



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5051 OF 2023

REKHA SHARMA

APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT, JODHPUR
& ANR.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5052/2023

RATANLAL

APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT, JODHPUR
& ANR.

RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. Both the appeals having common question of law and facts were heard together and are being decided by this common judgment.
2. The facts in nutshell are that the respondent High Court had issued an advertisement for the direct recruitment of 120 posts of Civil Judge and Judicial Magistrate under the Civil Judge Cadre. The appellant-Ms.

Rekha Sharma, having 40% permanent disability in relation to her eyes, had applied for the said post. The appellant-Ratan Lal having locomotor disability i.e. 55% permanent physical impairment in relation to his right upper limb, had also applied for the said post. Both having appeared in the Preliminary Examination were declared “not successful.” As per the result declared on 11.01.2022, the cut off marks in respect of every category mentioned in the advertisement were shown except the cut off marks for the category of Persons with benchmark disabilities.

- 3.** Being aggrieved by the said result, the appellant-Ratan Lal (in C.A. No. 5052/2023) had preferred D.B. Civil Writ Petition No. 1436 of 2022, which came to be dismissed by the High Court vide the judgment and order dated 02.03.2022. The appellant-Rekha Sharma (in C.A. No. 5051/2023) had also filed D.B. Civil Writ Petition No. 1868 of 2022 which came to be dismissed by the High Court vide the order dated 06.04.2022 relying upon the judgment dated 02.03.2022 passed in Writ Petition No. 1436 of 2022.
- 4.** The bone of contention raised by the learned counsels appearing for both the appellants in the instant appeals is that the respondents while declaring the result of Preliminary Examination showing the cut off marks for each of the categories mentioned in the advertisement in question, had not shown the cut off marks for the category of Persons

with benchmark disabilities. According to them, the said action of the respondents was discriminatory and violative of their Fundamental Rights enshrined in Article 14, 16 and 21 of the Constitution of India, and also violative of the Rajasthan Judicial Service Rules, 2010 read with Rajasthan Rights of Persons with Disabilities Rules, 2018.

- 5.** According to the learned Senior Counsel Ms. Pinky Anand appearing for the respondents, the appellant-Rekha Sharma having obtained 57 marks in the EWS category for which the cut off marks were 69 marks, and the appellant-Ratan Lal having secured 59 marks in the OBC-NCL category for which the cut off marks were 67 marks, were found to be not qualified for appearing in the Main Examination. She further submitted that the entire selection process was over on 30.08.2022 and the appointments of successful candidates have already been made by the respondents on 09.03.2023. The fresh advertisement for the vacancies of 2022-2024 was issued on 09.04.2024 and the result of the Preliminary Examination in respect of the said advertisement has also been declared on 15.07.2024.
- 6.** Before dealing with the rival contentions raised by the learned counsels for the parties, let us refer to the relevant paragraphs of the advertisement dated 22.07.2021 in question.

“1. The Rajasthan High Court, Jodhpur under the Rajasthan Judicial Service Rules, 2010 (As amended) is inviting online application in the prescribed online format for direct recruitment on 120 vacant posts (89 posts of 2020 and 31

posts of 2021) of Civil Judge and Judicial Magistrate under the Civil Judge Cadre on probation at the pay scale of 27700-770-33090-920-40450-1080-44770.

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4. Number of Vacant Posts and Reservations: -

Total no. of vacancies	Year	General	Reserved					Persons with benchmark disabilities
			SC	ST	OBC	EWS	MBC	
89	2020 (upto Dec. 2020)	35 out of which 10 posts for women out of 10 posts reserved for widow	14 out of which 04 posts for women out of 04 posts reserved for widow	10 out of which 03 posts for women	18 out of which 05 posts for women out of 05 posts reserved for widow	08 out of which 02 post for women	04 out of which 01 post for woman	Out of 89 vacancies 04 posts for persons with benchmark disabilities
31	2021 (upto Dec. 2021)	14 out of which 04 posts for women out of 4 posts reserved for widow	04 out of which 01 post for woman	03	06 out of which 01 post for woman	03	01	Out of 31 vacancies, 01 post for persons with benchmark disabilities

*Out of 05 posts reserved for persons with Benchmark Disabilities, 01 (one)post is reserved for blindness and low vision, 01 (one) for deaf and hard of hearing, 01 (one) for locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victim and muscular dystrophy and 02 (two) for autism, intellectual disability, specific learning disability and mental illness and multiple disabilities from amongst persons under clause (a) to (d) including deaf blindness in the posts identified for each disabilities.

