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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 111 of 2020**

(Arising out of order dated 23.01.2020 passed by the learned Single Judge in WPS No.451 of 2020)

- Arvind Kumar Chandel S/o- Late Narsingh Prasad Chandel Aged About 47 Years Occupation- Advocate R/o- Near Shiv Temple, Shivpara Durg, District- Durg, Chhattisgarh.

---- Appellant**Versus**

- High Court of Chhattisgarh Through Registrar General, High Court of Chhattisgarh, Bilaspur, Chhattisgarh.

---- Respondent**WA No. 117 of 2020**

(Arising out of order dated 23.01.2020 passed by the learned Single Judge in WPS No. 306 of 2020)

- Raj Kumar Pali S/o Late Shri B.R. Pali, Aged About 48 Years R/o Triveni Complex, Ramayan Chowk, Chantidih, Bilaspur, District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Through The Secretary, Law And Legislative Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur Chhattisgarh
2. Registrar General, High Court of Chhattisgarh, Bilaspur Chhattisgarh
3. Higher Judicial Direct Recruitment Committee, High Court of Chhattisgarh, Bilaspur Chhattisgarh

---- Respondents

For Appellant in WA 111/2020	: Shri Krishna Tandon, Advocate.
For Appellant in WA 117/2020	: Shri Goutam Khetrapal, Advocate
For Respondent/High Court of CG	: Shri Ashish Shrivastava, Standing Counsel
For Respondent/State	: Shri Gagan Tiwari, Dy. Govt. Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge**

Judgment on Board**P. R. Ramachandra Menon, CJ.****27.01.2020**

1. As per the common order dated 23.01.2020 passed by the learned Single Judge, the Interim Applications filed by the writ petitioners to permit them to participate in the District Judge Entry Level Examination (General Category) after granting the benefit of age relaxation being members belonging to OBC came to be rejected; which is put to challenge in these appeals.
2. Heard Mr. Goutam Khetrapal and Mr. Krishna Tandon, learned counsel for the Appellants as well Mr. Ashish Shrivastava, learned standing counsel for the High Court of Chhattisgarh.
3. Normally, no appeal is maintainable against an interim order, by virtue of the statutory bar under the proviso to Section 2(1) of the Chhattisgarh High Courts (Appeal to Division Bench) Act, 2006. The said proviso stipulates that no appeal shall lie against an interlocutory order under Article 226 or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Scope of the said proviso has been examined by a Full Bench of this Court and as per judgment dated 25.01.2017 passed in Writ Appeal No. 255 of 2016, it has been held that, if only the interim order is having the effect of finality, would an appeal lie against such order.
4. The learned counsel for the Appellants submit that, if interim relief sought for is not granted, the writ petitions will virtually become infructuous.

Insofar as the Appellants are concerned, by virtue of the rejection of IAs, it has attained finality; more so since today happens to be the last date to submit applications.

5. At the same time, it is to be noted that no final relief can be granted in the form of Interim Order as made clear by the Apex Court in ***Bank of Maharashtra v. Rice Shipping and Transport Co. Pvt. Ltd. and Another***¹. Since the main relief is to permit the Petitioners to participate in the examination for selection of District Judge Entry Level (Backlog vacancies of General Category), after granting age relaxation, being members of OBC, the interim relief virtually amounts to final relief as well. Anyhow, based on the submissions made by the learned counsel for the Appellants, this Court decided to hear the matter today itself and accordingly heard both the sides.

6. Annexure-P/1 Notification was issued on 11.11.2019 by Respondent / High Court of Chhattisgarh, inviting applications for filling up the 22 posts of District Judges (Entry Level) by Direct Recruitment from the Bar in accordance with Rule 5 (1) (c) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the 2006 Rules'). The Notification has also made a specific reference to orders passed by the Apex Court on different occasions in C.A. 1867/06 (Malik Mazhar Sultan and Another V/s. U.P. Public Service Commission & Ors.,) and that the vacancies have been notified to be filled up by the High Court in the above context.

1 (1995) 3 SCC 257

7. As per the relevant Rules, only 25% of the vacancies are available to be filled up by Direct Recruitment from the Bar in terms of Rule 5(1)(c) of the 2006 Rules. It is also revealed from the materials on record that all the 22 posts notified were 'backlog vacancies' in respect of the recruitment proceedings of the previous years and as such, the available 22 vacancies were distributed as 18 posts under the Unreserved Segment, 01 post for SC and 03 posts for ST. Last date and time for receipt of the applications in the Registry is stipulated as 27.01.2020 till 5.00 p.m. and the date of Written Examination is stipulated as 29.03.2020.
8. Under the Head No. 'Two' dealing with 'Eligibility', Clause (a) (ii) says that no person shall be eligible for appointment by Direct Recruitment unless he or she has attained the age of 35 years and has not attained the age of 45 years on the first day of January in the year in which applications for appointment are invited i.e. 01/01/2020, provided that upper age limit shall be relaxed upto a maximum limit of 3 years for the candidates belonging to Scheduled Castes and Scheduled Tribes. By way of 'NOTE' (iii) under the Head 'Eligibility', it has been clearly mentioned that, as there is no vacancy for OBC Category, the candidates belonging to that category may apply under 'Unreserved Category'. Under 'NOTE' (iv) reference is also made to various Rulings including Civil Appeal No. 5185 of 2019 (Niravkumar Dilipbhai Makwana Vs. Gujarat Public Service Commission & Ors.) to the effect that, only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies.

9. The case of the Appellants is that, they have crossed the age of 45 years, but since they belong to OBC category, they are entitled to get age relaxation by 3 years and hence they may be given permission to participate in the process of selection so as to compete along with the General Candidates, for getting appointment against the Unreserved seats, on the basis of their merits. The specific plea raised in this regard with reference to the relevant Rules and also the Ruling rendered by the Apex Court in ***Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh and Ors.***² (paragraph 43) have not been properly appreciated by the learned Single Judge while dismissing the IA and hence the grievance. It is also pointed out that the subsequent Ruling rendered by the Apex Court in ***Niravkumar Dilipbhai Makwana Vs. Gujarat Public Service Commission & Ors.***³ referred to and relied on by the learned Single Judge, to decline the relief, stands on a different footing. In the said case, the relevant Rule had already been amended, which clearly says that no age relaxation shall be available if the candidates do not come within the particular category and it was accordingly that ***Jitendra Kumar Singh's case*** was distinguished.
10. It is also the contention of the Appellants that the relevant 'Form' (copy of which has been produced along with the writ petitions) clearly provides an entry as to whether the candidate is entitled to any "fee relaxation / age relaxation", being a member of SC/ST/OBC. The law declared by the Apex Court in C.A. 1867/06 (Malik Mazhar Sultan and Another V/s. U.P. Public Service Commission & Ors.) is that the age relaxation can be given

² (2010) 3 SCC 119

³ (2019) 7 SCC 383

only if it is permissible under the Rules and not on the basis of the contents of the advertisement. In the instant case, it is very much available in the Rules and as such, the Notification to the contrary is not correct or sustainable. It is the last submission of the learned counsel for the Appellants that in the previous years also, the benefit of age relaxation was given and the Petitioners were permitted to participate in the process of selection. The omission of OBC in the relevant clause of Annexure P/1 Notification can only be a mistake and hence they seek for indulgence of this Court.

11. Mr. Ashish Shrivastava, the learned Standing Counsel for the Respondent-High Court of Chhattisgarh submits that there is absolutely no merit, either in the writ petitions or in the writ appeals. Admittedly, the Notification was issued for filling up of the 18 backlog vacancies of Unreserved posts, 01 vacancy of SC and 03 vacancies of ST. The identification of the posts is with reference to the extent of reservation available to SC to an extent of 15%, ST to an extent of 18 % and OBC to an extent of 14%. By virtue of the recruitment exercises pursued in the previous years, all the vacancies/slots available to OBCs have already been filled up and after the year 2017, no post of OBC was available to be filled up by any such candidate. When there is no vacancy for OBC, there is no question of any age relaxation or fee relaxation, as relaxation can only be with reference to their particular status - herein the caste status - which is not applicable in the case of filling up the post of general category. The learned counsel also submits that there is no pith or substance in the submissions made by the learned counsel for the

Appellants to have the relief sought for granted. According to the learned counsel, the issue has been correctly dealt with by the learned Single Judge and found that it was not a case where any interim relief could be granted, thus leading to dismissal of the IA.

12. During the course of hearing, the learned Standing Counsel for the High Court made available a chart showing the details of the candidates selected against the vacancies notified under Rule 5(1)(c) of the 2006 Rules, from the year 2008 covering it upto the year 2019, which is reproduced below:

“Details of candidates selected against the vacancies notified under Rule 5(1) (c) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 from the Year 2008-2019

Year	No. of Vacancies Notified under Rule 5(1) (c)	No. of candidates selected against the category							
		General		S.C. 15%		S.T. 18%		O.B.C. 14%	
		N	S	N	S	N	S	N	S
2008	12	6	2	2	0	2	0	2	2
2009	10	5	0	2	0	3	0	-	-
2010	13	4	4	4	2	4	0	1	1
2011	12	4	2	2	1	5	0	1	1
2012	11	5	5	2	0	2	0	2	1
2012-13	05	-	-	2	2	2	0	1	1
2013	10	5	5	2	2	2	0	1	1
2014	08	4	4	1	1	3	1	-	-
2015	10	5	0	1	0	3	0	1	0
2016	08	2	0	1	0	4	0	1	1
2017	08	6	0	1	0	1	0	-	-
2018	22	17	0	2	0	3	0	-	-
2019	22	17	0	2	0	3	0	-	-

Note:-

N* denotes Notified Posts

S* denotes Selected Candidates”

13. With reference to the challenge, the learned counsel submits that 22 vacancies notified as per Annexure P/2 advertisement under Rule 5(1)(c) of the 2006 Rules are in respect of the backlog vacancies under the General category, SC category and ST category; whereas no vacancy was available under the OBC category. Though Rule 7(b) of the 2006 Rules clearly provides relaxation to a maximum extent of 3 years to the SC/ST/OBCs, it can be given only when recruitment is made in respect of the slots available in the said category and obviously since no vacancy of OBC is notified, the Appellants/Petitioners cannot be heard to say that they will contest for the General category, but 'age relaxation' shall be given to them.
14. Insofar as there is no dispute that the vacancies notified are in respect of the backlog vacancies of Unreserved category (in respect of which the claim is mooted by the Appellants/Petitioners), the only point to be considered is whether they could be permitted to participate in the process of selection after giving the 'age relaxation'. The very term and concept of 'relaxation' denotes some exception / deviation from the general norm. When the general norms specifically prescribe the requisite extent of merit in the qualification; experience or physical measurements or such other traits, at the same time carving out an exception/relaxation in the case of other candidates belonging to SC/ST/OBC, the purpose of the said relaxation is to promote such category also to come up along with the general candidates so that there will not be any inadequacy in their representation with reference to the benefit of reservation they are enjoying. When the Appellants/Writ Petitioners contend that they do not

have any claim to be considered in the OBC slots (for want of OBC seats) and can be considered against the Unreserved category, they cannot be heard to say that they shall be given the benefit of 'age relaxation' for contesting with the General category. In other words, it is an instance of approbation and reprobation simultaneously.

15. When the contest is to the posts in the Unreserved segment, all the requirements to be satisfied by the Unreserved candidates have to be satisfied by all the participating candidates. If the Appellants/Petitioners are permitted to participate in the examination in respect of the backlog seats of Unreserved segment by granting age relaxation, it will amount to wrong classification within the same segment. Hundreds of other similar aspirants belonging to OBC may still be waiting in the queue. The law declared by the Apex Court in ***Jitendra Kumar Singh*** (supra) and subsequent ruling rendered by the Apex Court in ***Niravkumar Dilipbhai Makwana*** (supra) have been referred to and discussed by the learned Single Judge while declining the interim relief, which is quite in order. We do not find it a fit case to interdict the order under challenge. Appeals fail. They are dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge