

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 7667 Of 2013

Sudhir Kumar

Petitioner

Versus

The State of Jharkhand & Ors.

Respondents

For the Petitioners : Mr. Vijay Ranjan Sinha

For the Respondent-State : Mr. Jai Prakash, AAG

For the Respondent-JPSC: Mr. Sanjoy Piprawall

For the High Court : Mr. Ajit Kumar

PRESENT**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR****CAV on 10th January, 2014 Pronounced on 16th January, 2014**

R. Banumathi, C.J. &***Shree Chandrashekhara, J.*** This writ petition has been filed for

issuance of direction to the respondents to implement the circular issued by the Central Government and State Government for age relaxation for OBC and also for issuance of an appropriate direction to re-fix the age relaxation of Scheduled Caste and Scheduled Tribe candidates and to provide for relaxation of three years as five years.

2. Jharkhand Public Service Commission (JPSC) issued Advertisement No.4/2013 published in various newspapers on 10.12.2013, by which applications were invited from the eligible candidates for the post of Civil Judge (Junior Division)

of general category including backward classes. As per proviso to Rule 5, in case of female candidate or candidates belonging to Scheduled Caste or Scheduled Tribe, there shall be a relaxation of the upper age limit by 3 years. As per Rule 5, there is no age relaxation of upper age limit for the backward class.

3. The writ petitioner is the aspiring candidate for the examination. The case of the petitioner is that the posts have already been reserved for backward classes i.e. 9 seats for BC-I, whereas seven seats for BC-II, while seats are being reserved for Scheduled Caste and Scheduled Tribe who have been given relaxation of upper age limit by three years, there is no such age relaxation given to the backward classes. It is the contention of the petitioner that as the backward classes come within the purview of weaker section of the society, Central Government as well as other State Governments are giving concession in the age fixation of other backward classes in upper age limit by five years and further relaxation in age and while so, the respondents have also to consider the relaxation in upper age limit of the backward classes by five years along with Scheduled Caste and Scheduled Tribe. Hence, this writ petition.

4. We have heard Mr. Vijay Ranjan Sinha, learned counsel for the petitioner, Mr. Jai Prakash, learned AAG for the State,

Service Commission and Mr. Ajit Kumar, learned counsel for the High Court.

5. For recruitment of Civil Judge, Junior Division (Munsifs), Rule 5 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, being relevant, reads as under:-

"5. Eligibility. – A candidate shall be eligible to be appointed as Civil Judges, Junior Division (Munsif) under these Rules, provided –

(a) He is above the age of 22 years and below the age of 35 years as on the last day of January of the year in which applications for examination are invited.

Provided that in the case of a female candidate, or candidates belonging to Scheduled Caste or Scheduled Tribe there shall be relaxation of the upper age limit by 3 years.

(b) He is a graduate in law from a recognized University and enrolled as an advocate under the Advocates Act, 1961, and

(c) he possesses sound health, bears good moral character and is not involved in, or related to any criminal case involving moral turpitude."

6. By reading of Rule 5, it is evident that relaxation of upper age limit is given only to Scheduled Caste or Scheduled Tribe and to the female candidates, but no such relaxation of upper age limit is given to backward classes. In absence of any rule, the petitioner cannot seek for relaxation of upper age limit to the backward classes merely on the ground that certain seats are reserved for the backward classes.

7. Yet another relief sought for by the petitioner is to refix age relaxation of Scheduled Caste and Scheduled Tribe as five years, as other States are providing it as constitutional scheme. As per proviso to Rule 5 of the Jharkhand Judicial

age limit by three years in case of female candidates or candidates belonging to Scheduled Caste or Scheduled Tribe. The Jharkhand Judicial Service (Recruitment) Rules, 2004, is in place for the past 10 years, the petitioner has neither challenged the Rules, nor filed any writ petition seeking for a direction to re-fix the maximum age limit for Scheduled Caste and Scheduled Tribe candidates. This writ petition has been filed at the verge of last date for submission of applications for the examination of Civil Judge (Junior Division) (Munsifs) Recruitment, 2013. Since this writ petition has been filed at the last moment, we are not inclined to entertain this writ petition.

8. Article 16(4) of the Constitution is an enabling provision and it confers only a discretionary power on the State to make reservation in appointments in favour of backward class of citizens which, in its opinion, are not adequately represented in the services of the State. Taking note of the decision in "C.A. Rajendran Vs. Union of India", reported in AIR 1968 SC 507, the Hon'ble Supreme Court in "Ajit Singh (II) Vs. State of Punjab", reported in (1999) 7 SCC 209, has held that, "in view of the overwhelming authority right from 1963, hold that both Article 16(4) and Article 16(4-A) do not confer any fundamental right nor impose any constitutional duty 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

9. In "C. Udayakumar Vs. Union of India", reported in 1995 supp (3) SCC 146, the Hon'ble Supreme Court has held that the Government is not under an obligation to keep posts reserved in its services. To what extent within the constitutional limits, in what manner and in which of the services, reservation should be kept, is a matter for the Government to decide, on a consideration of the relevant factors. The Courts cannot give direction to the Government to keep reservation or the manner in which and the extent to which it should be kept. The Hon'ble Supreme Court has held as under:

3. "The Constitution itself recognises the distinction between the Scheduled Castes, Scheduled Tribes and the Other Backward Classes in the matter of reservation. Merely because reservations are kept or concessions are given to the Scheduled Castes and Scheduled Tribes which are not extended to the OBCs, the reservations and the concessions do not become discriminatory."

10. In "Chattar Singh Vs. State of Rajasthan", reported in (1996) 11 SCC 742, the provision under Rule 13 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 was challenged being discriminatory and violative of provisions under Article 14, Article 16(1) and Article 16(4) as the Rule 13 provided relaxation in cut-off marks upto 5% for candidates belonging to Scheduled Castes/Scheduled Tribes whereas such relaxation was not extended to candidates belonging to OBC category. The Hon'ble Supreme Court has discussed the issue in the following

"17. The next question is whether the OBCs are to be treated alike Scheduled Castes and Scheduled Tribes and given the 5% cut-off marks in the Preliminary Examination under proviso to Rule 13 and whether omission thereof prohibits the right to equality envisaged in Article 14? Article 14 provides right to equality of opportunity and equal protection of law. Articles 15 and 16 are species of Article 14. Article 16(1) prohibits discrimination and gives equality of opportunity to every citizen in matters relating to employment or appointment to any office under the State. Article 16(4) elongates the equality of opportunity to unequals by affirmative action by enjoining upon the State to make provision for reservation of appointments for posts in favour of "any backward class of citizens" which in the opinion of the State is not adequately represented in the service under the State. It is now a well settled legal position that Article 16(4) is not an exception but a facet of Articles 14 and 16(1). It gives power to the State to effectuate the opportunity of equality to any backward class of citizens. Article 366(24) defines "Scheduled Castes" and Article 366(25) defines "Scheduled Tribes". Article 341 empowers the President in consultation with the Governor of the State to specify by public notification that the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be. Similarly, Article 342(1) gives power to the President to specify the tribes or tribal communities which shall, for the purpose of Constitution, be deemed to be Scheduled Castes in relation to the State or Union Territories, as the case may be. That will be subject to the law made by Parliament under clause (2) of Articles 341 and 342(2) thereof. The expression "Backward Classes" has not been defined under the Constitution but the President has been empowered to appoint a Commission to investigate into the conditions of Backward Classes for recommendation with regard to steps to be taken by the Union or the State Governments to remove difficulties and to improve their conditions. Commissions like Kaka Kelekar Commission and Mandal Commission were appointed by the President who identified the backward classes. On identification of social and educational backwardness and acceptance thereof by the appropriate Government, the President or the Governor of the State Government would issue public notification extending the benefits to improve their conditions. Until such a notification is published, Backward Classes are not entitled to the benefit of reservation under Article 15(4) or 16(4) of the Constitution. Articles 14 and 16 read with the Preamble gives equality of opportunity in matters relating to employment or appointment to any office under the State.

The constitutional objective of socio-economic democracy cannot be realised unless all sections of the society participate in the State power equally irrespective of their caste, community, race, religion and sex. All discriminations in sharing the State power made on these grounds and those discriminations are to be removed by positive measures. The concept of equality, therefore, requires that law should be adaptable to meet equality. Article 38 mandates to minimise inequality in income and to eliminate the inequality in status

secure to them adequate means to improve excellence in all walks of life. Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. Equal protection clause, therefore, requires affirmative action for those placed unequally. Equality for unequals is secured by treating them unequally. Affirmative action or positive discrimination, therefore, is inbuilt in equality of opportunity in status enshrined in Articles 14 and 16(1) of the Constitution. Therefore, Scheduled Castes and Scheduled Tribes stand as two separate classes while OBCs stand apart.

18. The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the trinity of the Constitution to remove social, educational and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39-A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish evidence of historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated as dissimilar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4). Obviously, therefore, proviso to Rule 13 confines the 5% further cut-off marks in the Preliminary Examination from the ⁷⁵¹lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on a par with the general candidates. The rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled Tribes. By process of interpretation, OBCs cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that in view of the doctrine of fusing "any backward class of citizen" in Article 16(4), further classification of Scheduled Castes and Scheduled Tribes and OBCs as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(a) of the Constitution with a non obstante clause engrafted therein. The Founding Fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and

Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was provided to Scheduled Castes and Scheduled Tribes, was void under Articles 16(1) and 14 of the Constitution."

7. Following the ratio laid down in the case of *Chattar Singh Vs. State of Rajasthan*, reported in (1996) 11 SCC 742 and merely because of the concession in upper age limit is given to the Scheduled Caste and Scheduled Tribe, the same cannot be extended to the backward classes and the petitioner is not entitled to any relief sought in this writ petition. Since validity of proviso to Rule 5(a) of the Jharkhand Judicial Service (Recruitment) Rules, 2004, in so far as it relates to relaxation in upper age limit to Scheduled Caste and Scheduled Tribe is concerned, is not under challenge, therefore, prayer made by the petitioner cannot be entertained. This writ petition is thus dismissed.

(R.Banumathi, C.J)

(Shree Chandrashekhar,J)

Dey/ NAFR