5. In relation to reservation in various categories: -

i. The reservation in the reserved post for women (widow or divorcee) shall be category wise horizontal in the vacant posts, which means that the category (Scheduled Caste/Scheduled Tribes/Other Backward Class/Extremely Backward Class/ Economically Weaker Sections/General Category) of woman applicant selected will be adjusted in the same category for which she filed application.

ii. The reservation for the handicapped shall be horizontal against the total vacant posts, which means that category (Scheduled Caste/Scheduled Tribes/Other Backward Class/ Extremely Backward Class/ Economically

Weaker Sections/General Category) of handicapped applicant selected will be adjusted in the same category for which he filed application.

iii. In case candidates for Scheduled Caste/Scheduled Tribes/Other Backward Class/ Extremely Backward Class/ Economically Weaker Sections/Women (Widow or divorcee)/handicapped of Rajasthan State is not available then these posts shall be filled as per the procedure and customs of the Rajasthan Judicial Service Rules, 2010.

iv. For selection to the post of general category, the candidates of reserved category should be eligible like the candidates of general category.

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15. Scheme & Syllabus of Examination: -

(1) 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.

(2) The number of candidate 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.

Note: - To qualify for Main Examination, the candidates of SC/ST category shall have to secure minimum 40% marks and candidates of all other categories shall have to secure 45% minimum marks in the Preliminary Examination.

(3) The number of candidates to be admitted to the interview shall be, as far as practicable three times the total number of vacancies category-wise. Provided that to qualify for interview, a candidate shall have to secure a minimum of 35% marks in each of the law papers and 40% marks in aggregate in the Main Examination.

Provided further that a candidate belonging to Scheduled Caste or Scheduled Tribe category, shall be deemed to be eligible for interview, if he has obtained minimum of 30% marks in each of the law papers and 35% marks in the aggregate in the Main Examination.

(4) It shall be compulsory to appear, in each and every paper of written test, as also before the Interview Board for viva voce. A candidate, who has failed to appear in any of the written paper or before the board for viva voce shall not be recommended for appointment.

(5) The examination scheme for recruitment to the cadre of Civil Judge shall consist of :

- I. Preliminary Examination (Objective Type)
- II. Main Examination (Subjective Type)
- III. Interview.....”

7. As per the notice dated 11.01.2022 declaring the result of the Preliminary Examination held on 28.11.2021, the respondents had mentioned the following cut off marks for the respective categories mentioned in the advertisement.

Cut-off Marks

Category	Cut Off Marks
General	72
General (Divorcee)	58
General (Widow)	45
SC	55
SC (Divorcee)	39
ST	53
OBC-NCL	67
OBC-NCL (Divorcee)	63
OBC-NCL (Widow)	46
MBC-NCL	46
EWS	69

8. Though the Learned Counsels for the appellants have strenuously urged that it was incumbent on part of the respondents to show the cut off marks for the category of Persons with benchmark disabilities, particularly when the cut off marks for each of the categories mentioned in the advertisement in question were shown, it is difficult to accept the said submissions. Apart from the fact that the appellants having participated in the Selection Process in respect of the advertisement in question and having failed to succeed in the Preliminary Examination, had filed the writ petitions in the High Court, the appellants have also

failed to substantiate their contention that it was incumbent on part of the respondents to fix the cut off marks for the category of Persons with benchmark disabilities. As could be seen from the advertisement itself, the reservation in favour of the Persons with disabilities was an Overall Horizontal Reservation and was not compartmentalised reservation, because out of the total vacancies mentioned in the advertisement, five posts were reserved for the Persons with benchmark disabilities.

- 9.** It is quite well settled that the Horizontal Reservation is of two types: -
- (i) Compartmentalised Horizontal Reservation, and (ii) Overall Horizontal Reservation. The Compartmentalised Horizontal Reservation is such wherein the proportionate vacancies are reserved in each vertical reserved category. However, in case of Overall Horizontal Reservation, the Reservation is provided on the total post advertised i.e. such reservation is not specific to each vertical category. As per the advertisement dated 22.07.2021, the vacancies in case of women candidates were classified/identified for each category i.e. General, OBC, SC, ST, MBC whereas for the Persons with benchmark disabilities, no such vacancies were mentioned in the said categories. Further, in the three-tier process of the Examination Scheme, the number of candidates to be admitted to the Main Examination were fifteen times the total number of vacancies (category wise) and the candidates had to qualify themselves by securing the minimum

percentage of marks fixed for each of the categories in the Preliminary Examination. Therefore, the Persons with benchmark disabilities falling under the Overall Horizontal Reservation had to qualify for the Mains Examination by securing minimum cut off marks fixed for the concerned category in which he/she had applied.

10. Apart from the fact that there was nothing provided in the advertisement for the fixation of cut off marks for the Persons with benchmark disabilities, who fall under the Overall Horizontal Reservation, the learned counsels for the appellant have also failed to point out from the Rajasthan Judicial Services Rules, 2010 under which the recruitment process was undertaken, that such fixation of cut off marks for the Persons with benchmark disabilities was mandatory. The reliance placed by the learned counsels for the appellants on the notification dated 14.10.2021 issued by the Rajasthan Government is also not helpful to them in as much as the said notification was given effect to, in the notification dated 16.04.2024 amending the RJS Rules, 2010, providing relaxation in age and concession of 5% in marks in favour of Persons with benchmark disabilities. None of the said notifications or amendment in the RJS Rules, 2010 make it mandatory on part of the respondents to declare separate cut off marks for the Persons with benchmark disabilities.

11. It cannot be gainsaid that the said Act of 2016 is a social legislation enacted for the benefit of the Persons with disabilities and its provisions must be interpreted in order to enhance its objectives, so that the Persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others as contemplated under the Act. However, there is no such provision either in the said Act of 2016 or in the Rules of 2018 framed by the State of Rajasthan, which could be said to have been violated by the respondents by not fixing the cut off marks for the Persons with benchmark disabilities.

12. Undisputedly, the reservation for the Persons with disabilities has been treated as Horizontal Reservation i.e. the reservation under Clause (1) of Article 16, and not the Vertical reservation i.e. the reservation under Clause (4) of Article 16 of the Constitution of India. In the case of ***Indra Sawhney & Others vs. Union of India and Others***¹ the concept of “Vertical Reservations” and “Horizontal Reservations” has been aptly explained. The relevant paragraph 812 thereof reads 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 reservations whereas reservations in favour of physically handicapped under clause (1) of Article 16 can be referred to as

¹ 1992 Supp. (3) SCC 217

horizontal reservations. 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.”

13. Thus, in view of the said clarification made in *Indra Sawhney*, there remains no doubt that the reservation for persons with disabilities would be relatable to Clause (1) of Article 16 and the persons selected against this quota will be placed in appropriate category i.e. if he/she belongs to Scheduled Category, he/she will be placed in that category by making necessary adjustments, and if he/she belongs to open category, necessary adjustments will be made in the open category.

14. The concept of Overall Reservations and Compartmentalised Reservations is also aptly explained by this Court in *Anil Kumar Gupta and Others vs. State of U.P. and Others*². It has been observed therein that where the seats reserved for the Horizontal Reservations are proportionately divided amongst the Vertical (Social) Reservations and are not intertransferable, it would be a case of Compartmentalised

² (1995) 5 SCC 173

Reservations, whereas in the Overall Reservation, while allocating the special reservation candidates to their respective social reservation category, the Overall Reservation in favour of special reservation categories has to be honoured. Meaning thereby the special reservations cannot be proportionately divided among the Vertical (Social) reservation categories, and the candidates eligible for special reservation categories have to be provided overall seats reserved for them, either by adjusting them against any of the Social/Vertical reservations or otherwise, and thus they are intertransferable.

15. As could be seen from the advertisement itself, the reservation for women (widow or divorcee) was compartmentalised reservation, whereas the reservation for the persons with benchmark disabilities was overall reservation. The respondents therefore in the notice declaring result of Preliminary Examination had rightly shown the cut off marks for all the categories except for the category of persons with benchmark disabilities. The Persons with benchmark disabilities for being adjusted in the category for which he or she had applied, had to secure the minimum cut off marks fixed for such category under which he or she had applied. Such fixation of cut off marks for other categories and non fixation of cut off marks for the category of persons with benchmark disability could neither be said to be arbitrary nor violative of any of the Fundamental Rights of the appellants.

16. As well settled, the candidates who consciously took part in the process of selection cannot be permitted to question the advertisement or the methodology adopted by the respondents for making selection, on their having been declared as unsuccessful in the Preliminary Examinations. The appellants after they having found that their names do not appear in the list of successful candidates of Preliminary Examination, could not have questioned the result on the ground that the respondents had not declared the cut off marks for the Persons with benchmark disabilities. As stated earlier, the respondents have declared the cut off marks for the persons falling under Compartmentalised Horizontal Reservation and not for the Overall Horizontal Reservation under which the appellants fall. Such action could neither be said to be arbitrary nor violative of Article 14, 16 and 21 of the Constitution of India.

17. In that view of the matter, we do not find any illegality or infirmity in the impugned judgements and orders passed by the High Court. Both the appeals are dismissed accordingly.

.....J.
[BELA M. TRIVEDI]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI;
AUGUST 21, 2024