

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 15788 of 2012 (O&M)
Reserved on: September 13, 2017

Date of Decision: September 19, 2017

Paramjit Sharma

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Present: Mr. S.K. Garg Narwana, Sr. Advocate with
 Mr. Deepak Hooda, Advocate,
 for the petitioner.

Mr. Dheeraj Jain, Senior Counsel Government of India,
 for respondents no.1 to 3.

Mr. D.S. Nalwa, Advocate,
 for respondents no. 4 and 5.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has challenged the validity of communication dated 12.04.2012 (Annexure P/7) by which respondent – Bank has declined to consider name of the petitioner to appoint him to the post of Financial Analyst in JMG Scale-I (For short “FA [JMGS-I]”) under Orthopedically Challenged (for short “OC”) category. Further sought for a direction to the respondent – Bank to appoint him to post of FA [JMGS-I].

2. Posts in the respondent – Bank is not regulated by any regulation for the purpose of recruitment. It was submitted that as and when Board of Directors take a decision to fill up the post, in that event,

number of posts would be identified and proceed for recruitment. On 09.12.2005, Board of Directors approved direct recruitment of Specialist Officers and permission to recruit 541 Specialist Officers vide Annexure A/2 to the affidavit of Assistant General Manager dated 13.09.2017. To that extent resolution was passed and approved by the Board of Directors. Eligibility criteria was also notified for the post of Financial Analysts (Credit Analysis) – MMG Scale II and JMG Scale I. Extract of eligibility criteria to fill up the post prescribed as follows:-

<i>NAME OF THE POST</i>	<i>FINANCIAL ANALYSTS (CREDIT ANALYSIS) – MMG SCALE II AND JMG SCALE I</i>
<i>JOB PROFILE</i>	<i>Credit Risk Rating of Borrowal accounts and investment portfolio; maintenance of data base and analysis; factoring of management objectives in the rating & upgradation of models; industry analysis & preparation of notes to Top Management / Board.</i>
<i>NO OF VACANCIES</i>	<i>MMG SCALE II – 14; JMG SCALE I – 14</i>
<i>ELIGIBILITY / QUALIFICATION</i>	<u><i>MMG SCALE II & JMG SCALE I:</i></u> <i>Graduate with MBA (Finance) from a recognized university / reputed institute OR ICWA / CA</i> <i>Should possess Computer Literacy</i>
<i>EXPERIENCE</i>	<u><i>MMG SCALE II:</i></u> <i>3 years experience in credit rating of accounts in Banks / F Is, capacity to analyse data base and interpret is essential.</i> <i>Candidates with exposure in Credit Appraisal especially large credit will be preferred.</i> <u><i>JMG SCALE I:</i></u> <i>Experience in the related work area as above is desirable.</i>
<i>MODE OF SELECTION</i>	<i>Through Public Advertisement / Campus Selection</i>
<i>SELECTION PROCEDURE</i>	<i>1. The selection is proposed to be undertaken on the basis of Shortlisting and Interview as under:-</i> <i>a) The applications received will be shortlisted on the basis of academic track record of the candidate, experience and suitability.</i>

	<i>b) Candidates to the extent of required number only will be called for Interview. c) The shortlisted candidates have to undergo the process of Interview. d) Final Selection will be on the basis of Marks secured by the candidate in Interview.</i>
<i>AGE</i>	<i>Max. 28 years for MMG Scale II and Max. 26 years for JMG Scale I (Relaxation in Upper Age Limit will be extended to Candidates belonging to SC/ST/OBC category as per Government of India guidelines)</i>
<i>SALARY / COMPENSATION</i>	<i>Salary and other allowances as applicable to relative Scale. (Depending on experience and suitability and in deserving cases, the candidate may be fitted at a higher stage in the scale of pay upto 3 increments).</i>
<i>OTHERS</i>	<i>Should acquire working knowledge of Hindi, if not possessed already, before completion of Probation.</i>

The Board of Directors have taken a decision to advertised various posts including FA [JMGS-I] to the extent of 14 posts. 2 posts were reserved for OC category.

3. Petitioner was a candidate for the recruitment to the post of FA [JMGS-I] under OC category. Written examination was held on 12.12.2010. Results were announced on 03.03.2011. Petitioner has secured 113 marks in the written examination. Pursuant to the result, interviews were held between 21.03.2011 to 25.03.2011. Petitioner has been awarded 49.33 marks. On 07.04.2011 respondent – Bank issued an office note relating to Recruitment Project -3/2010 – Recruitment of Specialist Officers – JMG Scale-1. In the office note, opinion has been expressed that

“OUR VIEWS / RECOMMENDATIONS:

*The cut-off marks for qualifying in interviews have been reckoned as **55 or more for unreserved category***

candidates and 50 or more for reserved category candidates.”

It was submitted for consideration and orders of the Board of Directors. It was attested by the Board of Directors. The petitioner has secured 49.33 marks in the interview. Therefore, he has been held to be ineligible in view of the respondent-Bank's decision that Bench Mark in the interview is 50 for reserved category candidates like petitioner with reference to decision dated 07.04.2011. Feeling aggrieved by non-consideration of petitioner's candidature for the post of FA [JMGS-I] under OC category, he has approached Chief Commissioner for Persons with Disabilities, Ministry of Social Justice & Empowerment, Government of India. On 23.02.2012, Chief Commissioner for Persons with Disability passed a detailed order while giving advice to the respondents to consider the petitioner's matter positively with reference to para 22 of DOPT's O.M. dated 29.12.2005 (Annexure P/5) which provides for relaxation of standard to those candidates who claimed reservation under Disability Act read with Government Policy. The respondents while referring to order dated 23.02.2012 of Chief Commissioner for Persons with Disability proceeded to communicate to the petitioner that petitioner is not eligible for appointment since he has secured less than the Bench Mark of 50 marks in the interview which was stipulated for the purpose of appointment to the post of FA [JMGS-I]. Hence, the present writ petition.

4. Learned counsel for the petitioner contended that advertisement do not stipulate Bench Mark of 50 marks in the interview. It was introduced after interviews were held. Therefore, change of criteria for selection after commencement of selection process and that to when it

has almost attained finality to the extent that interview marks were announced only order of appointment was required to be issued with reference to merit i.e. with reference to maximum marks for interview is 100 and final selection shall be on the basis of marks secured by the candidate in test or interview. Therefore, introduction of Bench Mark for interview would be arbitrary and illegal. It was further submitted that when the Board of Directors approved for direct recruitment of Specialist Officers and permission to recruit 541 Specialist Officers including FA [JMGS-I] posts on 09.12.2005 (Annexure A-2). One of the item approved is reservation to be provided. "The reservation to Scheduled Castes, Scheduled Tribe and other Backward Classes as well as Physically Challenged candidates will be extended as per Government guidelines." The Government guidelines, namely, Reservation for the Persons with Disabilities was notified by Government of India vide Office Memorandum dated 29.12.2005. Para No.22 reads as under:-

*"22. **Relaxation of Standard of Suitability:** If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post / posts in question."*

It was also submitted that respondent – bank forwarded proposal to the Board of Directors to fix cut-off marks for qualifying in interviews to the post of Specialist Officers – JMG Scale-I on 07.04.2011 while expressing views / recommendations *“The cut-off marks for qualifying in interviews have been reckoned **as 55 or more for unreserved category candidates and 50 or more for reserved category candidates.**”* It was submitted for consideration and orders for Board of Directors, whereas in the absence of resolution and consideration of views and recommendations, members of Board of Directors simply signed the proposal for fixing cut-off marks for qualifying interview (Bench Marks). Therefore, there is no finalization insofar as cut-off marks for qualifying in the interview since views and recommendation is 55 or more for unreserved category candidates and 50 or more for reserved category candidates. Unless and until proposed views and recommendations are considered and order or resolution is passed by the Board of Directors to the extent fixing exactly the cut-off marks for qualifying in interviews as 55 or 50 or any other marks. The respondent – Bank cannot insist or adhere to fix the cut-off marks of 55 for unreserved and 50 for reserved category candidates [like the petitioner]. In other words, there is no cut-off mark for qualifying in interviews. Consequently, based on the merit in the written test and interview are required to be taken into consideration for the purpose of selection and appointment. Learned counsel for the petitioner submitted that the above contention could not be taken up in the present writ petition as the proposal to fix cut-off marks for qualifying in interviews or recommendation was placed on record by the respondent – Bank on the

directions of this Court. Therefore, the aforesaid contention be considered for the purpose of deciding the present petition. In support of this contention, learned counsel for the petitioner relied on two decision:-

