

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition No.26305 of 2018

Between

Vijay Goutam Dabbiru, S/o. Late C.P. Suresh, R/o. Flat No.A-3,
R.R. Enclave, H.No.6-22-RR/3A, Sai Nagar Colony,
Rai Durgam, Hyderabad – 500 104.

... Petitioners

And

1. The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh rep. by its Registrar General, High court Buildings, Hyderabad – 500 066.
2. The Registrar (Recruitment), Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh rep. by its Registrar General, High court Buildings, Hyderabad – 500 066.
3. State of Telangana rep. by the Chief Secretary, Government of Telangana, General Administration (SC.F) Department, Secretariat Buildings, Hyderabad 500 022.
4. State of Andhra Pradesh rep. by the Chief Secretary, Government of Andhra Pradesh, General Administration (SC.F), Department Building # 1, 1st Floor, A.P. Secretariat, Velagapudi, Amaravati, Guntur District – 522 503.
5. The Secretary to Government (Legal Affairs, Legislative Affairs and Justice), Law Department, A-Block, III Floor, T.S. Secretariat Buildings, Hyderabad – 500 022.
6. The Secretary to Government (Legal Affairs, Legislative Affairs and Justice), Law Department A.P. Secretariat, Velagapudi, Amaravati, Guntur District – 522 503.
7. Anil Kiran Kumar Gedela, Occ: Advocate, R/o. H.No.5-1-31, Adarsh Nagar Bandlaguda Jageer Village, Rajendranagar mandal, Ranga Reddy Distrit, 500 086.
8. L.H. Rajeshwar Rao, Occ: Senior Assistant Public Prosecutor, R/o. #4-235, Gita Nagar, Malkajgiri, Secunderabad – 500 047.
9. Vasanthi Anaparthi, Occ: Advocate, R/o. D.No.19-21-18, Rangireeju Street, Opp. Nookamamba Temple, Near Poorna Market, Visakhapatnam – 530 001.
10. Murali Mohan Kannoju, Occ. Judicial Service, IV Additional Junior Civil Judge, District Court Buildings, Nellore – 524 001.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 24-10-2018

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

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Vijay Goutam Dabbiru, S/o. Late C.P. Suresh, R/o. Flat No.A-3,
R.R. Enclave, H.No.6-22-RR/3A, Sai Nagar Colony,
Rai Durgam, Hyderabad – 500 104.

... Petitioner

Vs.

10. The Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh rep. by its Registrar General, High court Buildings, Hyderabad – 500 066.
11. The Registrar (Recruitment), Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh rep. by its Registrar General, High court Buildings, Hyderabad – 500 066.
12. State of Telangana rep. by the Chief Secretary, Government of Telangana, General Administration (SC.F) Department, Secretariat Buildings, Hyderabad 500 022.
13. State of Andhra Pradesh rep. by the Chief Secretary, Government of Andhra Pradesh, General Administration (SC.F), Department Building # 1, 1st Floor, A.P. Secretariat, Velagapudi, Amaravati, Guntur District – 522 503.
14. The Secretary to Government (Legal Affairs, Legislative Affairs and Justice), Law Department, A-Block, III Floor, T.S. Secretariat Buildings, Hyderabad – 500 022.
15. The Secretary to Government (Legal Affairs, Legislative Affairs and Justice), Law Department A.P. Secretariat, Velagapudi, Amaravati, Guntur District – 522 503.
16. Anil Kiran Kumar Gedela, Occ: Advocate, R/o. H.No.5-1-31, Adarsh Nagar Bandlaguda Jageer Village, Rajendranagar mandal, Ranga Reddy Distrit, 500 086.
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19. Murali Mohan Kannoju, Occ. Judicial Service, IV Additional Junior Civil Judge, District Court Buildings, Nellore – 524 001.

... Respondents

! For the Petitioner

: Mr. C.V. Mohan Reddy, Sr. Counsel for
Mr. M.V. Subba Reddy

^ For the Respondents 1 & 2

: Mr. S. Sri Ram, Standing Counsel

For Respondents 3 to 6: : ---
For the respondent No.7 : Mr. P. Kiran

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> HEAD NOTE:

? Cases referred

1. 2005 LawSuit (Guj) 450
2. 2014 LawSuit (Raj) 1083
3. (2010) 3 SCC 119
4. (2014) 14 SCC 745
5. (2015) 16 SCC 778
6. (2017) 12 SCC 680
7. (2018) 11 SCC 352.
8. (2010) 3 SCC 119
9. (2014) 14 SCC 745
10. (2015) 16 SCC 778
11. (2017) 12 SCC 680
12. (2018) 11 SCC 352



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE MS. JUSTICE J. UMA DEVI

W.P.No.26305 of 2018

ORDER: (per VRS,J)

The petitioner, who appeared for selection to the post of District Judge (Entry Level) under the quota reserved for direct recruitment, has come up with the above writ petition, challenging the action of the High Court in inviting the 7th respondent to appear for viva voce and also the action of the Registry in selecting the 7th respondent to the post of District Judge (Entry Level), as against an unreserved vacancy.

2. Heard Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioner, Mr. S. Sri Ram, learned Standing Counsel appearing for the respondents 1 and 2 and Mr. P. Kiran, learned counsel appearing for the 7th respondent.

3. By a notification dated 15.04.2017, applications were invited for appointment to four posts of District Judges (Entry Level) by way of direct recruitment. Out of those four posts, one was reserved for Scheduled Tribes; one was reserved for the candidates belonging to BC (B) category and the remaining two were unreserved. However, out of the remaining two unreserved posts, one was intended to be filled by woman.

4. It was indicated in the notification for direct recruitment that as per Rule 6(4) of the Andhra Pradesh State Judicial Service Rules 2007, the candidates appearing for the selection will be subject to a written examination, carrying maximum marks of 80 and viva voce carrying maximum marks of 20. The minimum qualifying marks in the written examination were prescribed to be 40% for open category candidates, 35% for the candidates belonging to Backward Classes and 30% for the

candidates belonging to the Scheduled Castes and Scheduled Tribes. No minimum marks were prescribed for viva voce.

5. The written examination was held on 10.09.2017 and the results of the written examination were declared on 30.11.2017. The candidates, who were declared qualified in the written examination, were invited to attend the viva voce on 11.12.2017. The petitioner was one among the candidates, who were so invited to attend the viva voce.

6. At this stage it may be relevant to point out that the petitioner was permitted to appear for the written examination, by virtue of an interim order passed by the Hon'ble Supreme Court in I.A.No.40050 of 2017 in W.P.(C).No.354 of 2017. The fixation of qualifications was the subject matter of dispute in the said writ petition and the question was as to whether the services rendered by a judicial officer is to be counted as experience at the bar.

7. We have brought on record the above fact, only for the purpose of completion of narration. The issue that arises for consideration in this writ petition has nothing to do with the issue pending before the Supreme Court or the interim order passed by the Supreme Court pursuant to which the petitioner was permitted to appear for the written examination.

8. As stated earlier, viva voce was held on 11.12.2017 in which six candidates participated. Thereafter, by a notification dated 07.07.2018, three candidates were declared as provisionally selected for appointment. These candidates are arrayed as respondents 7, 9 & 10 in the present writ petition. But the writ petition was not pressed as against respondents 8 to 10, and hence the same was dismissed on 27.07.2018 against respondents 8 to 10.

9. Therefore, the challenge in this writ petition is confined only to the selection of the 7th respondent and the challenge to his selection is on a very limited ground.

