

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.2728 OF 2022

- | | | | |
|----|---------------------------------------|---|----------------|
| 1. | Ashwini Sanjay Kale |) | |
| | Age 29 yrs., Occu : Nil, |) | |
| | R/o. 'Swapna Bhaskar' |) | |
| | Swami Vivekanand Nagar |) | |
| | Kopargaon, Tal. Kopargaon, |) | |
| | Dist. Ahmednagar. |) | |
| 2. | Anita Dada Hawaldar |) | |
| | Age 29 yrs, Occu. Nil |) | |
| | R/o, 42, At Post, Uplai (Khu.), |) | |
| | Kalkyani Niwas, Hawaldar Vasti, |) | |
| | Tal. Madha, District Solapur. |) | |
| 3. | Pallavi Shrikant Patil |) | |
| | Age 39 yrs., Occu. Nil, |) | |
| | R/o Survey No.381/C, Plot No.2, |) | |
| | Aditya Bunglow, Dutt-Digambar Colony, |) | |
| | Shahpuri, Satara- 415 002. |) | |
| 4. | Ramakant Gajendra Jadhav |) | |
| | Age 39 yrs, Occ.Nil, |) | |
| | R/o At post Karajgaon, Tal.Ausa, |) | |
| | District Latur-413520. |) | .. Petitioners |

Versus

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | The State of Maharashtra |) | |
| | Through its Principal Secretary, |) | |
| | Law and Judiciary Department |) | |
| | Mantralaya, Mumbai – 32. |) | |
| 2. | The High Court of Bombay, |) | |
| | Through its Registrar General, |) | |
| | Fort, Mumbai. |) | .. Respondents |

Mr.S. B. Talekar a/w Ms.Madhavi Ayyappan & Mr.Shubham Gurav i/by Talekar & Associates for the petitioner.

Mr.N.C. Walimbe, Addl. G.P. a/w Ms.Kavita N. Solunke, AGP for respondent no.1-State.

Dr.Milind Sathe, Senior Advocate a/w Mr.Rahul Nerlekar for respondent no.2-High Court.

***CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.***

Date on which arguments were heard : 15th JANUARY 2024.

Date on which judgment is pronounced : 20th FEBRUARY 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr.Walimbe, learned Additional Government Pleader waives service of notice for respondent no.1-State. Mr.Sathe, learned Senior Counsel has appeared on behalf of respondent no.2-High Court. By consent of the parties, the writ petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the communication dated 31st January 2022 whereby the petitioners have been informed that they cannot be considered for the post of Civil Judge, Junior Division and Judicial Magistrate, First Class (CJJD and JMFC) since on the date of the advertisement they are overage and further they cannot seek relaxation of the age on the ground that they belong to the Economically Weaker Section (EWS) and not backward class.

Narrative of Events :-

3. On 1st February 2019, the Maharashtra Public Service Commission (MPSC) issued an advertisement for the post of CJJD and JMFC. As per Clause 7 of the said advertisement, age limit for advocate on the date of publication of advertisement should not be less than 21 years and not more than 35 years in the case of Advocate, with 3 years practice. In the case of fresh law graduate, age should not be less than 21 years and not more than 25 years. As per Clause 7.5 of the said advertisement, if the candidate belongs to backward class, then the age would be relaxed by 5 years, that means in case of an advocate, the outer age would be 40 years and in case of fresh law graduate, the outer age would be 30 years.

4. On 12th February 2019, respondent no.1-State issued a Government Resolution granting 10% reservation in Government Services for the candidates belonging to EWS.

5. On 30th November 2018, Socially and Educationally Backward Classes Act, 2018 ('SEBC Act') was passed. As per Section 4(b) of the SEBC Act, 16% reservation was granted to the candidates belonging to SEBC and the Maratha Community was notified as backward community for the purpose of the said Act. The vires of the

SEBC Act was challenged before this Court and the same was upheld on 27th June 2019. The order of the High Court was carried in appeal to the Supreme Court and the Supreme Court on 9th September 2020 referred the matter to the Larger Bench. However, the Supreme Court directed that post 9th September 2020, appointments to public services and posts under the Government shall be made without implementing the reservation as provided in the said Act. However, the appointments made prior to 9th September 2020 were protected.

