

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on 24.09.2024
Pronounced on 25.10.2024

WP(C) No. 981/2024
c/w
WP(C) No. 1172/2024

Syed Shaifta Arifeen BalkhiAppellant(s)/Petitioner(s)

Through: Mr. Jahangir Ganai, Sr. Advocate with
Ms. Mehnaz Rather, Advocate in WP(C) No.
981/2024.
Ms. Syed Saifta, Advocate (petitioner in person)
Mr. Showkat Ali Khan, Advocate in (WP(C)
No. 1172/2024)

Vs

J&K Public Service Commission &ors. Respondent(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Varut Gupta, Advocate and
Mr. Aswad Attar, Advocate
Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate
Mr. Shah Aamir, Advocate
Ms. Shaila Shameem, Advocate vice
Mr. Furgan Sofi, GA
Mr. Aatir Javed Kawoosa, Advocate
Mr. Anirudh Sharma, Advocate

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

JUDGMENT

PER OSWAL-J

1. In terms of Notification No. 38-PSC (DR-P) of 2023 dated 27.08.2023, 69 posts of Civil Judge (Junior Division) were advertised. The breakup of the said posts is as under:

Sr. No.	Category	No. of Posts
1.	Open Competition	35
2.	Backward Area	07
3.	Scheduled Caste	6

4.	Scheduled Tribe	7
5.	Economically Weaker Section	6
6.	Line of Actual Control/ International Border	03
7.	Pahari Speaking people (PSP	03
8.	Social Caste	02
	Grand Total	69 posts (Including 03 posts for physically challenged persons on Horizontal reservation basis)

Further, 3 out of 69 vacancies were reserved for the persons having benchmark disability as per Government order No. 59-JK (SWD) of 2021 dated 15.04.2021 (One Arm, Both Legs, One Leg, Blind and Low Vision). The petitioner applied for the abovementioned post under the Open Merit category and participated in the preliminary examination, main examination and in the interview conducted by the respondent No. 3. On 03.04.2024, the result of Jammu and Kashmir Civil Services (Judicial) Examination-2023 was notified. The petitioner obtained 541.50 marks, but she did not figure in the list of selected candidates. Three candidates were selected under the Open Merit/PHC including the respondent Nos. 4 & 5, who had obtained 438 and 406.50 marks respectively.

2. The petitioner through the medium of this petition has assailed the selection of respondent Nos. 4 & 5 on the ground that the reservation provided to the physically challenged persons was horizontal reservation and was to be applied separately to each category under vertical reservation, but the official respondents while selecting the respondent Nos. 4 & 5 have converted the horizontal reservation into vertical reservation, meaning

thereby that they granted the benefit of reservation meant for physically challenged persons to the candidates under open merit only and not to the other categories of Scheduled Caste and Scheduled Tribe, RBA, EWS LAC/IB Pahari Speaking People and Social Caste. In nutshell, the case projected by the petitioner is that the horizontal reservation was to be applied separately to the categories under vertical reservation and had the respondent No. 3 done so, the respondent Nos. 4 & 5 would not have figured in the list of selected candidates and the petitioner & one other candidate would have replaced the respondent Nos. 4 & 5 in the list of selected candidates.

3. The respondent No. 3-J&K Public Service Commission has filed the response, stating therein that the selection of the private respondents has been made strictly in accordance with the J&K Reservation Act, 2004 and in terms of Explanation-B, appended to Rule-4 of the J&K Reservation Rules, 2005. The respondent No. 3 has further stated that as per indent 3 posts out of 69 posts were reserved for physically challenged persons on horizontal basis, therefore, the contention of the petitioner that one post was to be reserved for PHC candidates against 35 Open Merit posts, is misconceived. The private respondent Nos. 4 & 5 alongwith another candidate were selected under the physically challenged persons quota on the basis of their merit as per horizontal reservation Rules, who belong to the open merit category. As per horizontal Reservation Rules, the candidate having higher merit has to be placed in the category under vertical reservation, to which he/she belongs to, which in the present case is open merit. It is further stated that for filling up of the posts earmarked for

physically challenged persons, a merit list of all physically challenged candidates was drawn, the candidates equal to the number of vacancies were selected on merit and no recourse was taken to the category of the candidates. The respondent No. 3 has objected to the writ petition by submitting that the petitioner was aware of the fact that three posts reserved for physically challenged persons, were to be filled on the basis of horizontal reservation and despite knowing that fact, the petitioner participated in the selection process without any demur and now when the selection process has been concluded, the petitioner cannot be allowed to challenge the same at this stage.

