registrar (Examination), Rajasthan High Court, Jodhpur, to be illegal and invalid.

We have heard Mr.Rajak Haidar, learned counsel for the petitioner and Mr.V.K.Mathur, learned counsel for the respondents.

The facts lie in a short compass. In the aforestated advertisement for filling up 187 posts of Civil Judge (JD)-cum- Judicial Magistrate First Class in the Service, 5 were earmarked for physically handicapped candidates. The advertisement inter-alia disclosed in clear terms that reservation qua the physically handicapped candidates would be horizontal i.e. on their selection qua categories i.e. Scheduled Caste/Scheduled Tribe/OBC/ General/Women-they would be assimilated/integrated respectively in such category. The advertisement thus did not conceptualize the physically handicapped candidates to be a distinctly different category from those of General/Women/SC/ST/OBC and logically so according to the enjoinder of horizontal reservation. The scheme of selection envisages a preliminary examination followed by main

examination and interview. Thus, clause 14(2) stipulated that the number of candidates to be admitted to the main examination would 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 would be admitted to the main examination. The other clauses of the advertisement being not pertinent for the issue seeking adjudication are not being referred to for the sake of brevity.

Be that as it may, the petitioner responded to the advertisement by offering himself as a physically handicapped candidate. He was duly admitted to the preliminary examination and he did partake therein. The results were declared on 8.4.2014, which according to him, disclosed the cut-off marks for every category mentioned in the advertisement other than that of the physically handicapped candidates. Being aggrieved, he submitted a representation on 15.4.2014 which he has pleaded was not responded to. Situated thus, he has turned to this Court contending inter-alia violation of the Rajasthan Judicial Service Rules, 2010 (as amended) (for short, hereinafter referred to as "the Rules") and also the stipulation in the advertisement providing for declaration of cut-off marks for every category of candidates so as to facilitate admission of fifteen times the total number of candidates categorywise to the main examination.

In their reply, the respondents while stoutly refuting the assailment have clarified that the representation submitted by the petitioner had been duly considered by the examination committee and its decision to reject the same has meanwhile been communicated to him. While contending that there is no provision in the Rules for declaring the cut-off marks for the physically handicapped candidates and that the preliminary examination is only a process for short listing the candidates, they have asserted that the issue raised is squarely covered by the decisions of the Division Bench of this Court in D.B.Civil Special Appeal No.445/2004 Himanshu Kachhwaha V/s Rajasthan Public Service Commission & anr. (decided on 16.8.2011) and D.B.Civil Special Appeal No.881/2002 Bhuvnashwar Singh V/s Rajasthan Public Service Commission & anr. (decided on 16.8.2011). The answering respondents have asserted as well that the results of the preliminary examination have been declared strictly as per the prescription of the Rules and that as reservation for persons belonging to physically handicapped category has been predicated thereby (Rules) to be on horizontal basis as has been portrayed in the advertisement, they cannot be construed to be a separate category for whom cut-off marks are required to be declared.

Mr.Haidar has emphatically argued that as the physically handicapped candidates under the Rules and as per the advertisement, have been construed to be a separate category independent of General/SC/ST/OBC categories, in the scheme of selection, the respondents were under an obligation in the law to publish cut-off marks for the candidates of this category and their failure to do so has vitiated the process of recruitment. Contending that such omission is in contravention of the Rules and the professed stipulation contained in the advertisement to this effect, the learned counsel has urged that the same is violative as well of the fundamental right to equality guaranteed under Articles 14 and 16 of the Constitution of India to the physically handicapped candidates. To reinforce these contentions, the learned counsel has placed reliance on the decision of the Hon'ble Apex Court in Chattar Singh and ors. V/s State of Rajasthan and ors. ((1996) 11 SCC 742).

Per contra, Mr.Mathur has insisted that in absence of any provision in the Rules obligating declaration of cut-off marks separately for the physically handicapped candidates, the plea to the contrary is wholly misconceived. As the petitioner's representation has been duly considered and rejected on merits by the examination committee, this Court in the exercise of the power of judicial review would not intervene having regard to the framework of the Rules and the advertisement founded thereon qua the issue raised. This is more so as the same stands concluded by successive adjudications thereon by a Coordinate Bench of this Court in Himanshu Kachhwaha (supra) and Bhuvnashwar Singh (supra), he maintained. The learned counsel reiterated that the process has been undertaken strictly in accordance with the Rules and thus the results of the preliminary examination by no means can be faulted with. He urged that it being patently clear that the reservation contemplated for the physically handicapped candidates under the Rules was horizontal in nature, the consequence whereof is clearly spelt out in the advertisement, the insistence for cut-off marks for this category of candidates is ex- facie absurd and preposterous. The learned counsel has argued that as the preliminary examination is an exercise to short list the candidates, having regard to the nature of reservation for those who are physically handicapped, the challenge is even otherwise wholly misplaced. To buttress his arguments, he has placed reliance on the decisions of this Court rendered in Himanshu Kachhwaha (supra) and Bhuvnashwar Singh (supra).

We have traversed the pleaded facts and examined as well the documents available. We have also analyzed the arguments advanced.

Admittedly, the on-going process is governed by the provisions of the Rules. The relevant excerpt of Rule 10 which prescribes reservation of vacancies for Scheduled Castes, Scheduled Tribes, Other Backward Classes, Persons with Disabilities and Women candidates is extracted hereinbelow:-

"(4) Reservation of posts for Persons with Disabilities as defined in the Rajasthan Employment of Disabled Persons Rules, 2000, shall be 3% category-wise which shall be horizontal and shall be available only at the time of initial recruitment. In the event of non availability of eligible and suitable persons with disabilities in a particular year, the vacancy so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year."

Rule 20 details the scheme of examination and syllabus for recruitment to the post of Civil Judge. Apart from prescribing that competitive examination therefor would be in two stages i.e. preliminary and main examination as per the scheme set out in Schedule-IV, sub-rule (2) thereof enjoins as hereunder:-

"(2) The number of candidates to be admitted to the 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."

The stipulation corresponding to the above text appearing in the advertisement is a replica thereof.

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 Constitution Bench of the Hon'ble Apex Court in *Indra Sawhney V/s Union of India & ors.* (1992 Suppl.(3) SCC

215), which is reproduced hereinbelow for ready reference:-

"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 relating 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."

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 relating 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 Chattar Singh (supra) was distinguished. This rendition in Himanshu Kachhwaha (supra) was upheld in D.B.Civil Special Appeal No.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.

The writ petition lacks in merit and is dismissed.

(Vijay Bishnoi)J.

(Amitava Roy)CJ

Parmar