- 1) ***Ram Niwas and another vs. Rakesh Kumr and others, AIR 1981, Punjab and Haryana, 397 (Para No.5);***
- 2) ***Smt. Rajbir Kaur and another vs. M/s S. Chokosiri and Co., AIR 1988 Supreme Court, 1845 (Para No.22).***

Thus, it was submitted that respondent – Bank cannot adhere cut-off marks as 50 marks for reserved category candidates like the petitioner in the absence of Board of Directors to fix the cut-off marks as 50. Since as on date, bench marks of 50 has not been stipulated by passing a resolution / orders by the Board of Directors. Hence, unfilled OC category vacancy be filled with reference to criteria in the advertisement and to appoint petitioner.

5. Learned counsel for the petitioner further contended that Board of Directors' decision dated 09.12.2005 for direct recruitment of Specialist Officers and permission to recruit 541 Specialist Officers and its reservation policy that Government guidelines are required to be extended read with Government of India Office Memorandum dated 29.12.2005, Para No.22 which provides for relaxation for disability persons, the respondents-Bank should have relaxed standard both for the written examination as well as for interview marks. Petitioner has secured 49.33 marks whereas the contention of the respondents-Bank that cut-off marks of 50 marks for reserved category candidates, it is only relaxation to the extent of 0.77 marks is extended, petitioner could be appointed against unfilled vacancy under OC category. Since 2 posts were

advertised only one post was filled and remaining one post is yet to be filled in view of cut-off marks for interview. In order to uphold the policy of Social Justice Reforms of Government of India in fairness, the respondents-Bank should have taken note of their own decision to adopt the guidelines in respect of reservation read with Government of India Office Memorandum reservation for the persons with disability to the extent of reservation, petitioner or reserved candidates could have been extended the benefit of reservation to some extent. In not extending the same is violation of Board of Directors' decision dated 09.12.2005 and so also Government of India's Office Memorandum dated 29.12.2005 [Para 22].

6. Per contra, learned counsel for the respondents-Bank submitted that in the advertisement Post Code No. 11 relates to the Financial Analyst [JMG Scale-I], qualification, experience and job profile has been prescribed. Maximum marks for interview is 100 and the final selection shall be on the basis of performance in interview only and further it was informed to the candidates that

“Maximum marks for interview is 100 and the final selection shall be on the basis of marks secured by the candidate in Test and/or Interview, as decided by the Bank.”

“The Bank reserves the right to change the selection procedure, if necessary. The change, if any, shall be communicated to the candidates in advance.”

The respondents-Bank with reference to the aforesaid clauses, proceeded to fix the cut-off marks for qualifying in interviews have been fixed as 55 for unreserved category candidates and 50 for reserved category

candidates vide decision dated 07.04.2011 which was approved by the Board of Directors. Since the petitioner has secured 49.33 marks in the interview, he could not meet the cut-off marks of 50 for reserved category candidate, therefore, rightly, the respondents-Bank have declined to appoint the petitioner. It was further submitted that respondents-Bank have every right to prescribe criteria for the recruitment to any of the post even after interviews were held. In support of this, learned counsel for the respondents-Bank relied on following decisions:-

1. ***The State of Haryana vs. Subash Chander Marwaha and others, (1974) 3 SCC 220 (Para 12);***
2. ***Tej Prakah Pathak and others vs. Rajasthan High Court nd others, (2013) 4 SCC 540 (Para 13);***
3. ***Jarnail Singh etc. vs. State of Punjab etc., CWP No. 4277 of 2000, decided on 23.01.2014 (Para 31 and 33);***
4. ***Salam Samarjeet Singh vs. High Court of Manipur at Imphal and another, 2016(4) SCT 792 (Paras 8, 9 and 33);***
5. ***Yogesh Yadav vs. Union of India and others, 2013(4)SCT, 772.***

In view of the aforesaid decisions, petitioner's contention that respondents-Bank have changed the criteria after completion of interview which amounts to change of game and it is not permissible is not tenable since matter is referred to larger Bench by the Supreme Court in ***Tej Prakash Pathak's case*** (supra). In this background, Full Bench decision of this Court to the extent that ***Subash Chander Marwaha and Neelima Shangla's cases*** are binding judgments on this Court. In the aforesaid decisions for selecting and appointing authorities were permitted to prescribe higher standard for the purpose of merit consideration.