10. The petitioner herein as well as the 7th respondent belong to BC (D) category. No post was reserved for BC (D) in the selection in question. Therefore, both the petitioner as well as the 7th respondent were entitled to compete only for the single post kept unreserved for the general category. The marks secured by the petitioner and the 7th respondent are as follows:-

Candidate	Marks in written examination (out of Max of 80)	Marks in viva voce (out of a Max of 20)	Total marks (out of Max. of 100)
Writ Petitioner	33	7.33	40.33
Respondent No.7	28	14	42

11. The selection of the 7th respondent is assailed primarily on the ground that though he belonged to BC (D) category, he applied for selection only as an open category candidate and also got selected only as against an unreserved vacancy, and hence, he ought to have secured 40% marks, viz., 32 out of 80 in the written examination. But he secured only 28 out of 80 in the written examination and hence, according to the writ petitioner, the 7th respondent could not have been short listed for viva voce, in the teeth of Rule 6(4) of the Andhra Pradesh Judicial Service Rules 2007. It is relevant to point out at this stage that out of four vacancies notified for direct recruitment, one was reserved for Scheduled Tribes, one was reserved for the candidates belonging to BC (B) category and the remaining two were unreserved (but one out of those 2 was intended for woman). Therefore, it is contended by Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner that the 7th respondent (as well as the writ petitioner) could have applied and had actually applied only as against the unreserved vacancy available for men. No vacancy was

earmarked for BC (D). A candidate belonging to BC (D) is not entitled to apply for the vacancy earmarked for BC (B) category. Therefore, both the writ petitioner as well as the 7th respondent applied only as general category candidates eligible to be considered as against an unreserved vacancy. In such circumstances, the petitioner as well as the 7th respondent, according to the petitioner, could be declared to have passed the written examination, only if they had secured 40% marks in the written examination and not otherwise. While the petitioner secured 40% marks in the written examination and thus qualified for viva voce, the 7th respondent secured less than 40% marks in the written examination. But he was invited for interview and was also selected. Therefore, it is contended by the petitioner that the selection of the 7th respondent was illegal.

12. The main thrust of the argument of Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner is that when a reserved category candidate participates in a process of selection, as a general category candidate, he must acquire the minimum qualifying marks prescribed for general category candidates and that the threshold bar cannot be lowered. In support of his contention, the learned Senior Counsel relied upon certain decisions of other High Courts as well as of the Supreme Court. They are as follows:

- 1) Kailashben Ninama v. Gujarat University, Ahmedabad¹;
- 2) Rajesh Singh v. State of Rajasthan²;
- 3) Jitendra Kumar Singh v. State of Uttar Pradesh³;
- 4) Samta Aandolan Samitti v. Union of India⁴;

¹ 2005 LawSuit (Guj) 450

² 2014 LawSuit (Raj) 1083

³ (2010) 3 SCC 119

⁴ (2014) 14 SCC 745

- 5) Ajithkumar P. v. Remin K.R.⁵;
- 6) Deepa E.V. v. Union of India⁶; and
- 7) Gaurav Pradhan v. State of Rajasthan⁷.

13. In response to the contentions of the learned Senior Counsel for the petitioner, it was argued by Mr. S. Sri Ram, learned Standing Counsel for the Registry that the proviso to sub-rule (4) of Rule 6 did not distinguish between candidates applying under the quota reserved for the reserved categories and those actually belonging to the reserved categories and that therefore the relaxed bench mark stipulated in the proviso to Rule 6(4) has to be given an interpretation that will subserve the object of such a prescription. He contended further that the 7th respondent has not been selected on the basis of a relaxed criteria, but has been selected for appointment on the basis of his own merit. Drawing our attention to the marks secured by all the six candidates short listed for viva voce it was contended by Mr. S. Sri Ram, learned Standing Counsel that the 7th respondent was the topper in the total tally of marks. Therefore, he argued that merit was not compromised. It was also his submission that the distinction between the eligibility criteria and the standard of selection has to be kept in mind before testing the correctness of the selection of the 7th respondent.