6. Pursuant to the above advertisement, on 30th October 2019, the petitioners applied under the backward category under the SEBC Act and appeared for main exam and successfully cleared the said exam. On 21st December 2019, the list of eligible candidates was published which included petitioner no.1 to petitioner no.4 and these petitioners were recommended by the MPSC on 2nd January 2020. On 25th February 2020, verification of original documents of the petitioners was conducted and on 6th July 2021, a notification of the appointment to the post of CJJD and JMFC was published but the names of the petitioners did not appear in the said notification. Meanwhile, on 21st May 2021, the Supreme Court quashed the SEBC Act in Civil Appeal No.2123 of 2020 in the case of *Dr. Jaishri Patil Vs. State of Maharashtra*¹.

1 (2021) 8 SCC 323

7. On 8th June 2021 and 19th January 2022, the petitioners made representations to respondent no.1. Meanwhile, on 5th July 2021, respondent no.1-State issued a Government Resolution to overcome the decision of the Supreme Court which had quashed the SEBC Act.

8. On 15th July 2021, respondent no.1 issued further Government Resolution directing to make appointments to public services and post in order to implement the judgment of the Supreme Court striking down SEBC Act. On 15th July 2021, a further G.R. was issued permitting conversion of SEBC into EWS. On 17th December 2021, the Government issued G.R. granting one more chance to the candidates who had already crossed the upper age limit due to pandemic.

9. On 31st January 2022, respondent no.1 informed the petitioners the reason for they being not considered for the post of CJJD and JMFC. The reason being that they were overage as per Rule 5(3)(c) of the Maharashtra Judicial Services Rules, 2008 (2008 Rules) and furthermore the petitioners did not belong to backward classes and therefore the age relaxation provision cannot be applied in their case.

10. It is on the above backdrop that the petitioners are before us to challenge the communication dated 31st January 2022 with a further

prayer to appoint them as CJJD and JMFC w.e.f. 6th July 2021 with all consequential benefits.

Submissions of the petitioners : -

11. The petitioners submitted that the word “backward” used in Rule 3(3)(c) of 2008 Rules should be construed very widely and it would also include candidates who are holding certificates of Economic Weaker Section (EWS). The petitioners submitted that the word “backward” need not be considered socially and educationally backward classes but would also include economically backwardness. The petitioners submitted that the phrase “backward” should be so understood for the purpose of interpreting Rule 5 of the 2008 Rules. The petitioners further submitted that the State Government has also recognised and granted the reservation to EWS in civil services and therefore, same benefit should be extended to the petitioners. The petitioners submitted any other interpretation would be contrary to the constitutional mandate. Reference was made to the preamble of the Constitution of India as well as Articles 14, 15, 16(4), 16(6), 38 and 46 thereof. Attention was also invited to the decision in *Janhit Abhiyan Vs. Union of India*².

12. The petitioners further submitted that as per Rule 6 (4)(b) of the 2008 Rules, the Government should have completed the

² (2023) 5 SCC 1

appointment process within 2 months and if that would have been adhered to then the order of the Supreme Court dated 9th September 2020 freezing the appointment under the reservation would not have come in the way of the petitioners since the Supreme Court had protected appointments made before 9th September 2020 by interim order. The petitioners submitted that for no fault of theirs, they are being denied to be considered for the post of CJJD and JMFC. The petitioners have also alleged the discrimination since the candidates who have availed the benefits of the concessional examination fees even after reservation of SEBC Act was held to be unconstitutional have been granted benefits whereas similar treatment was not accorded to the petitioners. The petitioners have also submitted that the Delhi High Court as one time measure has allowed the age relaxation and the same was confirmed by the Supreme Court in case of *High Court of Delhi Vs. Devina Sharma*³. The petitioners also invoked the doctrine of promissory estoppel on the ground that the petitioners' names were recommended and hence, they did not appear in the exam held on 3rd January 2020. Therefore, they should be considered for the said post. The petitioners further submitted that the judgment of this Court in case of *Krantikumar Kishanrao Kaulwar & Anr. Vs. Maharashtra Public*

3 2022 SCC OnLine SC 316.

