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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2139 of 2014**

Smt. Shashikala Jangde, w/o Dr. S.N. Jangde, aged about 46 years, r/o Ward No.7, Purana Chandaniapara, Janjgir, P.S. Janjgiri, Tah. & Dist. Janjgir-Champa (C.G.)

---- Petitioner

**Versus**

1. High Court of Chhattisgarh, through Registrar General, High Court at Bodri, Bilaspur, Tah. & Dist. Bilaspur (C.G.)
2. Ganesh Ram Barman, s/o Raju Raj Barman, aged about 42 years, R/o Vill.- Bohapara (Arjuni), P.S. Akaltara, Tah. Akaltara, dist. Janjgir-Champa (C.G.)
3. Vijay Kumar Jolhe, s/o Late Shri Murit Ram Jolhe, aged about 40 years, R/o Aanand Nagar, Behind New Gurudwara, Raipur, P.S. Sankar Nagar, Tah. & Dist. - Raipur (C.G.)

---- Respondents

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| For Petitioner      | : | Shri H.V. Sharma, Advocate.    |
| For Respondent No.1 | : | Shri Abhishek Sinha, Advocate. |

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**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &  
HON'BLE SHRI P. SAM KOSHY, J.**

**Order On Board****Per NAVIN SINHA, C.J.****23/4/2015**

1. The Petitioner was a candidate for the post of District Judge (Entry Level) in the Higher Judicial Service Cadre and appeared in the examination held for the purpose in 2013. She is aggrieved by her non-selection and appointment of a male candidate belonging to her Scheduled Caste category on the post meant for a female candidate of that category.
2. Learned Counsel for the Petitioner submits that Rule 5(c) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (hereinafter called 'the Rules') fixing a minimum

qualifying marks of 50% in the interview was *ultra vires* and contrary to the recommendations of the Shetty Commission. The Petitioner passed the written examination but was declared unsuccessful because she secured 9 out of 20 marks only in the viva-voce test and thus failed to secure the minimum qualifying 50%.

3. Learned Counsel for the Respondents took a preliminary objection to the maintainability of the writ petition relying on (1995) 2 SCC 387 (Cochin Devaswom Board v. Captain E.M.George (dead) by Lrs.) submitting that if *vires* of Rule 5(c) had been challenged, the State was a necessary party in absence of which the writ petition was not maintainable. He next submitted that the total total marks prescribed in the selection process was 220. 100 marks had to be secured each in the first and second written paper and 20 marks in the viva-voce. The prescription for securing minimum 50% marks in the interview was not unusually high so as to be arbitrary, relying on (2006) 6 SCC 395 (K.H. Siraj v. High Court of Kerala). The last submission was that having participated in the selection process unsuccessfully, it is not open for the Petitioner to now turn around and challenge the Rules themselves.

4. We have considered the submissions on behalf of the parties.

5. We find substance in the preliminary objection taken on behalf of the Respondents that in a challenge to the *vires* of the Rules, the State was a necessary party and in absence of which the writ petition suffers from a defect of necessary party as held in Cochin Dewaswom Board (*supra*).

6. In K.H.Siraj (*supra*) it was observed that a bench mark of 30% out of a total of 50 marks for interview was not high or unreasonable keeping in mind that the total qualifying marks were 450. The marks for the viva-voce had been kept at a bare minimum and if a person was unable to secure this bare minimum, it postulates that the person was not suitable for the job of

Judicial Officer. In the present case, out of a total 220 marks, only 20 marks are fixed for interview.

7. The selections have been held according to the existing rules which have now been modified. In (2010) 2 SCC 637 (Rakhi Ray v. High Court of Delhi), it was observed that in (2008) 17 SCC 703 (Malik Mazar Sultan v. U.P.Public Service Commission) it had been clarified that the selection had to be made as per the existing rules and directions have been issued to amend the rules for future selections. It was further observed that inspite of acceptance of the recommendations by the Justice Shetty Commission the Court had insisted appointments have to be made giving strict adherence to the existing rules and not as per the recommendations of Justice Shetty Commission until new rules are framed. In absence of a statutory rule, the directions given by the Court were bound to be given effect to.

8. Furthermore, it is not the case of the Petitioner that if the aggregate marks obtained by her in written and viva-voce is taken together, excluding the requirement for minimum 50% marks in interview, any other candidate with lesser aggregate marks in the reserved Scheduled Caste category had been appointed ignoring her candidature causing hostile discrimination and arbitrariness. In the context, reference may be made to (2010) 3 SCC 104 (Ramesh Kumar v. High Court of Delhi).

9. Insofar as the submission that no male Scheduled Caste candidate could have been appointed on the post reserved for a female scheduled caste candidate and the petitioner being the only candidate had to be appointed, the Respondents have relied on a circular dated C/3-2/97/3/F dated 10.2.1997 providing that in such an event, the post shall not be carried forward and shall be filled with the male candidate of the same category for which it was reserved. There is no challenge to the circular dated 10.2.1997.

**10.** Last but not the least, the Petitioner participated in the selection process being well aware of the Rules and that too for a judicial post. If she was aggrieved, the challenge should have been laid out earlier and not after being unsuccessful in the selection process.

**11.** We find no merit in the writ application. The writ application is dismissed.

(Navin Sinha)  
**CHIEF JUSTICE**

(P. Sam Koshy)  
**JUDGE**