14. Mr. P. Kiran, learned counsel appearing for the 7th respondent, adopted the arguments of the learned Standing Counsel for the Registry and placed reliance upon the judgment of the High Court of Jammu & Kashmir in Naveen Kumar v. High Court of Jammu and Kashmir, rendered on 01.02.2010 in SWP.No.2886 of 2010. He also relied upon some passages in the decision of the Supreme Court in *Deepa E.V.*

⁵ (2015) 16 SCC 778

⁶ (2017) 12 SCC 680

⁷ (2018) 11 SCC 352.

15. We have carefully considered the rival submissions. The entire controversy, in our opinion, revolves around the question as to whether a reserved category candidate, to be eligible for selection as against an unreserved vacancy, should have secured the minimum qualifying marks prescribed for open category candidates, or whether he is entitled to claim the benefit of relaxed eligibility criteria. Before searching for an answer to this question from judicial precedents, let us first take a look at the rule position.

15. Rule 6 of the Andhra Pradesh State Judicial Service Rules, 2007 prescribes a detailed methodology for the conduct of the written examination for selection to the post of District Judges. Sub-rule (4) together with its proviso reads as follows:

“(4) The written examination shall invariably carry 80 marks limiting the viva voce to the remaining 20 marks.

Provided that the candidate shall secure a minimum qualifying mark of 40% for O.C. category, 35% for B.C. category, and 30% for S.C. and S.T. category in the written examination”

16. It appears from the language employed in the proviso that *the object of the proviso is to provide a relaxed eligibility criteria for candidates belonging to the reserved categories. The object does not seem to be to provide a relaxed eligibility criteria only to those considered under the exclusive streams. In other words, the relaxed eligibility criteria is not restricted in its application only to those opting to take the reserved category route.*

17. The law is well settled that the reserved category candidates are entitled to ride two horses by competing with others in the open category on their own merit and also by choosing to enforce the right of reservation. The proviso to Rule 6(4) is not framed in such a manner as to make the benefit of relaxed criteria available only to those who opt to take

the reservation route. Keeping this in mind, we shall now take a look at the decisions relied upon by Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner.

18. In the first decision relied upon by Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner in *Kailashben Ninama*, a learned Judge of the Gujarat High Court was concerned with a case of admission to Post Graduate Courses in Preventive and Social Medicine. The candidate before the Gujarat High Court belonged to the Scheduled Tribes and the pass mark prescribed for the reserved category candidates in the written examination was 40%. The petitioner before the Gujarat High Court had secured 40% marks in the written examination. But she could not secure admission to a particular college, in which no seat was reserved for Scheduled Tribes, in the particular course of her choice. But there were seats available in another college under the General category. However, the University refused to consider her case as against the vacancy in General category, on the ground that she had not secured 50% marks in the written examination. This decision of the University was challenged by the candidate, but the challenge was rejected by a learned Judge of the Gujarat High Court. This was on the ground that a candidate who seeks admission as against a seat kept unreserved, should fulfill the criteria prescribed for General category candidates. The learned Judge of the Gujarat High Court relied upon the decision of the Supreme Court in *E.V. Chinnaiah v. State of Andhra Pradesh* [(2005) 1 SCC 394], to come to the conclusion that he did.

19. But we do not know how the decision in *E.V. Chinnaiah* was made applicable to the case in *Kailashben Ninama*. What was in question before the Supreme Court in *E.V. Chinnaiah* was the categorization of Scheduled Castes in the State of Andhra Pradesh into four groups, under

a separate enactment known as Andhra Pradesh Scheduled Castes (Rationalisation of Reservations) Act, 2000. Three questions arose for consideration before the Supreme Court in *E.V. Chinnaiah*. They were – (i) whether the impugned Act was violative of Article 341(2), (ii) whether the impugned enactment was constitutionally valid and (iii) whether the enactment created sub-classification of Scheduled Castes violating Article 14. The decision in *E.V. Chinnaiah* had nothing to do with the issue that fell for consideration in *Kailashben Ninama*. Therefore, we are unable to agree with the decision of the learned Judge of the Gujarat High Court in *Kailashben Ninama*.