Service Commission, Mumbai & Ors.⁴ is *per incuriam* and should not be treated as binding precedent on this Bench. Lastly, the petitioners submitted that refusal of appointment would be contrary to Rules 7 and 8 of the 2008 Rules since the present contingency is not covered by the criteria specified for disqualification of the candidates for appointment of CJJD and JMFC. The petitioners have relied upon various case laws in support of their submissions and prayed that the petition be allowed in terms of the prayers sought for in the petition.

Submissions of Respondent No.2:-

13. The Respondent No.2 submitted that Rule 5 of the Maharashtra Judicial Service Rules of 2008 do not provide for age relaxation to the candidates belonging to the Economically Weaker Section but it gives relaxation only to “communities recognized as backward for the purpose of recruitment”. The Respondent No.2 further submitted that on a true and proper construction of Articles 15 and 16 of the Constitution of India, the reservation is available to only those persons belonging to Economically Weaker Section who do not belong to OBC and, therefore, Economically Weaker Section cannot be considered as backward for the purpose of age relaxation. The Respondent No.2 further submitted that in the light of the decision in

the case of *Dr. Jaishri Patil (supra)*, the petitioners are not eligible for being considered for the post of CJJD and JMFC. The Respondent No.2 further submitted that merely because the petitioners were recommended by the MPSC and the documents were verified, it does not create a vested right to seek the employment. The Respondent No.2 further submitted that the other candidates who had applied and were recommended under SEBC category, where given appointment letter as they qualified in open category and were otherwise eligible. Respondent No.2 further submitted that promissory estoppel has no application to the recruitment process under the 2008 Rules and therefore the submission on this count is misconceived. A similar contention was considered and turned down in *Krantikumar Kishanrao Kaulwar (supra)*. Referring to the communication dated 18th August 2021, it was pointed out that of the 11 candidates referred, 7 had taken benefit of concession of fees while the others were the petitioners. Respondent No.2 relied upon various decisions in support of its submissions and prayed for dismissal.

Submissions of Respondent No.1:-

14. The Respondent No.1 submitted that since the SEBC Act was held to be unconstitutional, no benefit could be given to the Petitioners for recruitment in judicial service, moreso because, there is no

amendment to the 2008 Rules to give such benefit. The Respondent No.1 further relied upon the opinion expressed by the High Court on its Administrative Side on this issue wherein the High Court observed that since the Petitioners belong to SEBC which does not fall in backward class category, they were not considered for the post of CJJD and JMFC. Respondent No.1 supported the submissions made by Respondent No.2 and prayed for dismissal of the present petition.

15. We have heard the learned counsel for the Petitioners and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the petition and filed during the course of hearing.

Analysis and Conclusions :-

16. Rule 6 (4)(a) and (b) of the Maharashtra Judicial Service Rules, 2008 reads as under :

“6. Recruitment by Nomination

(4)(a) The Recruiting Authority shall recommend the names of selected candidates by completing the selection process.

(b) The Government within two months of the names of the selected candidates being forwarded to it shall complete the process of verification of antecedents and medical examination and issue appointment orders”.

The aforesaid Rule provides that the Recruiting Authority shall recommend the names of selected candidates by completing selection

process and the Government within two months of the names of the selected candidates being forwarded to it shall complete process of verification of antecedents and medical examination and issue appointment orders. Rule 6 falls under Chapter III of the Maharashtra Judicial Service Rules of 2008 which deals with the process of recruitment.

17. In our view, the time limit prescribed under Rule 6(4)(b) of the 2008 Rules is only recommendatory and would not mean that the Government has to complete the process strictly within two months and if not done so would amount to having appointed the candidate. In the instant case, the recommendation of candidates were sent on 2nd January 2020 and the verification of original certificate was done on 25th February 2020. Thereafter on account of Pandemic from March- 2020, the recruitment process did not progress any further and was frozen. The Supreme Court in the case of *Dr.Jaishri Patil (supra)* stayed the operation of the SEBC Act by clarifying that appointments to public service and post under the Government shall be made after 9th September 2020 without implementing the reservation as provided in the SEBC Act. However, the appointments made prior to 9th September 2020 were protected. In the instant case, the respondents could not complete the appointment process on account of pandemic and

furthermore no malice or malafide is attributed by the petitioners against respondents for not completing the process of recruitment within two months as prescribed under Rule 6(4)(b) of the 2008 Rules. Furthermore, the process of recruitment is for the recruiting agency i.e. the Government and no right gets vested in the candidates if the time limit is not adhered to moreso on account of reasons stated hereinabove. In our view, therefore the petitioners are not justified in submitting that if the time limit of two months would have been adhered to by the respondents their appointments would not have been affected on account of the Supreme Court staying the operation of the SEBC Act on 9th September 2020. Therefore the arguments of the petitioners on this count is rejected.

18. Article 15(4) of the Constitution of India provides that nothing in said Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Schedules Tribes. Article 15(6) provides that nothing in said Article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) of Article 15.

Explanation to Article 15 provides that economically weaker sections shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. On a conjoint reading of Article 15(4) and (6) two things emerge :- (i) economically weaker sections are different than socially and educationally backward classes, (ii) Article 15(6) would apply to those persons who are not covered by Article 15(4). The basis of notifying the economically weaker sections and socially and educationally backward classes are also different. Therefore, a clear cut distinction is made in the Constitution between the backward classes and people belonging to Economically Weaker Sections.

19. Article 16(4) provides that nothing in said Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State. Article 16 (6) provides that nothing in said Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of the economically weaker sections of citizens other than the classes mentioned in clause (4). The aforesaid two clauses of Article 16 also bring out a distinction between economically weaker sections and backward class of citizens. Both these concepts namely

backward class and economically weaker sections are not one and the same, but they are different and same is recognised by the Constitution also as different.

20. The Constitution (One Hundred Twenty Fourth Amendment) amending Articles 15 and 16 also in the statement of objects and reasons states that because benefit of Articles 15 and 16 is unavailable to economically weaker section, an amendment is brought in to give benefit to economically weaker section. This also fortifies that EWS and backward class are treated separately by the Constitution.

21. Therefore, in our view, candidates belonging to economically weaker section cannot be construed as candidates belonging to backward class.

22. Rule 5(3)(c) of the Maharashtra Judicial Service Rules of 2008 reads as under ;

5. Method of Recruitment, Qualification and Age Limit –

(3).....

(c) Age – As on date of Publication of Advertisement not less than twenty one years and not more than,

(i) thirty five years in the case of Advocates with three years practice,

(ii) twenty five years in the case of fresh law graduates,

(iii) forty five years in the case of ministerial staff.

*Provided that upper age limit in each of the above categories may be relaxed by five years in respect of candidates **belonging to communities recognised as backward by the Government** for the purpose of recruitment;*

(emphasis supplied)

Rule 5(3)(c) provides for age relaxation in respect of candidates belonging to communities recognised as backward by the Government for the purpose of recruitment. As analysed by us above, the constitutional framework brings out a distinction between the candidates belonging to communities recognised as backward and candidates belonging to economically weaker section. The age relaxation as per Maharashtra Judicial Service Rules of 2008 is for those candidates who belong to communities recognised as backward and not in respect of candidates belonging to economically weaker sections. Therefore, Rule 5(3)(c) of Maharashtra Judicial Service Rules, 2008 as it stands today cannot be construed to mean that the age relaxation provided by the proviso to Rule 5(3)(c) would be applicable to candidates belonging to economically weaker section. Therefore, in our view, the contention of the petitioners that since they belong to economically weaker section, the phrase “backward” used in proviso to Rule 5(3)(c) would include candidates belonging to economically weaker section is required to be rejected.

23. The petitioners had made an application under the SEBC Act

which was struck down by the Supreme Court on 21st May 2021 in the case of *Dr.Jaishri Patil (supra)*. Therefore, the community notified under the said Act would not be treated as backward class since the said Act does not exist. Therefore, the respondents were justified in not considering the application of the petitioners based on the SEBC Act.

24. The petitioners have relied upon Government Resolutions dated 5th July 2021, 15th July 2021 and 17th July 2021 to submit that the age relaxation provided under these Government Resolutions for recruitment to civil services should be made applicable to the petitioners. In our view, the Government Resolutions relied upon by the petitioners are the resolutions which govern the recruitments for Civil Services and not for Judicial Services. Insofar as, the Judicial Service is concerned, it is governed only by the Maharashtra Judicial Service Rules of 2008 and since the said Government Resolution does not deal with judicial services, on this count itself, the reliance placed by the petitioners on these Government Resolutions are of no assistance. It is by now settled that the Government Resolution cannot override the Maharashtra Judicial Service Rules of 2008 and unless there is an amendment to Maharashtra Judicial Service Rules 2008, the Government Resolution issued by the Government with respect to other civil services cannot be considered for the post of Judicial Services, therefore, on this count also,

the petitioners contention is required to be rejected.

25. The petitioners have further invoked the doctrine of promissory estoppel to seek the appointment of judicial service. We failed to understand how this doctrine is applicable to the facts of the petitioners. The petitioners were over age on the date of the advertisement under the open category. Merely because, the petitioners name were recommended and the documents verified does not give a vested right in them to seek the appointment. Since the petitioners were overage on the date of the advertisement dated 1st February 2019, they could not have applied to the advertisement dated 3rd January 2020 for the post of CJJD and JMFC. Therefore, the doctrine of promissory estoppel invoked by the petitioners is to be rejected and not applicable to the facts of the present case.

26. The petitioners have relied upon Rules 7 and 8 of the Maharashtra Judicial Service Rules of 2008 to contend that since their case does not fall within Rules 7 and 8 which provides for disqualification for appointment, they should be considered for the post of judicial service. In our view, the petitioners gets disqualified under Rule 5(3)(c) itself on the ground of overage and therefore, the question of reaching to Rules 7 and 8 does not apply. The petitioners at the threshold are not eligible to make an application for the post of CJJD

and JMFC on account of them being overage. Merely because, the facts of the present petitioners are not prescribed in Rules 7 and 8 being disqualification for appointment and conditions relating to suitability, fitness and character would not mean that the petitioners who are overaged as per Rule 5(3)(c) can be considered for selection of the judicial post. Therefore on this count also, the contention of the petitioners is cannot be accepted.

27. The petitioners have relied upon the following decisions :-

- (i) Kushewar Prasad Singh vs. State of Bihar⁵,
- (ii) Jitendra Kumar Singh vs. State of Uttar Pradesh⁶,
- (iii) Vikas Balwant Alase vs. Union of India⁷,
- (iv) Santosh Bhupal Kagwade vs. State of Maharashtra⁸ and
- (v) Akshay Ashok Chaudhari & Ors. vs. Government of Maharashtra & Ors⁹
- (vi) Janhit Abhiyan Vs. Union of India¹⁰
- (vii) Renu & Ors. Vs. District & Sessions Judge¹¹

28. In our view, the decisions relied upon by the petitioners are not applicable to the facts of the present case, inasmuch as, none of these of decisions deals with appointment under the Maharashtra

5 (2007) 11 SCC 447

6 (2010) 3 SCC 119

7 2022 SCC Online Bom 1592

8 W.P. No.2331 of 2019 dated 7th June 2023

9 2023 SCC Onlijne Bom 2741

10 (2023) 5 SCC 1

11 (2014) 14 SCC 50

Judicial Service Rules of 2008. The recruitment of judicial officers under the Maharashtra Judicial Service Rules of 2008 are not governed by any Government Resolution or any other Act except 2008 Rules. This issue was considered in detail by this very bench in the case of ***Sagar Satish Patil vs. The State of Maharashtra & Ors.***¹², wherein from paras 9 to 15 we have analysed this controversy and have come to a conclusion that since the recruitment of judicial officers is governed by the Maharashtra Judicial Service Rules of 2008, a candidate cannot rely upon the Government Resolutions issued with respect to civil services to seek entitlement. Therefore, in our view, none of these decisions relied upon by the petitioner can be of any assistance. It is also important to note that the recruitment process got delayed not on account of any factors attributable to the respondents but it was on account of global pandemic and furthermore the respondents have not gained by delaying the process and therefore the proposition of the petitioners that one cannot take the benefit of its own wrong in the facts of the present case would not be applicable.

29. It is also important to note that proviso of Rule 5(3)(c) of the 2008 Rules grants age relaxation to the candidates belonging to communities recognised as backward by the Government. The phrase

12 Writ Petition No.356 of 2022 dated 19th January 2024

“backward” in the proviso has to be read in the context of the “community” which precedes the said word and not in isolation. It is the candidate belonging to backward community who can seek the benefit of age relaxation under the proviso of Rule 5(3)(c) of 2008 Rules. Insofar as, the present petitioners are concerned, their claim is based on Economically Weaker Section which in our view would not constitute backward community. Therefore on this count also, the contention of the petitioners to construe “backward” used in Rule 5(3) to mean economically weaker section would not be correct reading of the proviso.

30. The petitioners’ contention that the decisions in the case of *Krantikumar Kishanrao Kaulwar (supra)* is *per incurium* would not be correct. However, even in for the sake of arguments if it is assumed that the decision of *Krantikumar Kishanrao Kaulwar (supra)* has not considered provisions of the 2008 Rules, Constitution of India and the Government Resolutions then even in that scenario since we in the present decision have considered the aforesaid aspects, the contentions of the petitioners that they should be considered for the post of Judicial Service is to be rejected for the reasons stated hereinabove. The decision in the case of *Krantikumar Kishanrao Kaulwar (supra)*, in our view has considered the 2008 Rules, Constitution of India and the Government

Resolutions as evident from the reading of the decision and therefore the petitioners are not justified in contending these decisions is *per incurium*.

31. The Petitioners have also relied upon the following decisions :-

(i) Municipal Corporation of Delhi vs. Gurnam Kaur¹³, (ii) Indra Sawhney vs. Union of India¹⁴, (iii) Raghunath Rai Bareja vs. Punjab National Bank¹⁵, (iv) Ram Singh vs. Union of India¹⁶, (v) Ashish Kumar vs. State of Uttar Pradesh¹⁷ and (vi) High Court of Delhi vs. Devina Sharma¹⁸ which are based on general principles on interpretation. Ratio of the same however does not assist the case of the petitioners. The decision in the case of ***Devina Sharma (supra)*** has already been considered by us in the decision of ***Sagar Satish Patil (supra)*** and therefore we do not propose to deal with the same here.

32. We are in agreement with the view as taken in the case of ***Krantikumar Kishanrao Kaulwar (supra)***. We, therefore, do not propose to take a different view.

33. To conclude, in our view for the reasons stated above the

13 (1989) 1 SCC 101

14 (1992) 3 SCC 217

15 (2007) 2 SCC 230

16 (2015) 4 SCC 697

17 (2018) 3 SCC 55

18 2022 SCC Online SC 316

petitioners are not justified in seeking appointment for the post of CJJD and JMFC on account of they being overage as per the 2008 Rules..

34. Rule is discharged. The Writ Petition is dismissed with no order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.