

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 10949 OF 2012

RAVINDRA SINGHPETITIONER(S)

VERSUS

STATE OF CHHATISGARH & ORS.RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

1.In the present Special Leave Petition, the petitioner challenges the impugned judgment and final order dated 12.3.2012 passed by the High Court of Chhattisgarh in Writ Appeal No. 101/2012 whereby the High Court has summarily dismissed the Writ Appeal of the Petitioner.

2.The core issue involved in the present petition is regarding inclusion of reserved category candidates in the unreserved category candidates list at the preliminary stage.

3.This issue revolves around Rule 3(i) of the State Service Examination Rules and the outcome depends on the interpretation and working of this Rule. Minimal but necessary facts which require mention are given below:-

The Respondent No. 2 namely Chhattisgarh Public Service
Commissioner issued an advertisement dated 3.9.2008 inviting

applications for filling up various posts in the State Administration. The selection procedure consisted of three stages namely Preliminary Examination, followed by Main Examination, and thereafter Interview. Petitioner belongs to the general category.

4. Preliminary examination of the candidates were held on 01.02.2009. Since further process was to be governed by Rule 3 of the Examination Rules, we reproduce this Rule at this stage,

3(i) The candidates obtaining minimum marks in the preliminary examinations as may be fixed by the Commission in their discretion, shall be arranged in the order of marks obtained by them. Out of these candidates only about as many as equal to fifteen times at the most the total number of posts under various categories, will be deemed to qualify for the Main Examination and the results of the preliminary examination shall be announced accordingly. The list of candidates belonging to unreserved category, Scheduled Castes and Scheduled Tribes, and OBC qualifying for main examination shall be separately prepared and their results announced accordingly. Preliminary Examination will only serve as a screening test for selecting candidates for the main examination and marks obtained in this examination will not be considered at the time of final selection of candidates.

(ii) The candidates who appear in the main examination and obtain such minimum marks as may be fixed by the Commission in their discretion will be arranged in the order of total marks obtained by them in the main examination. Out of these candidates only about as many as equal three times the total number of posts under various services will be deemed to qualify for being called

for interview. Similarly, a separate list of candidates belonging to unreserved category, scheduled castes, scheduled tribes and OBC who qualify for being called for interview shall be prepared.

- (iii) (a) After the interview the candidates will be arranged by the commission in the order of merit as disclosed by the aggregate of marks awarded to them in the Main Examination and the interview.

Due consideration will be given while recommending a candidate for a particular service, preference, if any expressed by him/her in the application subject to the following conditions:

- (1) If a candidate has not expressed any preference in the application, he will be considered for all posts in the order in which these have been enumerated in the advertisement.
 - (2) In case a candidate does not succeed in getting any of the posts of his preference, he will be considered on the basis of his aggregate of marks for other posts in the order in which these have been enumerated in the advertisement. However, he shall not be considered for any post for which he has expressly indicated that he would not like to be considered for it.
 - (3) The above principles will also apply while preparing supplementary list.
- (b) Merit list for each post in the case of candidates belonging to scheduled castes, scheduled tribes and OBC will be similarly prepared separately to the extent of reserved vacancies. In case a candidate

belonging to scheduled castes or scheduled tribes or OBC by virtue of his aggregate of marks, finds place in the unreserved list, he shall be shown in the unreserved list and will not be counted against a reserved vacancy subject to the condition that at any given point of time, as a result of such inclusion of members of scheduled casts, scheduled tribes or OBC in the unreserved list, the total number of candidates belonging to scheduled casts, scheduled tribes and OBC, does not exceed 35% in the case of Class II post and 40% in the case of Class III Post of the total posts for which selection is being made, this will be further subject to the condition that such candidates will not be entitled to the relaxation in pass marks to the extent of 10% granted by General Administration Department.

5. According to the Rule 3(i) of the Rules, while declaring the results of the preliminary examination, names of the persons having obtained minimum qualifying marks for selection were to be placed serially as per merit. As per the same Rule, candidates equivalent to 15 times of the total number of available vacant posts were to be qualified for the mains examination. The Rule also explicitly specifies that the list of candidates having qualified for the mains examination are to be prepared and declared separately and category wise for the unreserved, scheduled castes, scheduled tribes and other backward classes. In addition, it is also specified under the same Rule that the preliminary examination is merely a screening test and the marks obtained in this exam would not be considered in final selection of the candidates. The only purpose of preliminary examination is to screen the candidates having basic qualification to hold the posts desired, among 'N' number of applicants.