20. The second decision relied upon by Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner, is that of the Division Bench of the Rajasthan High Court in *Rajesh Singh*. The question that fell for consideration in *Rajesh Singh* was whether a reserved category candidate, upon having availed of relaxation in age, besides special relaxations/concessions, can be considered for being selected against unreserved vacancies, in the event of his securing high marks in the selection. The Division Bench of the Rajasthan High Court made a distinction between two types of reserved category candidates viz., (i) those who participated in the process of selection after availing the relaxation in age and (ii) those reserved category candidates who participated in the process of selection after availing special relaxations/concessions. Insofar as the first category of persons is concerned, the Rajasthan High Court held that those candidates, though belonging to the reserved categories, are entitled to migrate to General/Open category vacancies. The Court held that the second category of persons viz., those reserved category candidates who availed special relaxations/concessions are not entitled to so migrate to the vacancies under the Open/General

category. The Division Bench of the Rajasthan High Court sought to draw a distinction between these two categories of persons on the ground that a mere relaxation in age did not tantamount to a relaxed standard of merit, affecting the maintenance of efficiency in administration. As a matter of fact, by the time the Division Bench of the Rajasthan High Court considered the issue in *Rajesh Singh*, the Supreme Court has already clinched the issue with regard to relaxation in age, in its decision in *Jitendra Kumar Singh v. State of Uttar Pradesh*⁸.

21. In *Jitendra Kumar Singh*, the reserved category candidates were granted waiver of examination fee and also relaxation in upper age limit. But Section 3(6) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, stipulated that if a reserved category candidate got selected on the basis of merit in open competition with General category candidates, he shall not be adjusted against the vacancies reserved for reserved categories. It was contended before the Supreme Court that those who participated in the process of selection after availing the benefit of waiver of examination fee or relaxation in upper age limit cannot take advantage of Section 3(6) of the Act. While rejecting the said contention, the Supreme Court pointed out that the concession in fee and age relaxation merely enable the reserved category candidates to fall within the zone of consideration and that the same did not tilt the balance in favour of the reserved category candidates in the preparation of the merit list. The concession granted in the matter of upper age limit and examination fee were held by the Supreme Court, not to be relaxations in the standards prescribed for qualifying in the written examination. The benefits so

⁸ (2010) 3 SCC 119

granted to the reserved category candidates in the matter of fee and upper age limit, were held by the Supreme Court not to have upset the level playing field.

22. Placing heavy reliance upon the said decision, it was contended by Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner, that the real test is to find out whether the concession availed by a reserved category candidate actually tilted the balance and resulted in a relaxation of the standard. If the benefit availed by a reserved category candidate in the process selection, resulted in the lowering of standards, then such a reserved category candidate cannot stake a claim for an unreserved vacancy. According to the learned Senior Counsel, the observations of the Supreme Court in paragraphs-46, 48 and 49 of the report in *Jitendra Kumar Singh* clinch the issue and that if the concession availed of by the reserved category candidate had any relevance to the determination of *inter se* merit on the basis of the final written test and interview, then such a candidate cannot be considered as against a vacancy kept unreserved.

23. We have no difficulty in accepting the contention of the learned Senior Counsel for the petitioner that the real test in such cases is to find out whether the concessions/benefits availed by a reserved category candidate had a bearing upon the standard of merit. If it did, then such a candidate cannot be considered as against a vacancy kept unreserved. But before we apply this test to the facts of the case on hand, we shall also take a look at the other decisions relied upon by the learned Senior Counsel for the petitioner.