4. The respondent No. 4 has also objected to the writ petition on the similar grounds as raised by the respondent No. 3.
5. The respondent No. 5 in his response has stated that the J&K Reservation Rules as amended by S.O. No. 127 dated 20.04.2020 lays down the procedure to provide horizontal reservation to the Ex-servicemen and Physically Challenged Persons and in absence of challenge to the said Rules, the present petition is not maintainable. It is further stated that a perusal of the roster for direct recruitment as prescribed by S.O. 127 dated 20th April 2020 would show that in the roster points, only the categories for which the vertical reservation has been provided are mentioned and the roster points are applicable to only such categories. There is no vertical reservation for Ex-serviceman and Physically Challenged Persons, in these categories and candidates irrespective of their categories are selected as per their own merit and thereafter they are adjusted in their respective categories and that is why there are no separate points fixed for them in the

100 points roster maintained under the Rules. It is also urged by the respondent No. 5 that the marks of the petitioner are 541.50 and one candidate namely Durga Sandhya Shivam figuring at Sr. No. 63 is possessed of a better merit than the petitioner, who has obtained 543 marks.

6. Mr. Jehangir Iqbal Ganie, learned Senior Counsel for the petitioner in WP(C) No. 981/2024, has argued that 4% of the posts advertised, were reserved for physically challenged candidates and as there were 35 posts under the Open Merit category, therefore, only one post under the Open Merit category was available for selection under physically challenged persons quota and further the benefit of reservation to the candidates under the physically challenged quota was also to be granted to other categories on horizontal basis. Learned Senior Counsel has drawn the attention of this Court to the Office Memorandum dated 15.01.2018 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances & Pensions, Government of India to substantiate his submission that point Nos. 1, 26, 51 and 76 of the 100 points' roster have been earmarked for the persons with benchmark disabilities. He has placed reliance upon the judgments of Hon'ble Supreme Court of India in "**Anil Kumar Gupta vs. State of UP and others (1995) 5 SCC173**", "**Suraj Yadav vs. State of UP,(2021) 4 SCC 542**" and "**Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, 2007 (8) SCC 785**".
7. Mr. Showkat Ali Khan, Advocate in WP(C) No. 1172/2024, has supported the submissions made by the learned Senior Counsel in WP(C) No. 981/2024.
8. Per contra, Mr. Rahul Pant, learned Senior Counsel appearing for respondent No. 5 has argued that in terms of Explanation-B to Rule 4 of

J&K Reservation Rules 2005, a candidate selected against the quota meant for physically challenged persons has to be placed in his appropriate category and the horizontal reservation cannot be compartmentalized between the different categories under the vertical reservation. He has further argued that Office Memorandum (OM) dated 15.01.2018 has only been mentioned in the order dated 05.11.2021 issued by the Social Welfare Department, UT of Jammu & Kashmir and the said order has not been made applicable in the Union Territory of J&K. He has placed reliance upon the judgment of Hon'ble Supreme Court of India in '**Rekha Sharma vs. Rajasthan High Court and Another**', 2024 SCC Online SC 2109.

9. Mr. Vikram Sharma, Senior Advocate and Mr. Shah Ameer, Advocate have reiterated the submissions made by Mr. Rahul Pant, learned senior advocate.
10. Heard learned counsel for the parties and perused the record.
11. Before we proceed ahead to adjudicate the controversy involved in this petition, it needs to be noted that horizontal reservation is of two types i.e. (a) compartmentalised horizontal reservation and (b) overall horizontal reservation. Both these reservations are permissible and in the ultimate analysis, the rules only would determine as to which of these both species of horizontal reservation would govern the selection process. In this context it would be appropriate to take note of the various pronouncements of the Hon'ble Supreme Court of India.
12. In '**Anil Kumar Gupta v. State of U.P.**', (1995) 5 SCC 173, the Hon'ble Supreme court has explained as to how horizontal reservation is to be

applied in case of overall and compartmentalised horizontal reservation and it has been held as under

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). **The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations.** In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

(emphasis added)

13. The same principle has been followed in **“Rajesh Kumar Dardia vs. Rajasthan Public Service Commission & Ors”, (2007) 8 SCC 785.**
14. In **Rekha Sharma vs. the Rajasthan High Court, Jodhpur and Anr. 2024 SCC Online SC 2109**, the Hon’ble Supreme Court of India in paragraphs 9 and 14 has held as under:

“9. It is quite well settled that the Horizontal Reservation is of two types: -(i) Compartmentalized Horizontal Reservation, and (ii) Overall Horizontal Reservation. **The Compartmentalized 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.

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. 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 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.”

