

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1834 OF 2024

Dharmendra Kumar

.. Petitioner

Versus

Union of India, Ministry of Personnel, .. Respondents
Public Grievances and Pension,
Department of Personnel & Ors

...

Mr.Rajesh Bhosle appointed through the High Court Legal Service Committee, for the petitioner.

Mrs.Savita Ganoo a/w Mr. D.P. Singh, for respondent nos.1 to 4.

Ms. Sudha K. Gond i/b Vinod Joshi, for respondent no.5.

CORAM: BHARATI DANGRE &

ASHWIN D. BHOBE, JJ.

RESERVED ON : 21st JANUARY, 2025

PRONOUNCED ON: 4th FEBRUARY, 2025

JUDGMENT:- (PER BHARATI DANGRE J)

1. The petitioner with 57% Multiple Disability, and being eligible for reservation under clause (e) of sub-section (1) of Section 34 of “The Rights of Persons with Disabilities Act, 2016” has approached this Court through the Writ Petition raising a challenge to Rule 3 of the Civil Services Examination Rules 2024, framed by the respondent no.1 Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, vide its notification bearing No. 13018/07/2023- AIS-I, on 14/02/2014.

The petitioner is aggrieved by the imposition of restriction on the number of attempts for persons with Benchmark

Disability (PwBD) under General/Economically Weaker Section / Other Backward Classes (GL/EWS/OBC) category to 9 attempts and it is the contention of the petitioner that he ought to avail unlimited number of attempts as there cannot be discrimination in the category of persons with Benchmark Disability, which is a class, by itself and therefore the classification between the SC/ST, who are allowed unlimited attempts, whereas restriction of attempts for GL/EWS/OBC candidates to 9, is discriminatory and therefore arbitrary.

2. We have heard learned counsel Mr. Rajesh Bhosle for the petitioner and Advocate Ms. Savita Ganoo for respondent nos.1 to 4. Ms. Sudha Gond represented the Union of Public Service Commission and considering the urgency expressed, by consent of the respective counsel, we issue 'Rule'. Petition is taken for final hearing at the stage of admission.

3. The petitioner Shri Dharmendra Kumar, aged 38 years is resident of Mumbai, State of Maharashtra, and he is armed with a Disability Certificate issued by the Medical Authority, Mumbai, assessing his Locomotor Disability as 53 % and his Low Vision Disability Right Eye (RE), diagnosed with AMBLYOPIA as 10%. The Disability Certificate dated 11/3/2023 issued in favour of the petitioner certify his impairment as 57% and the certificate clearly state that his condition is not likely to improve.

4. The petitioner is an aspirant for Civil Services Examination (CAC-2024) to be held by the Union Public Service Commission for the purpose of filling vacancies in the services like Indian Administrative Service (IAS), Indian Foreign Service (IFS), Indian Police Service (IPS), Indian Audit and Accounts Service,

Indian Revenue Service (IRS), Indian Railway Management Service etc.

For conduct of the Civil Services Examination, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training i.e. respondent no.1 on 14/02/2024, issued a notification, in form of Rules providing the general information as well as stipulating the requisite qualifications, prescribing the vacancies and reservation, age, along with the other eligibility criteria to be fulfilled by a candidate who was desirous of appearing for the said examination.

5. The petitioner had unsuccessfully given 9 attempts of the Civil Service Examination conducted by the Union Public Service Commission in the past and he feel aggrieved by the imposition of restriction on the number of attempts imposed by the notification dated 14/02/2024, and we would paraphrase his grievance in the subsequent paragraphs, when we simultaneously set out the necessary requirements for appearance for the Civil Services Examination of 2024, to be conducted by the UPSC in accordance with the manner prescribed in the appendix appended to the said Rules referred to as 'Civil Services Examination Rules-2024'.

6. According to the petition, Rule 5 prescribe the upper age limit for the candidates appearing for Civil Services Examination as 32 years and as per Rule 5 (2)(b), the upper age limit of 32 years is relaxable upto maximum 3 years in case of candidates belonging to OBC category and in terms of Rules 5 (2)(f), which is applicable to the candidates belonging to persons with Benchmark Disability (PwBD) as specified therein, the prescribed age limit of 32 years is

further relaxable upto maximum 10 years and according to the petitioner this is irrespective of the caste/category to which the candidate belong.

Claiming that the petitioner belongs to the PwBD category and since he also belong to Other Backward Class (OBC), he is eligible for cumulative age relaxation under both categories, which make him entitle for age relaxation of 13 years (3 years as OBC and 10 years as PwBD). It is therefore the pleaded case of the petitioner that he is entitled to appear for the Civil Services Examination, upto the age of 45 years

7. The difficulty projected by the petitioner is in regards to the number of attempts which he is entitle to take for his appearance in the Civil Services Examination and for this purpose, he has relied upon Rule 3 of the Civil Services Examination Rules-2024 and we reproduce the same:-

“Number of Attempts:

3. Every candidate appearing at the examination who is otherwise eligible, shall be permitted **six (6)** attempts at the CSE. However, relaxation in the number of attempts will be available to the SC/ST/OBC and PwBD category candidates who are otherwise eligible. The number of attempts available to such candidates as per relaxation is as under:

	Category to which the Candidate Belongs		
	SC/ST	OBC	PwBD
<i>Number of attempts</i>	<i>Unlimited</i>	<i>09</i>	<i>09 for GL/EWS/OBC Unlimited for SC/ST</i>

Note-I : The terms – GL for General, EWS for Economically Weaker Sections, SC for Scheduled Castes, ST for Scheduled Tribes, OBC for Other Backward Classes and PwBD for Persons with Benchmark Disability – are used for denoting the categories of candidates taking an attempt at the Examination.”

8. The petitioner feels aggrieved by the aforesaid stipulation, as his grievance is that Rule 5 of the Civil Services Examination Rules entitle him to appear for the examination upto the age of 45 years, but when it comes to the attempts, he can avail only 9 attempts.

Rule 3, according to the petitioner, is discriminatory as for an SC/ST candidate, belonging to PwBD category, unlimited attempts are available, but as a OBC candidate, he would be only entitle for 9 attempts. He therefore alleged discrimination and would place reliance upon the decision of the Apex Court in case of *All India Confederation of Blind And anr vs. Union of India and anr*, which has categorized the reservation for disabled as horizontal reservation cutting across all vertical categories such as SC, ST, OBC and General and according to him, it has been recognized that PwBD belonging to SC/ST category i.e. vertical categories enjoy the relaxation to which an SC/ST candidate is entitle to and there is no reason for not giving same benefit/concession to those disabled, who are in General category or other backward class category as this process would only bring parity among all the persons with disability, irrespective of their vertical categories.

In addition to this, reliance is placed upon decision of Delhi High Court in case of *Anmol Bhandari (Minor) through his Father/Natural Guardian vs. Delhi Technological University*, and it is his contention that the Delhi High Court, has categorically held that people suffering from disabilities are equally socially backward, if not more, as those belonging to SC/ST categories, and therefore, as per the Constitutional mandates, they are entitled to at least the same

benefit of relaxation given to SC/ST candidates.

9. By way of amendment, the petitioner has placed on record the Office Memorandum issued by the respondent no.1, on 15/01/2018, with regards to the subject of reservation for the persons with the benchmark disabilities, pursuant to the enactment of 'The Rights of Persons With Disabilities Act, 2016' and the notification of 'The Rights Of Persons With Disabilities Rules, 2017', and according to him the instructions contained in the office memorandum are imperative and must be strictly adhered to and he would invoke clause 11 of the said office memorandum, which, we must reproduce for reference.

"11. RELAXATION OF STANDARD OF SUITABILITY:

11.1 If sufficient number of candidates with benchmark disabilities candidates 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. However, this provision shall not be used to allow any relaxation in the eligibility criteria laid down for the issuance of certificate of disability.

11.2 Same relaxed standard should be applied for all the candidates with Benchmark Disabilities whether they belong to Unreserved/ SC/ST/OBC. No further relaxation of standards will be considered or admissible in favour of any candidate from any category whatsoever."

10. The petition is opposed by the respondent no.1, by filing an affidavit through the Under Secretary to the Government of India, affirmed on 26/09/2024, wherein it is stated that the Civil Services Examination Rules, 2024 has permitted six attempts to every candidate, with an exception that SC/ST candidates would get unlimited attempts, whereas OBC candidate is entitled to avail 9 attempts. It is a specific stand adopted in the affidavit that the

impugned Rule treats people belonging to the same category as alike and therefore it cannot be termed to be ultravires under Article 14, 19 (1) (g), 21 of the Constitution of India, as alleged by the petitioner and in fact if the interpretation suggested by the petitioner is given effect to, it would treat un-equals as equals and this would contradict Article 14 of the Constitution. In addition, the affidavit also state that, there is a reasonable basis for the classification and hence it cannot be termed as arbitrary as the object of classification is to provide benefits to an identified group of persons, who form a class of their own, and persons with Benchmark Disabilities of OBC and SC/ST are not equal and therefore they cannot be treated as a homogeneous group.

In addition, the petition is also opposed on the ground that the petitioner had already taken 9 attempts of the Civil Services Examination, but remained unsuccessful and the preliminary objection is also raised to the fact that he was aware of the Rule since when he took the first attempt as per the Civil Services Rules 2014, but never raised a challenge but now when there are no more attempts available to him, he is challenging the validity of the Rules.

Similarly the affidavit is also filed by the Public Service Commission i.e. respondent no.5, and a stand is adopted that the examination is to be conducted as per the Rules framed by respondent no.1 and the respondent is no one to comment upon the validity of the Rules as it is only the examining body, but imposition of conditions for appearance of the examination, is completely fall within the purview of the respondent no.1.

11. The Civil Services Examination Rules, 2024, governing the conduct of the Civil Services Examination for the purpose of filling vacancies in distinct services covered therein and it prescribe the requirement of nationality, age, educational qualification along with the number of attempts. As far as the criteria for age is concerned, it prescribes that the candidate must have attained the age of 21 years and must not have attained the age of 32 years as on 1/08/2024. The upper age limit is however relaxed by relaxing clause 2 of Rule 5 as in case of a candidate belonging to Scheduled Caste and Scheduled Tribe, it is relaxed upto a maximum 5 years, whereas in case of an OBC candidate, the relaxation is upto a maximum 3 years. In addition, relaxation is also provided to candidates belonging to distinct categories, one such category is of persons with Benchmark Disabilities, who are entitle to a maximum 10 years of relaxation.

Note-I appended to Rule 5 clearly permit availing of cumulative age-relaxation, if a candidate fall in two different categories and therefore a petitioner, who is a PwBD candidate, but belong to OBC category, he is entitled for relaxation of 13 years (10+3) years as far as the age is concerned.

12. Rule no.3, which we have reproduced above, has offered relaxation in number of attempts available to the SC/ST/OBC and PwBD category candidates, who are otherwise eligible and as far as SC/ST category is concerned, it has permitted unlimited attempts, but for a OBC candidate, 9 attempts are available. Similarly, for a PwBD candidate belonging to GL/EWS/OBC, 9 attempts are permitted, but a PwBD candidate, who is also a candidate from SC/ST category,

then he can enjoy unlimited attempts.

13. The argument advanced by Mr. Bhosale representing the petitioner is about the sub-classification of the PwBD into two classes of SC/ST and GL/EWS/OBC, and this is the point which deserve consideration by us.

14. In order to give effect to the United Nations Convention on the Rights of Persons with Disabilities, Parliament has enacted 'The Right of Persons With Disabilities Act 2016', which has defined a 'person with disability' to mean a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

The Special enactment cast a duty on the appropriate Government to ensure that the persons with disabilities enjoy the right to equality, life with dignity, and respect for his/her integrity equally with others and has made it imperative for the government to take steps to utilize the capacity of persons with disabilities by providing appropriate environment. The salient feature of the enactment is that no person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is proportionate means of achieving a legitimate aim.

15. Keeping in mind the object in bringing the special statute, several provisions which shall benefit the persons with disabilities are carved out in the said Act. Chapter VI of the Act has enumerated special provisions for persons with benchmark disabilities, which include free education as well as reservation in

higher educational institutions.

Section 33 of the Act cast a duty on the appropriate Government to identify the posts in the establishments, which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34, and this is directed to be done by constituting an expert committee, with representation of persons with benchmark disabilities and to undertake periodic review of the identified post at regular interval.

Section 34 is a statutory mandate, which direct that every appropriate Government shall appoint in every Government establishment, not less than 4 % of total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1 % each shall be reserved for persons with benchmark disabilities under clause (a), (b) and (c) and 1% persons with benchmark disabilities in clause (d) and (e), the benchmark disabilities being specifically set out in the said provision.

16. In exercise of the duty cast upon the respondent no.1, for discharging its obligation under the said enactment, where respondent no.1 has issued the office memorandum on 15/01/2018, setting out that in case of direct recruitment, 4% of total number of vacancies in the cadre strength in each group of posts shall be reserved for persons with benchmark disabilities.

The said notification has enlisted the disabilities as set out in Section 34 of the Act of 2016.

What is important to note is the stipulation contained in clause (4) of the office memorandum, which contemplates that in the category of posts which are identified suitable for persons with benchmark disabilities, a person with benchmark disabilities cannot be denied the right to compete for appointment by direct recruitment against an unreserved vacancy, i.e. a person with benchmark disability can be appointed against a vacancy not specifically reserved for benchmark disability, provided the post is identified suitable for person of the relevant category. Clause 4.2 further stipulates that persons with benchmark disabilities selected without relaxed standard along with other candidates, will not be adjusted against reserved share of vacancies and the reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities, which will comprise of candidates with such disabilities, who are lower in merit than the last candidate in the merit list but otherwise found suitable for appointment, if necessary, by relaxed standards.

17. Rule 11 which we have already reproduced above, prescribes the relaxation of standard of suitability and the learned counsel Ms. Savita Ganoo, has laid emphasis on the said clause, by submitting that only if sufficient number of candidates with benchmark disabilities are not available on the basis of general standard to fill up the vacancies reserved for them, the candidate belonging to this category may be selected by applying relaxed standards to fill up the remaining vacancies provided they are not found unfit for such posts.

She has placed before us the details of the aforesaid relaxation, which was made applicable to the Civil Services Examination 2023, but according to her, this contingency arises only if the sufficient number of candidates with benchmark disabilities are not available by applying the general standard and therefore, relaxation is offered to them at all stages and for the Civil Services Examination 2023, she has placed before us the minimum qualifying standards/marks on which the candidates were held entitled for being considered on the post reserved for PwBD. The details reads thus:-

“Civil Services Examination, 2023- minimum qualifying marks

In the Civil Services Examination, 2023 the minimum qualifying standards/marks secured by the last recommended candidate in various categories at various stages are as under:-

Examination	General	EWS	OBC	SC	ST	PwBD-1	PwBD-2	PwBD-3	PwBD-5
CS (Prelim)*	75.41	68.02	74.75	59.25	47.82	40.40	47.13	40.40	33.68
CS (Main)#	741	706	712	694	692	673	718	396	445
CS (Final)	953	923	919	890	891	894	930	756	589

**Cut off marks on the basis of GS Paper-I only. GS Paper-II was of qualifying nature with 33% marks as per Rule-15 of Civil Services Examination, 2023.*

#Subject to 10% marks in each of the seven competitive papers i.e. Essay, GS-I, GS-II, GS-III, GS-IV, Optional-I and Optional-II.”

18. It is thus a submission advanced on behalf of respondent no.1 that the relaxation is offered to the candidates belonging to distinct categories, when they fail to comply with the general standard as contemplated under the Rules of 2024.

It is also a stand of Respondents that fixing up of number of attempts for candidates belonging to distinct categories is a policy decision, which vest with the respondent no.1, which is reflected in the notification issued for conduct of Civil Services Examination, and it being a policy decision, as long as it is not arbitrary or do not

violate fundamental right of the petitioner, there can be no interference in the said policy decision.

19. Ms.Ganoo raised a preliminary objection about the remedy being available to the petitioner for approaching the Central Administrative Tribunal in respect of his grievance and she would submit that without availing the remedy since the petitioner has approached this Court, the petition is liable to be dismissed.

At the outset, we must deal with the preliminary objection of the respondent no.1 about the remedy of the Central Administrative Tribunal being available to him on the ground that, the petitioner has assailed the notification issued by the respondent no.1 on the ground that it violates Article 14, which is a fundamental right available to him as he is denied the benefit of the number of attempts which are available to an SC/ST candidate from PwBD category and the number of attempts restricted to him as an OBC candidate are 9 and this is arbitrary and therefore, a prayer is made that the said criteria should be struck out. We must note that since the petition is filed alleging violation of fundamental right, and availability of an alternative remedy is not an absolute bar in entertaining a writ petition in exercise of power under Section 226, we turn down the said objection and have heard the counsel for the petitioner in support of the grounds raised in the petition.

20. It is pertinent to note that the reservation under the Right of Persons with Disabilities Act, 2016, and in particular contemplated under Section 34 of the Act, is an horizontal Reservation, as in case of reservation provided to women under Article 15(3) in contrast of the reservation prescribed under Article 15(4), in form of a special

provision of advancement of any Socially and Educationally Backward Classes of citizen or for the Scheduled Castes and Scheduled Tribes, and also a reservation under Article 16 (4), an enabling provision for the State to make 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.

The aforesaid reservation under Article 15 and 16, is a vertical reservation and this may include a reservation for SC/ST on one hand and for OBC on the other. The Reservation to physically handicapped candidate is a horizontal reservation, and in order to afford an opportunity to the classes of persons, even if belonging to any category i.e. General, OBC, SC/ST, which afford an opportunity to come up and compete in the main stream and enjoy all the benefits and developments and in order to make this opportunity available, the Parliament had enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995, which is eventually replaced by the Act of 2016, with an intention to offer new opportunities to the persons with disabilities owing to the development of the Society and by recognizing their capabilities to be a part of the development. The reservation contemplated under Article 16 (1) is a horizontal reservation and, this includes the reservation for differently abled persons as contemplated in the Act of 2016. The reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes is vertical reservation, whereas reservation in favour of physically handicapped is horizontal reservation, which necessarily cut across the vertical reservation,

what is called as interlocking reservation. In *Indra Sawhney v Union of India*, (1992) Supplement 3 SCC 217 in paragraph 812, the illustration given demonstrates how the horizontal reservation shall operate:-

“812. ...There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under [Article 16\(4\)](#)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of [Article 16](#)] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of [Article 16](#). The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

21. A PwBD candidate, who is entitled for 3 % reservation, will have to be fitted in the vertical reservations provided for SC/ST and OBC with regard to the number of posts, which are available and in a particular year, if there are 3 seats available for PwBD candidates, they fall either in SC/ST or OBC or General Category depending upon the roster point that is available for recruitment. There can be no doubt about the fact that, the Act of 2016 intend to offer better opportunities to the persons with disabilities for their empowerment and by identifying the disabilities, it is made imperative that, they shall secure the benefit of reservation in Educational Institution as well as in employment and Section 34 of

the Act 2016, therefore prescribe that not less than 4 % of the total number of vacancies in the cadre strength in each group of post shall be filled with persons with benchmark disabilities and the said post shall be filled in horizontally, which shall cut across the vertical reservation for distinct categories.

PwBD itself is a class, which is distinct from the class of SC/ST, OBC/EWS/General. The Scheduled Castes and Scheduled Tribes has a distinct status in the Constitution, as it is the power of the President with respect to any State or Union Territory and where it is a State, after consultation with the Governor to specify the caste, races or tribes (or parts or groups within them) which shall for the purpose of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be. Another distinct class in the Constitution is the Other Backward Class and the Socially and Educationally Backward Class, which is inserted by the 102nd amendment with effect from 15/08/2018. Since while providing reservation for SC/ST/OBC, the Constitution had prescribed different percentage of reservation and has permitted the State Legislatures to provide the reservation for these distinct classes considering it to be a separate class. The procedure for identification of the SC/ST and notifying them is different from the one prescribed for recognition of the OBC and the benefit conferred under Article 15 which prohibits discrimination on the ground of religion, race, caste, sex or place of birth and enables the State to make special provision for advancement of Socially and Educationally Backward Classes for citizens or for the Scheduled Castes and Scheduled Tribes.

Sub-clause (5) of Article 15 is another species of the enabling power which permit the State by law to make a provision for advancement of any Socially and Educationally Backward Class of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as the provision relate to their admission to the Educational Institution as contemplated therein.

22. By 103rd amendment, sub-clause 6 is inserted in Article 15, which once again enable the State in making any special provision for advancement of any economically weaker section of citizen other than the classes mention in clause 4 and 5, including private educational institution, whether aided or unaided, other than the minority educational institutions referred to in clause 1 of Article 30.

Article 16, which afford equalities of opportunity in matters of public employment, by virtue of sub-clause (4) enable the State from making 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. In addition, the State is also empowered to make any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in services under the State in favour of Scheduled Castes and Scheduled Tribes which in the opinion of the State are not adequately represented in the services.

23. In wake of the aforesaid constitutional scheme, conferring enabling power on the State to provide for reservation, one thing is clear that Scheduled Castes/Scheduled Tribes has received a different treatment from the Other Backward Class and this

distinction is succinctly noted by the Constitution Bench Judgment in *Indra Sawhney*, which is consistently followed by the highest Court of this country, which has held that the Scheduled Castes and Scheduled Tribes are the most backward amongst the backward classes and it is therefore, presumed that once they are contained in the presidential list under Article 341 and 342 of the Constitution of India, there is no question of showing backwardness of the Scheduled Castes and Scheduled Tribes all over again.

The view taken in *M Nagaraj vs. Union of India* (2006) 8 SCC 212, which was referred to three Judge Bench to test its correctness was answered in *Jarnail Singh and ors vs. Lachhmi Narain Gupta and ors* (2018) 10 SCC 396, in reference to the ‘Creamy layer’ in the backward class and in paragraph nos.23 and 24, the Apex Court speaking through Justice Nariman (as his Lordship then was) observed thus:-

“23. This brings us to whether the judgment in *Nagaraj* needs to be revisited on the other grounds that have been argued before us. Insofar as the State having to show quantifiable data as far as backwardness of the class is concerned, we are afraid that we must reject Shri Shanti Bhushan’s argument. The reference to “class” is to the Scheduled Castes and the Scheduled Tribes, and their inadequacy of representation in public employment. It is clear, therefore, that *Nagaraj* has, in unmistakable terms, stated that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes. We are afraid that this portion of the judgment is directly contrary to the nine-Judge Bench in *Indra Sawhney* (1). Jeevan Reddy, J., speaking for himself and three other learned Judges, had clearly held, —

“[t]he test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression “backward class of citizens”. (See paragraphs 796 to 797).

Equally, Dr. Justice Thommen, in his conclusion at paragraph 323(4), had held as follows:

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(4) Only such classes of citizens who are socially and educationally

backward are qualified to be identified as Backward Classes. To be accepted as Backward Classes for the purpose of reservation under [Article 15](#) or [Article 16](#), their backwardness must have been either recognised by means of a notification by the President under [Article 341](#) or [Article 342](#) declaring them to be Scheduled Castes or Scheduled Tribes, or, on an objective consideration, identified by the State to be socially and educationally so backward by reason of identified prior discrimination and its continuing ill effects as to be comparable to the Scheduled Castes or the Scheduled Tribes. In the case of the Scheduled Castes or the Scheduled Tribes, these conditions are, in view of the notifications, presumed to be satisfied.”

24. In fact, [Chinnaiyah](#) has referred to the Scheduled Castes as being the most backward among the backward classes (See paragraph 43). This is for the reason that the Presidential List contains only those castes or groups or parts thereof, which have been regarded as untouchables. Similarly, the Presidential List of Scheduled Tribes only refers to those tribes in remote backward areas who are socially extremely backward. Thus, it is clear that when [Nagaraj](#) requires the States to collect quantifiable data on backwardness, insofar as Scheduled Castes and Scheduled Tribes are concerned, this would clearly be contrary to the [Indra Sawhney](#) (1) and would have to be declared to be bad on this ground.”

In the wake of the aforesaid observations it was held that there is no need to refer to the decision in case of *Nagaraj* (supra) to a Larger Bench.

24. Recently the Apex Court in case of *State of Punjab and ors vs. Davinder Singh and ors* (2025) 1 SCC 1, in reference to the affirmative action has once again identified the heterogeneous nature of the caste/class of the Scheduled Caste and hierarchical relationship of the said class with the class of backward classes of Article 15 and 16 as a source of power to sub-classify Scheduled Castes by holding that it forms a heterogeneous class and the power of the State to sub-classify the scheduled Caste for affirmative action, including reservations is stress-able to Article 15(4) and 16(4) in case of Educational Institutions and appointments respectively.

25. It is thus evidently clear from the constitutional scheme and the interpretations, which Article 15 and 16 has received from various Constitution Benches of the Hon'ble Apex Court that Scheduled Caste/Scheduled Tribe is the distinct class from the Other Backward Classes and since they are two different classes, a class in themselves and, hence, while prescribing different criteria for them do not and cannot be termed as arbitrary.

SC/ST itself is a class which has a definite connotation in the Constitution and is distinct from the Other Backward Class (OBC) which has received recognition under the Constitution and by no stretch of imagination, can a person belonging to OBC category compare himself with a person from SC/ST category, as the two classes stand apart in the Constitution for the purposes of reservation.

The Civil Services Examination Rules, 2024 also continue with this distinction when it offer unlimited attempts for SC/ST candidate, whereas an OBC candidate is held entitled to 9 attempts. PwBD is a distinct class by itself though it may include candidates, belonging to General Category, SC/ST/OBC, but since the reservation of PwBD is a horizontal reservation, it will cut across the vertical reservation and therefore, in a PwBD category, if a candidate belong to SC/ST category he shall stand on a different footing than a candidate belonging to OBC category.

The contention of the petitioner that, the PwBD itself shall be treated as a class and therefore, irrespective of whether a candidate is SC/ST or OBC they must be held entitled for equal number of attempts cannot be accepted, since a candidate belonging to SC/ST category merely because he belongs to the said class is

conferred with unlimited attempts to appear for the examination, whereas as far as OBC category is concerned, the number of attempts are restricted to 9. Therefore, when a PwBD reservation is availed by a candidate, the number of attempts to be availed by him would depend upon whether he belongs to SC/ST category or OBC category and this is why Rule 3 of the Civil Services Examination Rules, 2024, according to us do not create any further classification in the PwBD class as PwBD is a horizontal reservation, whereas the reservation for SC/ST and OBC is a vertical reservation.

26. In *Union of India and ors vs. M. Selvakumar and ors* (2017) 3 SCC 504, this very issue had cropped up with relation to the Civil Services Examination in reference to a situation, when an attempts for Physically Handicapped candidates belonging to General Category where increased from 4 to 7, with effect from 2007 and as the same number of attempts were already available to Physically Handicapped OBC candidate and this was the subject matter of challenge before the Central Administrative Tribunal and subsequently before the Madras High Court.

What was in question was the notification dated 29/12/2007, governing the Civil Services Examination of 2008 and Rule 4 thereof read as below:-

“4. Every candidate appearing at the examination who is otherwise eligible, shall be permitted four attempts at the examination:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible.

Provided further that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be seven. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates.

Provided further that a physically handicapped will get as many attempts as are 'available to other non-physically handicapped candidates of his or her community, subject to the condition that a physically handicapped candidate belonging to the general category shall be eligible for seven attempts. The relaxation will be available to the physically handicapped candidates who are eligible to avail of reservation application to such candidates.'

27. The question that arose for consideration was whether actually there is any discrimination in number of attempts made available to physically handicapped candidates belonging to General category and those of OBC category, as it was recorded that all physically handicapped category candidates have been granted uniform relaxation of upper age by 10 years as per Rule 6. Taking note that Rule (4) indicated that the third proviso contain a theme of relaxation pertaining to physically handicapped candidates, who are eligible to avail reservation applicable to them, provided further that a physically handicapped will get as many attempts as are available to other non-physically handicapped candidates for his or her community. This stipulation was however subject to the condition that physically handicapped candidate belonging to General category shall be eligible to 7 attempts, and he was thus given equal chance as compared to a physically handicapped candidate.

In this background, the Apex Court recorded thus:-

“No discrimination can be read, when the number of attempts for both the above categories have been made equally i.e. 7. The number of attempts for SC/ST candidates is unlimited within their maximum age limit with regard to which there is no challenge.”

28. Reservation for physically handicapped is a kind of horizontal reservation. As accepted, physically handicapped persons belonging to any category i.e. General, OBC, SC/ST have to be given

opportunity to come up and compete in the main stream and enjoy all the benefits of development.

The Apex Court observed thus:-

“37. The present case is not a case of treating unequals as equal. It is a case of extending concessions and relaxations to the physically handicapped candidates belonging to general category as well as physically handicapped belonging to OBC category. Physically handicapped category is a category in itself, a person who is physically handicapped, be it physically handicapped of a general category or OBC category, suffering from similar disability has to be treated alike in extending the relaxation and concessions. Both being provided 7 attempts to appear in Civil Services Examination, no discrimination or arbitrariness can be found in the above scenario.”

29. While allowing the appeals by setting aside the judgment of the Madras High Court in *M. Selvakumar vs. Central Administrative Tribunal*, which had taken a view that since attempts permitted for physically handicapped candidates belonging to General Category and that of physically handicapped belonging to OBC category, have been made equal, it amounts to discrimination as physically handicapped candidates both of General Category and of OBC category are entitled to 7 chances as per the Civil Services Examination Rules, the Madras High Court though did not quash the Rules, but directed that physically handicapped candidates belonging to OBC should be given 3 additional attempts on erroneous ground and that number of attempts was a matter of policy decision. In 2000 examination the attempts for physically handicapped candidate belonging to General Category, were increased to 7 to bring it on par with physically handicapped category belonging to OBC category. Setting aside the same, the Special Leave Petition filed by the Union of India was allowed.

30. In the wake of the aforesaid authoritative pronouncement, we arrive at a conclusion that the challenge raised by the petition to Rule 3 of the Civil Services Examination Rules 2024, must fail as merely because the petitioner belong to OBC category in PwBD, he do not deserve the same number of attempts, which are available to an SC/ST candidate and who coincidentally happen to be a PwBD, as an SC/ST candidate stand on a different footing than an OBC candidate.

Finding no ground to stand, raising the challenge to the said condition, we must refuse the relief prayed in the petition.

As a result of the above discussion, the petition is dismissed. Easy on costs.

(ASHWIN D. BHOBE, J)

(BHARATI DANGRE, J)