24. In *Samta Aandolan Samiti v. Union of India*⁹, the Supreme Court was concerned with admissions to MBBS Course in the All India Institute of Medical Sciences. The actual issue before the Supreme Court in *Samta Aandolan Samiti* was whether the meritorious reserved category candidates, admitted to seats available in the open competition, are to be counted within the quota reserved for SCs/STs/OBCs etc. The origin of the controversy in *Samta Aandolan Samiti* could be traced to the judgment of the Supreme Court in *Ritesh R. Sah v. Y.L. Yamul* [(1996) 3 SCC 253]. In the said case, the Supreme Court held – (i) that a student, who is entitled to be admitted on the basis of merit, though belonging to a reserved category, cannot be considered to have been admitted as against the seats reserved for such a category and (ii) that provisions should be so made that it will not work out to the disadvantage of such candidates and he may not be placed in a more disadvantageous position than the other less meritorious reserved category candidates.

25. The principles laid down in *Ritesh R. Sah* were given a relook by the Constitution Bench of the Supreme Court in *Union of India v. Ramesh Ram* [(2010) 7 SCC 234]. In *Ramesh Ram*, the Supreme Court framed three questions for its consideration, the first of which was whether the reserved category candidates who were selected on the basis of their own merit and placed in the list of General category candidates, could be considered as reserved category candidates at the time of service allocation. After considering the ratio in both *Ritesh R. Sah* and *Ramesh Ram*, the Supreme Court held in *Samta Aandolan Samiti* that so long as the upper limit of 50% reservation is not breached, the consideration of the claim of a meritorious reserved category candidate as

⁹ (2014) 14 SCC 745

against a General category seat was not violative of the Constitutional scheme.

26. But none of these decisions (*Ritesh R. Sah*, *Ramesh Ram* or *Samta Aandolan Samiti*) have any relevance to the issue arising for consideration in the present writ petition. As we have pointed out earlier, the only question that we are obliged to consider in this case is as to whether the concession availed by the 7th respondent amounted to a relaxed standard of merit, so as to deprive him of the eligibility to stake a claim against an unreserved vacancy or not.

27. The next decision relied upon by the learned Senior Counsel for the petitioner is the one in *Ajithkumar P. v. Remin K.R.*¹⁰. The case before the Supreme Court in *Ajithkumar* related to the appointment to the post of Sub Inspectors in the Kerala Police Subordinate Service. Though the Kerala Public Service Commission Rules of Procedure prescribed a written test followed by practical test, physical efficiency test and oral test for selection, the number of persons who applied was so huge that the Public Service Commission thought fit to conduct a screening test first, for the purpose of shortlisting candidates who could be invited for the written examinations to be conducted as per the Rules. Relaxed eligibility criteria was fixed for various reserved categories, in the screening test. The candidates shortlisted in the screening test, were allowed to participate in a written examination followed by physical efficiency test and oral interview and a final list of candidates was published. The final list came to be challenged on the ground that those candidates who failed to secure the minimum marks fixed for General category candidates in the screening test, but who were declared successful on the basis of the

¹⁰ (2015) 16 SCC 778

relaxed cut-off marks available for reserved category candidates should not have been accommodated against the General category vacancies. The challenge was rejected by the Supreme Court on the ground that the screening test/preliminary examination conducted by the Public Service Commission for shortlisting the candidates for the main written examination, had no statutory basis and that a relaxation or concession given at the preliminary stage cannot have any relevance in determining the merit of the candidate.

28. The decision of the Supreme Court in *Ajithkumar* was pressed into service by the learned Senior Counsel for the petitioner to drive home the point that whenever a selection is held as per the statutory scheme, the relaxation given in the written examination, if availed, would enable the reserved category candidate only to stake a claim as against a vacancy reserved for such category.

29. But what follows from *Ajithkumar* is that a person who gets qualified in a screening test/preliminary examination, even though on the basis of relaxed criteria, is entitled to improve his performance and prove his merit, when he is subjected to a further process of selection. Once he does, he cannot be branded as a reserved category candidate merely because of the benefit that he availed in the screening test. The real competition in cases of the nature covered by *Ajithkumar* starts after the shortlisting of candidates in the preliminary examination. The decision in *Ajithkumar* stops at this stage and it cannot be stretched to cover a situation like the one on hand. It is well settled that a judgment is a binding precedent for what it holds and not for what follows.