(emphasis added)

15. The only issue which arises for consideration of this Court is as to whether the reservation of 4% provided for physically challenged persons is a compartmentalized horizontal reservation to the categories under the vertical reservation or an overall horizontal reservation.
16. In order to address this issue, it is appropriate to extract relevant part of Rule 4 of J&K Reservation Rules, 2005, as amended vide notification dated 20th April, 2020, which is as under:

“4. Reservation in Direct Recruitment: Except as otherwise provided in these rules, available vacancies shall be reserved for direct recruitment in each service, class, category and grade belonging to any of the below mentioned categories which shall, as nearly as possible constitute the percentage of available vacancies shown against each.

(a)	Scheduled Caste	8%
(b)	Scheduled Tribe	10%
(c)	Socially and Educationally Backward Classes (other than Scheduled Caste and Scheduled	

	Tribe : (i) Weaker and under privileged Classes (Social Caste); (ii) Residents of areas adjoining line of Actual Control (ALC)/International Border (IB) (iii) Residents of backward areas; (iv) Pahari Speaking People	4% 4% 10% 4%	
C(a)	Economically Weaker Sections (EWS)	10%	
(d)	Ex-servicemen	6%	Horizontal Reservation
(e)	Physically Challenged Persons	4%	

Explanation(A) The horizontal reservation to the extent of 6% of the available vacancies shall be provided to the Ex-servicemen against such posts only where the maximum of pay scale does not exceeds Rs. 10,500/-.

“Explanation (B): - For purposes of clause (d) and (e), the horizontal reservation means the reservations which would cut across the vertical reservation (what is called inter-locking reservation) and the person selected against the physically challenged quota will have to be placed in the appropriate category viz. if he/she belongs to the scheduled caste category, he/she will be placed in that quota by making the necessary adjustment and similarly if he/she belongs to the open competition category, he/she will be placed in that category.”

17. Amended Rule 4 of J&K Reservation Rules 2005, provides for horizontal reservation of 6% and 4% to the Ex-servicemen and Physically challenged persons respectively. Explanation-B appended to Rule 4 explicitly provides that horizontal reservation would cut across the vertical reservation and the persons selected against the physically challenged quota would be placed in the appropriate category. The architectural composition of the Explanation-B appended to Rule 4 amplifies Rule 4, to the extent that the reservation provided to the physically handicapped persons is an overall horizontal reservation, when it states that if such a candidate belongs to Scheduled Caste category, he/she will be placed in that category by making the

necessary adjustment and similarly, if he/she belongs to the Open Merit category, he/she will be placed in that category. The vertical reservation under Rule 4 (supra) has been provided for the candidates belonging to Scheduled Caste, Scheduled Tribe, Socially and Educationally Backward Classes i.e. Weaker and Under Privileged Classes, Residents of Area adjoining ALC/International Border, Residents of Backward Areas, Pahari Speaking Peoples and Economically Weaker Sections. Further the roster of 100 vacancies to be filled by direct recruitment provided by Rule 5(1) of the Rules (supra) reveals that the points have been distributed amongst the categories under the vertical reservation. There are no separate points for physically challenged persons in this 100 points' roster. Office Memorandum dated 15.01.2018 relied upon by the learned Senior Counsel for the petitioner cannot come to the rescue of the petitioner, as the order dated 05.11.2021 issued by Social Welfare Department, Government of UT of Jammu & Kashmir, has only taken note of the same and thereafter the guidelines have been issued for implementation of the Reservation Rules to the persons with benchmark disabilities and as per the guidelines, the persons selected under physically challenged persons quota have to be placed in appropriate category, meaning thereby that if a candidate selected under physically handicapped persons quota belongs to SC category, he/she will be placed in that category and would occupy the SC roster point. Likewise, if a person selected under physically challenged persons quota belongs General Category, he/she will be placed in the said category and would utilise a General Category roster point. Same would be the case

where a selected candidate under physically handicapped persons quota belongs to other social caste or scheduled tribe category.

18. Thus, this court is of the considered view that the reservation of 4% provided to the physically challenged persons under the Reservation Rules of 2005, is an overall horizontal reservation and not compartmentalised horizontal reservation. The judgment relied upon by the learned Senior Counsel in case titled “**Suraj Yadav vs. State of UP, (2021)**” 4 SCC 542, is not applicable in the present case, as the reservation in the said case was compartmentalised horizontal reservation.
19. Ergo, the writ petition is dismissed being without any merit.
20. **WP(C) No. 1172/2024** is also dismissed in the aforesaid terms.

(SANJAY DHAR)
JUDGE

(RAJNESH OSWAL)
JUDGE

Srinagar
25.10.2024
Rakesh P/S

Whether the order is speaking: Yes
Whether the order is reportable: Yes