6. Result of the preliminary examination was declared on 1.5.2009. List was prepared of the successful candidates who reached second stage, becoming eligible to participate in the main examination. Name of the petitioner, however, was not in the list of successful candidates in the general category. The petitioner was stunned and surprised with the aforesaid result, as he was very hopeful of his berth in the main examination. He moved an application under Right to Information Act, 2005 and sought relevant information. He came to know that in the preliminary examination of year 2008 total number of candidates selected were 4059 out of which total of 1246 candidates of unreserved category (177 candidates from SC, 155 candidates from ST and 914 candidates from OBC) having secured higher or equivalent marks were placed in the list of qualifying candidates for the unreserved category.

7. According to the petitioner, inclusion of persons from reserved category in the list meant for general category at the preliminary stage was contrary to Rule 3 (i) of the Exam Rules which provides for separate and category wise list of different categories. With this procedure, many general category candidates got excluded and could not appear in the main examination. The petitioner, filed the Writ Petition in the High Court of Chhattisgarh. This Writ Petition was dismissed by the learned Single Judge vide orders dated 18.10.2011. The petitioner decided to challenge this order and filed Writ Appeal before the Division Bench, which also met the same fate, in as much as vide orders dated

12.3.2012 this appeal has been summarily dismissed by the High Court observing as under:-

“This rule does not provide that a candidate belonging to scheduled caste or scheduled tribe or OBC cannot be included in the list of unreserved category.

In *Indra Sawhney & Others vs. Union of India and Ors.* (1992) Suppl (3) SCC 217; the Supreme Court held that “In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to say, scheduled castes get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for scheduled castes; they will be treated as open competition candidates.”

The writ court, relying on various decisions of the supreme court including *Indra Sawhney* (supra) did not find any force in the arguments advanced by learned counsel for the appellant/ petitioner that the candidates belonging to scheduled caste, scheduled tribes or OBC cannot be included in the list of candidates belonging to unreserved category.”

It is this order which is under challenge before us.

8. Submission of Mr. Atul Nanda, learned Senior Counsel appearing for the petitioner was same before us as well, as was argued before the High Court, viz. at the stage of preparing the result of preliminary examination, reserved category candidates cannot be included in the list of unreserved category candidates. He submitted that the petitioner does not dispute the inclusion of the reserved category candidates, in the unreserved category at the final stage on the basis of their merits. However, by including them at the preliminary stage itself not only is contrary to the aforesaid rule but it will give reserved category

candidates undue advantage. Furthermore, in this process they will thereafter be treated as general category candidates (those reserved category candidates which are included in the list for general category) and will have to compete, at the time of taking final exam and interview etc. as general category candidates which may even be to their disadvantage. Further, it would be discriminatory qua them vis-a-vis those candidates who remain in reserved category in as much as this class would be judged by higher standards but those who secured lesser marks in the preliminary exams and remained in reserved category would be selected on relaxed standards applicable to the reserved category.

9. This argument appears to be attractive. *Prima facie*, even the reading of Rule 3 suggests that such a shift is permissible at the final stage. However, we need not express final view in the matter as on the facts of the present case we feel that even if some persons belonging to reserved category were included in the list of unreserved category in the results of the preliminary examination itself, it would not make any difference in so far as the present petitioner is concerned who was out of reckoning in any case.

10. The respondents have placed on record the results of the petitioner. He had obtained 223.4050 marks in the unreserved category. Whereas the last candidate selected in the unreserved category had obtained 232.9795 marks. Total unreserved post for male candidates were 152. Since 15 times candidates were to be included in the list for appearing in main examination, total number

of persons in this category who were called were 2280 (152x15). Even if those reserved candidates who were included in this list are excluded, the last selected candidate would be the person with more than 223.4050 marks. The petitioner, therefore, would remain unsuccessful in any case. In the affidavit by the official respondents after giving the aforesaid figures it is categorically stated as under:

“Therefore, out of the unreserved category, all the candidates of reserved category are separated and even in the imaginary situation of marking the unreserved category, the marking of candidate Ravinder Kumar would not be possible in the Main Examination.”

11. Therefore, it may not even be necessary to authoritatively go into the question raised by the petition. Thus, leaving the question of law open, we dismiss the Special Leave Petition *in limine*.

.....J.
[ANIL R. DAVE]

.....J.
[A.K.SIKRI]

New Delhi
December 05, 2013.