30. In *Deepa E.V. v. Union of India*¹¹, a candidate belonging to the Other Backward Classes, who participated in the process of selection

¹¹ (2017) 12 SCC 680

for appointment to the post of Laboratory Assistant after obtaining relaxation of the upper age limit, staked a claim for appointment as against a General category vacancy on the ground that she had secured more than the minimum cut-off marks prescribed for General category candidates. No candidate belonging to the General category had secured more than the minimum cut-off marks prescribed for General category candidates. But her claim was rejected on a combined reading of Rule 9 of the Recruitment Rules and the proceedings issued by the Department of Personnel and Training. Though the candidate before the Supreme Court placed heavy reliance upon the decision in *Jitendra Kumar Singh*, the said decision was distinguished on the ground that the decision in *Jitendra Kumar Singh* was based upon a statutory interpretation to U.P. Act, 1994. In *Deepa*, the Supreme Court found that there was an express bar for the candidates belonging to SCs/STs/OBCs who have availed relaxation, for being considered for the vacancies kept unreserved for the General category candidates. But the decision in *Deepa* will be of no avail to the petitioner in this case, since there is no express bar for reserved category candidates who have availed the relaxed eligibility criteria from being considered for vacancies kept unreserved.

31. The decision in *Deepa* was cited with approval in *Gaurav Pradhan v. State of Rajasthan*¹². In fact, the State of Rajasthan issued a Circular after the judgment of the Supreme Court in *Deepa E.V.* and reiterated the position that candidates belonging to SCs/STs/OBCs who have availed the concession of age are not eligible to be migrated to the unreserved vacancies. Therefore, the Supreme Court held in *Gaurav Pradhan* that the law laid down in *Deepa* would hold the field. While holding so, the Supreme Court also took note of another decision in *Vikas*

¹² (2018) 11 SCC 352

Sankhala v. Vikas Kumar Agarwal [(2017) 1 SCC 350]. But all the three decisions viz., *Deepa E.V.*, *Vikas Sankhala* and *Gaurav Pradhan* were decided on the basis of Circulars, while *Jitendra Kumar Singh* was decided on the basis of a statutory scheme.

32. In other words, all the four decisions of the Supreme Court that dealt with the relaxation in upper age limit or waiver of examination fee, revolved around statutory schemes. While *Jitendra Kumar Singh* was decided on the basis of U.P. Act, 1994, the decisions in *Deepa E.V.*, *Vikas Sankhala* and *Gaurav Pradhan* were decided on the basis of Rules and Circulars issued by the State, the validity of which were not challenged. Therefore, it boils down to the question as to whether the statutory scheme provides for a migration or not.

33. We have already extracted sub-rule (4) of Rule 6 and the proviso thereunder of the Andhra Pradesh State Judicial Service Rules. *The relaxation in the minimum qualifying marks in the written examination, granted under the proviso to Rule 6(4) is actually to the candidate and not to the post earmarked for reserved categories.* The proviso is not framed in such a manner as to apply the relaxed criteria only to the category of post sought to be filled up. This hypothesis can be explained by taking two illustrations:

(i) let us take for instance a case where a Notifications is issued for direct recruitment to a few posts of District Judges, none of which is reserved for any category. If all the posts notified are unreserved vacancies, all candidates irrespective of the category to which they belong, are entitled to apply. If the argument of the writ petitioner is accepted, then the minimum qualifying mark to be secured by all candidates in the written examination should only be 40%. In such a case, the proviso to Rule 6(4) will have no application to the said

Notification for recruitment. There cannot be two different types of Notifications for recruitment, one to which the proviso Rule 6(4) would apply and another, to which the proviso would not apply. So long as the language employed in the proviso to Rule 6(4) does not permit the same to be eclipsed by the type of the Notification, it is not possible for us to hold that the proviso to Rule 6(4) would be redundant in cases where all the posts notified for recruitment fall under the General category.

(ii) The second illustration can be of a Notification where two posts are kept unreserved and one post is reserved for candidates belonging to BC-D (The petitioner as well as the 7th respondent belong to BC-D category and in the Notification out of which the present controversy arises, no vacancy was reserved for BC-D). Let us take a hypothetical case where one vacancy was reserved for BC-D. If it was so reserved, the 7th respondent herein would have been declared successful in the written examination, on the basis of the relaxed criteria stipulated in the proviso to Rule 6(4). Thereafter, he would have been invited for interview. Since the final selection is based upon the combined performance of candidates in the written examination and oral interview, the Registry would have been obliged to draw a merit list of candidates (to begin with) after the interviews are over. If in the ultimate tally, the 7th respondent was found to have secured the highest tally of marks (written exam and interview put together), he cannot be overlooked for a claim as against the unreserved vacancy. The law is well settled that while filling up the posts after completion of the process of selection, the unreserved vacancies are to be filled up first by allotting the meritorious candidates in the order of merit, without looking into the category to which they belong. It is only after first filling up the vacancies kept unreserved, that the process of filling up the posts reserved for other categories has to be taken up.

Unless this well established rule is violated, the 7th respondent could not have been overlooked, for allotment as against a vacancy kept unreserved. Law does not permit a less meritorious General category candidate to be allotted a seat kept unreserved, by overlooking the claim of a more meritorious candidate, solely on the ground that such more meritorious candidate belonged to the reserved category and availed the benefit of relaxed criteria.

34. The tug of war between merit and reservation poses several challenges and in a variety of ways. Ultimately, the test to be applied is to see where a person stands in the order of merit at the time of final selection. A less meritorious candidate, after availing the benefit of a concession, cannot suddenly become a topper at the end of the process of selection. The concession granted, does not suddenly become a spring board that catapults him to rank No.1 in the order of merit. This can be seen even in the case on hand.

35. We have provided elsewhere a tabulation indicating the marks secured in the written examination, the marks secured in the interview and the total tally of marks of the petitioner as well as the 7th respondent. Though the 7th respondent secured lesser marks than the petitioner in the written examination, the 7th respondent emerged as the most meritorious among all the six candidates who came up to the final stage of selection. Therefore, to overlook the 7th respondent on the basis of his performance in the written examination and to appoint the petitioner herein, would only result in overlooking merit. The underlying theme in all the decisions of the Supreme Court right from *Ritesh R. Sah* is that merit cannot be sacrificed. If the same theme is applied, the selection of the 7th respondent cannot be found fault with.

36. As a matter of fact, it should be pointed out that the Rules of Procedure adopted by this Court on the administrative side are such that the Interview Committee is not made aware of the marks secured by the candidates invited for interview. In other words, the Members of the Interviewing Board will not be aware of the marks secured by the candidates whom they will be interviewing. This procedure is evolved with a view to ensure that the marks secured by a candidate in the written examination do not influence the mind of the Members of the Interviewing Board.

37. Therefore, if in the ultimate tally, a person is found to be the topper in the entire process of selection, the selection of such a candidate does not result in merit being compromised. On the contrary, his non-selection would result in merit being compromised.

38. In view of the above, we are unable to sustain the challenge to the selection of the 7th respondent for appointment by way of direct recruitment to the post of District Judge. Hence, the writ petition is dismissed. Pending applications, if any, shall stand closed. No costs.

V. RAMASUBRAMANIAN, J.

J. UMA DEVI, J.

24th October, 2018
Js/Ak

Note:-

1. L.R. Copy to be marked.

2. Website – yes.

(B/o)

Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMA DEVI

W.P.No.26305 of 2018
(Per VRSJ)



24th October, 2018
(Ak)