Therefore, contention of the petitioner that the respondents-Bank have changed the criteria after holding interviews which is impermissible is not tenable.

7. Learned counsel for the respondents-Bank further submitted that question of relaxation to reserved category candidates is not applicable in view of Office Memorandum dated 29.12.2005 which are applicable to posts and services under the Government of India, therefore, question of relaxation any application of the office memorandum dated 29.12.2005 is not tenable.

8. Learned counsel for the respondents-Bank further submitted that the petitioner has not pleaded that the respondents-Bank have yet to take a decision insofar as fixing a cut-off marks for qualifying in interviews as 50 marks for reserved category candidates, therefore, he is not permitted to contend the said contention. Whereas on 07.04.2011 Board of Directors have approved for fixing the cut-off marks for qualifying in interviews as 55 for unreserved category candidates and 50 for reserved category candidates. As is evident from the office note dated 07.04.2011 that when the proposal and views/recommendations was made to the extent of fixing the cut-off marks for qualifying in interviews were submitted for consideration and orders, Board of Directors have signed. Thus, Board of Directors have approved for fixing the cut-off marks (Bench marks) for interviews. Thus, the petitioner has not made out a case to interfere with the communication dated 12.04.2012 (Annexure P/7). Hence, instant writ petition is liable to be dismissed.

9. Heard learned counsel for the parties.

10. Learned counsel for the respondents-Bank resisted the contention of the petitioner to the extent that he cannot contend that proceedings dated 07.04.2011 is not in accordance with law to the extent of approving the proposed cut-off marks for qualifying in interviews to the extent of 55 for unreserved category and 50 for reserved category candidates as he has not pleaded in the present petition for which the petitioner contended that on the directions of this Court, proceedings dated 07.04.2011 were placed and it was not made available to the petitioner as required under the advertisement to the extent “***The change, if any, shall be communicated to the candidates in advance***”. Since the candidates have not been informed and the fact that it was not made available to the candidates, during the course of the writ proceedings, such plea can be raised. In support of this, learned counsel for the petitioner has relied on the following two decisions:-

1) *Ram Niwas and another vs. Rakesh Kumr and others, AIR 1981, Punjab and Haryana, 397. Para no. 5 reads as under:*

“5. The main question which arises for decision is that if in a suit for ejectment on the ground of tenancy, the plaintiff pleads title and the parties lead evidence in that regard, can a decree for possession on the basis of the title be passed. According to the leaned counsel for the appellants, it cannot be done. It is well settled that if the parties knew that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the court can still adjudicate thereon. None of the parties can be allowed to say that the court cannot decide the matter because it was not raised in the pleadings. The matter is not res integra. A similar question arises arose before the Privy Council in Rani Chandra Kunwar v. Narpoat Singh, (1906) 34 Ind App 27.

In that case, the defendants at the time of trial raised a contention that the plaintiff had been given away in adoption and was, therefore, not entitled to inherit. This plea was neither taken in the written statement nor an issue had been framed thereon. The contention was raised before the privy council by the plaintiff that in view of the pleadings, the question of adoption could not be gone into. It was held by lord Atkinson that as both the parties had gone to trial on the question of adoption and as the plaintiff had not been taken by surprise, the plea as to adoption was open to the defendants. The objection was consequently overruled. The view of the Privy Council was followed by the Supreme Court in Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593. In that case, no specific plea that the sale in favour of the defendants was affected by the doctrine of lis pendens was taken in the plaint and no specific issue had been framed on the question. However, the defendants went to trial with full knowledge that the question of lis pendens was in issue, had ample opportunity to adduce their evidence thereon and fully availed themselves of the same. Venkatarama Ayyar, J. speaking for the Court, observed that the principle that the evidence led on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties, has no application to a case where parties go to trial with the knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating there to. The absence of a specific pleading on the question is a mere irregularity which causes no prejudice to the defendant.”

2) Smt. Rajbir Kaur and another vs. M/s S. Chokosiri and Co., AIR 1988 Supreme Court, 1845. Para No.22 reads as under:-

“22. Dr. Chitaley than urged that there was not even a pleading by the appellant on the point of money- consideration

for the parting of possession and that no amount of evidence adduced on a point not pleaded could at all be looked into. As a general proposition the submission is unexceptionable; but in the present-case, the point, in our opinion, is not well taken Appellants specifically pleaded "sub-letting". Respondent understood that pleading as to imply all the incidents of sub-letting including the element of 'Rent' and specifically traversed that plea by denying the existence of considerations. Parties went to trial with full knowledge of the ambit of the case of each other. In the circumstances the pleadings would required to be construed liberally.

In Ram Sarup Gupta v. Bishun Narain Inter College, AIR 1987 SC 1242 this Court said this of the need to construe pleadings liberally:

".... Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and find the proceeded or trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal." (Emphasis Supplied)

After all, the “parties do not have the foresight of prophets and their lawyers the draftmanship of a Chalmers.” There is no substance in this contention of Dr. Chitaley either.”

In view of above facts, the respondents-Bank contention that petitioner cannot raise a plea against the defective proceedings dated 07.04.2011 is hereby rejected and petitioner’s contention is accepted.

11. Petitioner contended that interviews for the post of FA [JMG-I] was held between 21.03.2011 to 25.03.2011. Thus, the selection process was over. Consequently, fixation of cut-off marks for qualifying in interviews to the extent of 55 for unreserved category and 50 for reserved category candidates amongst to change of criteria. The respondents-Bank submitted that in the advertisement, bank reserves its right to change the selection procedure. Moreover, for the purpose of appointment, cut-off marks for qualifying in interviews has been fixed, therefore, it does not amount to change of criteria. Further, it was submitted that in view of various decisions cited by him (supra), the latest position in respect of change of criteria during the process of selection is permissible with reference to ***Subash Chander Marwaha’s*** case. Since the said decision was not considered by the Supreme Court in the case of ***K. Manjushree vs. State of Andhra Pradesh, (2008) 3 SCC 512 and Tej Prakash Pathak’s*** case (supra), therefore, Supreme Court referred the matter to larger Bench. Further, Full Bench of this Court in the case of ***Jarnail Singh*** (supra), this Court was pleased to held that even today ***Subash Chander Marwaha and Neelima Shangla’s cases*** are binding. Hence, respondents were permitted to change the criteria of selection and

appointment even during the course of selection and appointment. Therefore, the petitioner's contention is not tenable. No doubt, issue relating to change of criteria during the process of selection is a subject matter which is pending consideration before the larger Bench of the Supreme Court in view of decision in ***Rej Prakash Pathank's case*** (supra). Thus, petitioner has not made out a case insofar as change of criteria.

12. The petitioner further contended that fixing of cut-off marks for qualifying in interview as 55 and 50 for unreserved and reserved category is yet to take finality or shape so as to operate the same for issuance of appointment of FA [JMGS-I]. Perusal of proceedings dated 07.04.2011 of the respondents-Bank, it was only a proposal before the Board of Directors who are required to approve the cut-off marks, whereas Board of Directors have merely signed the proposal since proposal is cut-off marks for qualifying in interviews as 55 or more and 50 or more for unreserved and reserved category candidates. In other words, there is no determination of cut-off marks whether it should be 55 or 50. Therefore, the respondents-Bank cannot presume or assume the things that the Board of Directors have approved a particular marks like 55 and 50 for unreserved and reserved category candidates. Since in the proposal, it is mentioned "***as 55 or more and 50 or more for unreserved and reserved category candidates***". Thus, fixation of cut-off marks for qualifying in interviews is yet to be fixed even to this day. Learned counsel for the respondents-Bank contended that Board of Directors have approved on 07.04.2011 in the very same proceedings where there was a

proposal. Therefore, one has to draw inference that approval is for 55 or 50 for unreserved and reserved category candidates. Petitioner's contention is liable to be rejected. Extract of proceedings dated 07.04.2011 reads as under:-

“OUR VIEWS / RECOMMENDATIONS:

*The cut-off marks for qualifying in interviews have been reckoned as **55 or more for unreserved category candidates and 50 or more for reserved category candidates.**”*

