

ITEM NO.46

COURT NO.10

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) Diary No.49998/2024

TISHAN JANGID

Petitioner(s)

VERSUS

HIGH COURT OF JUDICATURE FOR RAJASTHAN & ANR.

Respondent(s)

Date : 25-10-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Shadan Farasat, Sr. Adv.
Mr. Talha Abdul Rahman, AOR
Mr. Taha Bin Tasneem, Adv.
Mr. Prannv Dhawan, Adv.
Mr. Sudhanshu Tewari, Adv.

For Respondent(s) Mr. Mukul Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Issue notice.
- 2 Mr Mukul Kumar, the learned counsel waives service of notice for and on behalf of the respondent Nos 1 and 2 respectively.
- 3 The petitioner has prayed for the following reliefs:

“(a) Pass a writ, order or a direction in the nature of certiorari quashing the results dated 01.10.2024 declared by the respondents for Civil Judge Cadre of the Rajasthan Judicial

Service Examinations, 2024 to the extent it does not apply or provide for separate cut-off for persons with benchmark disabilities;

- (b) Pass an order declaring that the denial of the benefit of reservation for Persons with Benchmark Disabilities (PWBDs) to the petitioner in the mains examination result of the Civil Judge Cadre of the Rajasthan Judicial Service Examinations, 2024, as arbitrary, unlawful and violative of the petitioner's fundamental rights under Articles 14, 16 and 21 of Constitution of India;
- (c) Issue a writ in the nature of mandamus directing the respondents to fix cut-off marks for persons with disabilities and thereafter to consider the candidature of the petitioner against the said cut-off marks and apply PWBDs' reservation at all stages of Civil Judge Cadre of the Rajasthan Judicial Service Examinations, 2024.

4 We take notice of the fact that the petitioner suffers from locomotor disability to the extent of 60%. He appeared in the Preliminary Examination conducted by the High Court for the post of Civil Judge. It is not in dispute that he secured the minimum marks required to clear Preliminary Examination. He has secured 111.5 marks in the Main Examination, i.e., above the minimum marks.

5 We had an occasion to consider an identical matter on 24 October 2024. This Court passed the following order in Writ Petition (Civil) No 710 of 2024 filed by one Siddharth Sharma. The order reads thus:

- 1 The petitioner is a blind candidate. The Rajasthan High Court in advertisement No 783 of 2024 dated 9 April 2024, announced the commencement of the recruitment process for direct recruitment to the cadre of Civil Judge 2024. Nine vacancies were reserved for Persons with Benchmark Disabilities, of which two are for the persons pertaining to blind and low vision category. The

advertisement also stated that 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. The advertisement which was issued on 9 April 2024, contains clause 23 pertaining to the scheme and syllabus of the examination which is reproduced below:

“23. Scheme & Syllabus of Examination-

(i) 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.

(ii) 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

(a) To qualify for Main Examination, the candidates of SC/ST category and **Persons with Benchmark Disability** shall have to secure minimum 40% marks in the Preliminary Examination.

(b) To qualify for Main Examination, the candidates of all other categories shall have to secure 45% minimum marks in the Preliminary Examination.

(iii) 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 and Persons with Benchmark Disability 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.”

- 2 Rule 10 of the Rajasthan Judicial Services Rules 2010 provides for reservation of vacancies for Scheduled Castes, Scheduled Tribes, Other Backward Classes, More Backward Classes, Economically Weaker Sections, **Persons with Disabilities** and Women candidates. Rule 10(4) is in the following terms:

“Reservation of vacancies for Persons with benchmark disabilities in the recruitment to the service shall be in accordance with the rules of the State issued from time to time in this behalf.”

- 3 Rule 10(4), *inter alia*, makes a reference to the rules of the State issued from time to time. The State of Rajasthan has issued a notification dated 23 January 2019, prescribing rules called the Rajasthan Rights of Persons with Disabilities Rules 2018 under Section 101 of the Rights of Persons with Disabilities Act 2016.
- 4 Rule 5(1) of the Rules of 2018 prescribes for reservation of vacancies in the following terms:

“In every establishment 4% percent of the vacancies of direct recruitment in the cadre shall be reserved for persons or class of persons with benchmark disabilities according to the section 34 of the Act. In the posts identified for each disability by the Government of India under section 33 and such reservation shall be as treated as horizontal reservation and the vacancies for persons with benchmark disabilities shall be maintained as a separate class:

Provided that where the nomenclature of any post in the State Government is different from the post in Government of India or any post in the State Government does not exist in any department of the Government of India, the matter shall be referred to the Committee constituted under rule 6 for identification of the equivalent post in the State Government. The Committee shall identify the equivalent post on the basis of nature of job and responsibility of each post.”

- 5 In the present case, the petitioner appeared for the Preliminary Examination and secured the requisite marks for qualifying for the Mains Examination in terms of the PWD category. At the Main Examination, the petitioner scored 113.5 marks. However, he has not been called for interview on the ground that he fails to fulfill the cut-off for the EWS category to which he belongs.
- 6 At this stage, it is material to note that in terms of the proviso to clause 23 of the scheme and syllabus of the examination, eligibility has been provided of a minimum of 30% of marks in each of the Law Papers and 35% of marks in the aggregate for the Main Examination for Scheduled Castes and Scheduled Tribes candidates and for Persons with Benchmark Disabilities. The petitioner has admittedly fulfilled this criterion.
- 7 The attention of the Court has been drawn to a judgment of a two-Judge Bench of this Court in **Rekha Sharma vs Rajasthan High Court**¹ delivered on 21 August 2024. In the course of the judgment, the two-Judge Bench referred to the judgment in **Indira Sawhney and Others vs Union of India and Others**², more particularly, paragraph 812, which reads as follows:

“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

1 Civil Appeal No 5051 of 2023
2 1992 Suppl. (3) SCC 217

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 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 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."

- 8 The Court in **Indira Sawhney** has clarified that reservations for the physically handicapped "category" are horizontal in nature in the sense they cut across vertical reservations. The persons selected against this quota will be placed in the appropriate category so that if a candidate, for instance belongs to the Scheduled Caste category, such a candidate will be placed in that quota by making necessary adjustments. In other words, once selected, the candidate would be placed in the category to which he or she belongs after making necessary adjustments.
- 9 In the present case, admittedly, the petitioner has fulfilled the eligibility norm for being called for the interview as

stipulated in the proviso to clause 23 of the scheme and syllabus of the examination, as noted above.

10 In this backdrop, since the interviews will conclude on Saturday (26 October 2024), we direct that the petitioner shall be called for interview as part of the ongoing interview process and shall be duly assessed by the Committee during the course of the interview.

11 The respondents shall file their counter affidavit on or before 1 November 2024.

12 List the Petition on 4 November 2024.”

6 Both the sides are at *ad idem* on the fact that the issues involved in the present petition are identical to the one raised in Writ Petition (Civil) No 710 of 2024. The Writ Petition (Civil) No. 710 of 2024 is coming up for further hearing on 4 November 2024.

7 In such circumstances, referred to above, since the interviews will conclude on Saturday (26 October 2024), we direct that the petitioner Tishan Jangid shall be called for interview as part of the ongoing interview process and shall be duly assessed by the Committee during the course of the interview.

8 The respondents shall file their counter affidavit on or before 1 November 2024.

9 List the Petition on 4 November 2024 along with Writ Petition (C) No 710 of 2024.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar