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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3366 of 2016**

1. Anuradha Agrawal W/o Shri Din Dayal Agrawal, aged about 32 years, Occupation Service presently working as Naib Tahsildar, Tahsil Kartala, Up Tahsil Barpali, Thana Kartala, District Korba, Chhattisgarh.
2. Ram Kumar Gupta S/o Shri Shiv Shankar Gupta, Aged about 32 years, R/o Ghotiya Road, Near Sapna Lodge, Police Station City Kotwali, Kawardha, District Kabirdham, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh, Through Secretary, Department of General Administration Mantralaya Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Secretary, Department of Revenue & Disaster Management, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh.
3. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar, Road, Raipur, Chhattisgarh.
4. Controller of Examination, Chhattisgarh Public Service Commission, Shankar Nagar Road, Raipur, Chhattisgarh.
5. Abhishek Diwan C/o Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh, Selected as Deputy Collector in State Service Examination 2014.
6. Nand Kumar Chaubey C/o Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh (Selected as Deputy Collector in State Service Examination-2014).

---- Respondents

For Appellants : Shri Vinay Pandey, Advocate.

For Respondent/State : Shri Prafull N Bharat, Additional Advocate General.

For Respondent/PSC : Shri B.D.Guru, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J

Order on Board

Per Deepak Gupta, Chief Justice

03/08/2016

1. By means of this writ petition, the Petitioners have challenged the constitutional validity of Rule 7 of the Chhattisgarh Public Service Commission Rules of Procedure (for short 'the Rules') which reads as follows:

"7. Minimum qualifying score for written examination, skill examination or screening examination.- Candidates of the unreserved and unreserved sub-category must obtain at least 33 percent marks in every question paper and in any written/skill/screening examination, otherwise he/she will be disqualified and taken off the remaining process of selection. Thus for unreserved category and unreserved sub-category, question paper wise minimum qualifying marks shall be 33 percent of the total marks assigned for the question paper.

Candidates of the reserved category and reserved sub-category must obtain at least 23 percent marks in every question paper in any written/skill/screening examination, otherwise he/she will be disqualified and taken off the remaining process of selection. Thus for reserved category and reserved sub-category candidates, question paper wise minimum qualifying marks shall be 23 percent of the total marks assigned for the question paper.

Where there is provision of scaling of marks obtained in examination, there question paper wise non scaled/raw marks means actual marks obtained will be used for fixing eligibility criteria."

2. Admittedly, the Petitioners belongs to the general category. They are, however disabled person and have sought employment under the State Civil Services Examination as a general category candidate belonging to the physically handicapped category. There is reservation in the State of Chhattisgarh wherein 32% seats are reserved for Scheduled Tribes (for short 'the ST'), 16% seats for Scheduled Castes (for short 'the SC') and 10% seats for Other Backward Class category (for short 'the OBC'). Rest of the seats are open category seats. This is the vertical reservation.

3. There is horizontal reservation also and cutting across all the three reserved categories, 3% seats are reserved for the physically handicapped candidates as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called 'the Act'). The reservation for persons with disabilities cuts across other three reserved categories i.e. SC, ST and OBC and is applicable in amongst all the reserved categories also.

4. The Chhattisgarh Public Service Commission has laid down two benchmarks for a candidate to be declared as successful. For general category candidate, the pass percentage is 33% marks whereas for a candidate belonging to the reserved category, the pass percentage is 23%. The claim of the Petitioners is that they also belongs to the reserved sub-category i.e. the category of physically handicapped and therefore they should be given this benefit of lower pass marks of 23%.

5. The Petitioner No. 1, in this behalf had filed Writ Petition (S) No. 2188 of 2016 in which she had claimed that as per the Rules, she was entitled to reservation. This prayer was rejected by the by the learned Single Judge vide order dated 11.07.2016. However, the learned Single Judge gave liberty to the Petitioner No. 1 to challenge the validity of the Rules. Therefore, the Petitioner No. 1 has accepted the judgment of the learned Single Judge that as per the Rules, she is not entitled to any higher marks. However, now the Petitioners have challenged the validity of the Rules on the ground that they are discriminatory and discriminate between disabled sub-category and other reserved categories.

6. We are not at all impressed with this argument. The disabled persons are in a totally different class as compared to the persons belonging to reserved categories of SC, ST or OBC. The reservation made for SC, ST or OBC has its legal basis in Article 15 and 16 of the Constitution of India. The reservation for disabled persons is not as per the Constitution but as per the statutory provisions

known as "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Moreover, as pointed out above, the reservation for disabled persons is a horizontal reservation cutting across all the categories. The disabled persons will be further classified into disabled persons belonging to the SC, disabled person belonging to ST and disabled person belonging to OBC and so on so forth. If a disabled person belongs to any of the reserved category, then that disabled person will also be entitled to relaxation of the pass marks, however, if the disabled person belongs to the general category, then he cannot be given this benefit.

7. We find no discrimination in this case because the case of disabled person stands on a totally different footing from that of SC, ST or OBC. Reservation for the SC, ST or OBC is meant to remove injustice which has been caused to the members of these categories for centuries together. Reservation for disabled is meant to give an opportunity to individual who are suffering from a disability. The Act gives them an opportunity to get a government job against a quota meant for them. The SC, ST or OBC form a different class by themselves. The disabled persons are totally a different class and category. The object of providing lower marks to the reserved category candidates belonging to SC, ST or OBC is to compensate them for the social injustice which they have faced. This may not apply to disabled persons and disabled persons belonging to general category may even belong to a very well-off family. He can get benefit of the quota inasmuch as 3% meant for the disabled but cannot seek further benefit of the relaxed eligibility criteria on the basis of his being a disabled person. In the case of disabled person, if he belongs to general category, then he will have to clear the test like any other general category person but he will not be denied a job because he is disabled and as per the mandate of the Act, 3% jobs must be made available for disabled persons. We do not think that this envisages grant of any further benefit of relaxation in marks to any such person.

8. In view of the above discussion, we are clearly of the view that challenge of the Petitioners to the constitutional validity of rule 7 of the Rules is totally misplaced and is without any legal basis.

9. We therefore find no merit in this petition. It is accordingly dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(P Sam Koshy)
Judge