Reading of the above proposal or views/recommendations, it is crystal clear that it is only a proposal either to **fix 55 or more and 50 or more for unreserved and reserved category candidates**. There is a total non-application of mind by the Board of Directors as is evident from the proceedings dated 07.04.2011. With the aforesaid proposal, it was **“SUBMITTED FOR CONSIDERATION AND ORDERS”**. The Board of Directors have not considered and passed an order to the extent fixing particular cut-off marks for qualifying in interviews to the extent 55 and 50 or any other figure for unreserved and reserved category candidates so also resolution has not been passed. The respondents-Bank's contention that proposal has been approved, therefore, they have proceeded to fix the cut-off marks for qualifying in interviews as 55 and 50 cannot be accepted for the reasons that Board of Directors have not considered the proposal and passed order to the extent of determination of cut-off marks as 55 and 50, so also they have not passed a resolution which is one of the requirement as is evident from the proceedings dated 09.12.2005 relating to direct recruitment of Specialist Officers and permission to recruit 541 Specialist Officers vide Annexure A/2 to the affidavit of Assistant General

Manager dated 13.09.2017 wherein resolution has been passed. In view of these factual aspects, the respondents-Bank have not determined the cut-off marks for qualifying in interviews so as to 55 and 50 marks for unreserved and reserved category candidates. In the absence of complete procedure for fixation of cut-off marks for the purpose of determining exact marks and so also in not passing a resolution, the respondents-Bank cannot insist or adhere to the criteria of fixing 55 and 50 as cut-off marks for qualifying in interviews to the unreserved and reserved category candidates respectively. Therefore, the contention of the respondents-Bank that adherence to cut-off marks for qualifying in interviews as 50 for reserved category candidates is not supported by any final decision by the appropriate authority. Therefore, they are bound by whatever the criteria stated in the advertisement like *“Maximum marks for interview is 100 and the final selection shall be on the basis of marks secured by the candidate in Test and/or interview, as decided by the Bank.”*

13. Learned counsel for the petitioner contended that petitioner's candidature is required to be considered under OC category. The respondents have identified two posts of FA [JMGS-I]. One post has been filled up and unfilled vacancy is existing. For OC, SC and ST categories, the respondents-Bank in their order dated 09.12.2005 relating to recruitment of Specialist Officers, reservation has been provided vide Annexure A/2 to the affidavit of Assistant General Manager dated 13.09.2017, which reads as under:-

“RESERVATION TO BE PROVIDED:

The reservation to Scheduled Caste, Scheduled Tribe and Other Backward Classes as well as Physically

Challenged candidates will be extended as per Government guidelines.”

Government of India issued Office Memorandum dated 29.12.2005, Para No.22 provides for Relaxation of Standard of Suitability, which reads as under:-

*“22. **Relaxation of Standard of Suitability:** If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post / posts in question.”*

In this background, petitioner has secured 49.33 marks in the interview. Even assuming that cut-off marks for qualifying in interview is stated to be 50 even with reference to the aforesaid relaxation clause, petitioner is entitled for relaxation cut-off marks in the interview. Petitioner is a short of 0.77 marks to meet the assumed cut-off marks of 50 for reserved category candidates. Learned counsel for the respondents-Bank resisted the above petitioner's contention to state that there is no relaxation provision, therefore, the petitioner's contention is liable to be rejected. Perusal of the aforesaid clauses of the respondents-Bank as well as Government of India, it is crystal clear that disabled persons including

OC, candidates are entitled for benefit under the aforesaid clauses. If the respondents-Bank insisted that 50 marks as a cut-off marks/Bench Marks for qualifying in interviews even then the petitioner is entitled for some relaxation. In the present case, if the petitioner is given relaxation to the extent of 0.77 marks which is sufficient for claiming appointment against unfilled vacancy of FA [JMGS-I].

14. In view of above facts and circumstances, order dated 12.04.2012 (Annexure P/7) is set aside. The respondents-Bank are hereby directed to reconsider the petitioner's candidature for the post of FA [JMGS-I] as if cut-off marks for qualifying in interviews as 50 is not fixed due to in complete of proposal, while following the maximum marks for interview is 100 and the final selection on the basis of marks secured by the candidate in test and/or interview, as decided by the Bank. In the alternative, the respondents-Bank may extend relaxation provision provided in the respondents-Bank's decision dated 09.12.2005 read with Government of India Office Memorandum dated 29.12.2005 and consider the petitioner's name for appointment to the post of FA [JMGS-I] from the date of issuance of appointment orders to other eligible candidates pursuant to advertisement on notional basis. The above exercise shall be completed within a period of three months from today.

15. Instant writ petition stands allowed.

September 19, 2017
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[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes