IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 693 of 2023

Shyam Tiwari, aged about 26 years, Son of Madan Mohan Tiwari, Resident of Village-Barkagaon, P.O.-Rajwadih, P.S.-Daltonganj, District-Palamau, Jharkhand. **..... Petitioner**

V E R S U S

1. **State of Jharkhand** through the Chief Secretary, Government of Jharkhand, having office at Project Building, Dhurwa, P.O. – Dhurwa, P.S. – Jagarnathpur, District – Ranchi.
2. **Secretary,** Personnel, Administrative Reforms & Rajbhasha Department Government of Jharkhand, having office at Project Building, Dhurwa, P.O. – Dhurwa, P.S. – Jagarnathpur, District – Ranchi.
3. **Jharkhand Public Service Commission** through its Secretary, having office at Circular Road, P.O. & P.S. – Lalpur, District – Ranchi.
4. **Controller of Examination**, Jharkhand Public Service Commission, having office at Circular Road, P.O. & P.S. – Lalpur, District – Ranchi. **..... Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner(s) : Mr. Indrajit Sinha, Advocate
Mr. Amritansh Vats, Advocate
Mr. Kumar Abhishek, Advocate
Mr. Arpan Manjash Ekka, Advocate
Mr. Ashish Choudhary, Advocate
Mr. Rahul Ranjan, Advocate

For the Resp.-State : Mr. J.F.Toppo, G.A.-V
Mr. Neil Abhijeet Toppo, A.C. to G.A.-V

For the Resp.-JPSC : Mr. Sanjoy Piprawall, Advocate
Mr. Prince Kumar, Advocate
Mr. Jay Prakash, Advocate

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C.A.V. ON: 27/08/2026 **PRONOUNCED ON:02 /11/2026**

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for the following reliefs: -

(i) "To consider the case of the Petitioner for appointment to the post of Class-II officer under EWS category pursuant to Advertisement No.01/2021 (7th-10th Jharkhand

Combined Civil Services Examination-2021) (Annexure-2) published by Jharkhand Public Service Commission, since Petitioner has obtained marks much above than last selected candidates but his candidature has not been considered under EWS category, rather, he has been treated under UNR category even though, he has submitted the EWS certificate alongwith Income Certificate issued from Competent Authority at the time of document verification and he was allowed to sit in the interview process without any objection by the Jharkhand Public Service Commission;

3. The brief fact of the case is that an advertisement was published by the Jharkhand Public Service Commission hereinafter referred as 'JPSC', inviting eligible candidates for appointment on Class-II Posts (Civil Services), pursuant thereto, the petitioner has filled-up the examination form and appeared in the examination. He has been declared successful in preliminary test examination, thereafter, he has again asked to fill-up the application form for appearing in the mains examination, wherein, he has applied under EWS category. Thereafter, he was declared successful in the mains examination and was called for verification of his documents, which was scheduled on 14.05.2022 and subsequently, he was also called for interview, which was scheduled on 15.05.2022.

4. Just a day before interview i.e. on 14.05.2022, he has submitted all his documents including EWS certificate and educational certificates etc., before the officials of JPSC, which was duly accepted by the JPSC, therefore, he was allowed to sit in the interview on 15.05.2022.

5. On 31.05.2022, the result was published, wherein, his name was not found place, subsequently, when the marks statement and cut off marks category wise was published, the petitioner came to know that he had obtained total 627 marks; however, the cut off marks in EWS Category was 612 marks. In the remark column of the marks statement issue by the JPSC, the reason for non-consideration was mentioned as "*Candidate considered under UNR (Not Selected),* reason for non-selection was Rule – 26 of *Jharkhand Combined Civil Services Examination Rule, 2021*, and Clause – 22 of the Advertisement. Further, in the explanation column, it is mentioned that the candidate has uploaded the EWS certificate issued on 06.04.2021, which is after the closing date of the online application.

Submission on behalf of the petitioner: -

6. Learned Counsel of the petitioner contended that the petitioner even after obtaining higher marks than the last selected candidate in his category has not been selected; rather, the candidature of the petitioner was considered under UNR category on the ground that he has submitted the EWS certificate issued on 06.04.2021 which is after the closing date of online application form of Preliminary Test examination (PT).

7. It was further contended that a candidate has to upload their EWS certificates before the closing date of application form for the Mains Examination, which was 25.02.2022 as such he

has rightly uploaded the EWS certificate before the cutoff date prescribed in terms of the *Jharkhand Combined Civil Services Examination Rule, 2021*.

8. Learned Counsel of the petitioner further contended that as per the Proviso of Rule -26 of *Jharkhand Combined Civil Services Examination Rule, 2021*, it is specifically mentioned that Economically Weaker Section (EWS) candidates shall submit their Income and Assets certificate (Certificate of Eligibility) at the time of submission of detailed application form of the Mains (Written Examination).

9. It has been further contended that there is no allegation by the JPSC that the petitioner has not submitted his EWS certificate in proper format as per the circulars issued by the State Government as well as terms of the Advertisement.

10. It was also contended that the Respondent-JPSC is considering the cut-off date as last date of filling-up the application form for the PT Examination, which was 21.03.2021 and has not considered the proviso of *Rule – 26 of Jharkhand Combined Civil Services Examination Rule, 2021*, which has specifically dealt with the EWS candidates and last date of submission of EWS Certificate.

Further, it was contended that in clause – 7 (c)(ix) of the Advertisement, it is specifically mentioned that the caste certificate/ EWS certificate has to be produced at the time of

document verification, which was duly complied by the petitioner and the same was accepted by the JPSC, therefore, he was allowed to appear in the interview, which was scheduled on next date of document verification.

11. Further, it was contended that the JPSC has wrongly interpreted clause – 22 of the Advertisement, wherein, the only condition mentioned was that a candidate must be having all desired certificates before the last date of filling-up of the application form mentioned in the Advertisement, which the petitioner is having.

Further, it was contended that in the said clause – 22 of the Advertisement, no consequences have been mentioned for not having desired certificates on the last date of filling-up the application form.

12. It was further contended that from the bare perusal of Rule – 26 including its Proviso of *Jharkhand Combined Civil Services Examination Rule, 2021* read with *clause – 22* of the Advertisement, it can be very much interpreted that so far as EWS candidate is concerned; the Income and Assets certificate is required to be submitted at the time of submission of detailed application form of Mains (written) examination, which has been done by the petitioner and he had the certificate prior to the last date of filling-up the application form for the mains examination; as such, his candidature should have been considered under

EWS Category and should have been recommended for appointment as he has obtained higher marks than the last selected candidate in his category.

13. It was also contended on behalf of the learned counsel of the petitioner that the Recruitment Rules always prevail over the Advertisement and in the present case, the Recruitment Rules is very clear that the cut-off date for submission of the EWS Certificate was last date of filing-up the detailed application form for Mains (written) Examination.

14. Ld. Counsel of the petitioner has relied upon the Judgement passed by the Hon'ble Supreme Court in the case of *Ashish Kumar v. State of Uttar Pradesh & Ors.* reported in *(2018) 3 SCC 55, Malik Mazhar Sultan & Anr. V. UP Public Service Commission & Ors.* reported in *(2006) 9 SCC 507, ESI Corporation V. Union of India & ors.* reported in *(2022) 11 SCC 392.*

In all these aforesaid judgements, it has been held that it is a settled principle of service jurisprudence that in the event of conflict between a statement in an advertisement and service regulations, the latter shall prevail.

Submission on behalf of the Respondents: -

15. The Respondent-JPSC has filed its counter affidavit by taking the stand that on the date of verification of documents, the petitioner in support of his claim for extending the benefit of reservation under EWS category has submitted the EWS

certificate dated 06.04.2021 issued by the Circle Officer, Sadar Medininagar, Palamau. Further, the stand was taken that the same certificate was uploaded by the petitioner in the online application form.

16. Further it was contended on behalf of the Respondent-JPSC that from the perusal of the Advertisement for extending the benefit of reservation to EWS category candidates, the requirement was to produce the EWS certificate in proforma as mentioned in Clause – 7 (iii) of the Advertisement and the same EWS Certificate must be issued up to the last date of submission of online application form i.e. 21.03.2021.

17. It was also contended on behalf of the Respondent-JPSC that the EWS certificate produced by the petitioner has been issued on 06.04.2021 i.e. after the last date of submission of the application form; as such, the same is not valid for extending the benefit of reservation to the petitioner in terms of the advertisement as well as Examination Rules, 2021.

18. Accordingly, the candidature of the petitioner has been considered under unreserved category; rather than EWS category and could not be declared successful for appointment as he obtained lesser marks than the last selected candidate of unreserved category.

19. Lastly, the reasons have been disclosed to the petitioner in the marksheet uploaded in the website of JPSC with the

remark that *"candidate has uploaded EWS certificate issued on 06.04.2021, which is after the closing date of online application"*.

20. It was further contended that since the petitioner has failed to upload the valid EWS certificate in terms of the advertisement and Examination Rules, 2021 before the last date of submission of online application form of the preliminary test examination, hence, the benefit of reservation could not be extended to the petitioner.

21. Learned Counsel of the Respondent-JPSC has relied upon the Judgements of the Hon'ble Supreme Court in the case of ***Divya V. Union of India & Ors.*** reported in ***(2024) 1 SCC 448.***

ANALYSIS

22. Learned Counsels of the parties have heavily relied upon the Examinations Rules, 2021 as well as the clauses of the Advertisement; the same are being discussed hereinbelow.

23. The Clause – 26 of Examination Rule, 2021 is quoted hereinbelow: -

> ***"26.*** *Candidates seeking reservation/relaxation benefits available for Scheduled Castes/Scheduled Tribes/Extremely Backward Classes (Annexure-I)/Backward Classes (Annexure-II)/ Economically Weaker Section(EWS) /PwBD/Ex-servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the rules. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the rules for such benefits, and these certificates should be dated not later than the closing date of the application of the examination.*
>
> *Provided further that* ***Economically Weaker Section (EWS) candidates shall submit their 'Income and Asset Certificate (certificate of eligibility) at the time of submission***

of Detailed Application Form of the Main (written) Examination. *"The Income and Asset Certificate of the applicant will be applicable as per the Circular issued by the Department of Personnel, Administrative Reforms and Rajbhasha."*

Emphasis Supplied

24. The relevant clauses of the Advertisement are quoted hereinbelow: -

Clause 7. आरक्षण का लाभ-

a) *आरक्षण का लाभ केवल झारखण्ड राज्य के स्थायी निवासी को (राज्य सरकार के पत्रांक-1754 दिनांक-25.02.2019 के अनुसार) झारखण्ड राज्य के सक्षमप्राधिकार यथा जिलादंडाधिकारी / अपर दंडाधिकारी / उपायुक्त/ अपर उपायुक्त/ अपर समाहर्त्ता / प्रथम श्रेणी दंडाधिकारी / अनुमंडल दंडाधिकारी / कार्यपालक दंडाधिकारी / सहायकसमाहर्त्ता एवं सहायक दंडाधिकारी / अंचल अधिकारी में से किसी एक पदाधिकारी द्वारा निर्गत जाति प्रमाणपत्र के आधार पर ही देय होगा।*

b) *जातिप्रमाणपत्र की मूलप्रति अन्तर्वीक्षा के समय सत्यापन प्रकिया के दौरान प्रस्तुत करना अनिवार्य होगा अन्यथा आरक्षण का लाभ देय नही होगा।*

c) *जातिप्रमाणपत्र हेतु विस्तृत निदेश निम्नवत् है*

(i) *अनुसूचितजनजाति / अनुसूचितजाति :-*
*झारखण्डराज्य के अनुसूचित जनजाति एवं अनुसूचितजाति के उम्मीदवारों को आरक्षण का लाभ कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड के परिपत्र संख्या 1754 दिनांक-25.02.2019 द्वारा निर्धारित विहित प्रपत्र-IV मेंझारखण्डराज्य के सक्षम प्राधिकार द्वारा निर्गत जाति प्रमाणपत्र के आधार पर ही देय होगा। संबंधित परिपत्र एवं विहित प्रपत्र आयोग के वेबसाईट **www.jpsc.gov.in** परउपलब्ध है।*

(ii) *अत्यंत पिछड़ा वर्ग-1एवं पिछड़ा वर्ग-II :-*
झारखण्ड राज्य के अत्यंत पिछड़ा वर्ग-1 एव पिछड़ा वर्ग-II कोटि के उम्मीदवारों को आरक्षण का लाभ कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड के परिपत्र संख्या-1754 दिनांक-25.02.2019 द्वारा निर्धारित विहित प्रपत्र-VI के साथ प्रपत्र- XI (कीमीलेयर रहित) में झारखण्ड राज्य के सक्षम प्राधिकार द्वारा निर्गत जाति प्रमाणपत्र के आधार पर ही देय होगा। संबंधित परिपत्र एव 'विहित प्रपत्र आयोग के वेबसाईट www.jpsc.gov.in परउपलब्ध है।

(iii) *आर्थिक रूप से कमजोरवर्ग के लिए*
कार्मिक, प्रशासनिक सुधार तथा राजभाषाविभाग द्वारा झारखण्ड सरकार की सिविल सेवाओं एवं पदों पर सीधी नियुक्तियों में आर्थिक रूप से कमजोर वर्ग के लिए देय आरक्षण हेतु निर्गत संकल्प संख्या-1433 दिनां क-15.02.2019 के आलोक में विहित प्रपत्र (परिशिष्ट-1) में झारखण्ड राज्य के सक्षम प्राधिकार द्वारा निर्गत प्रमाणपत्र के आधार पर ही देय होगा। संबंधित संकल्प एवं विहितप्रपत्र आयोग के वेबसाईट www.jpsc.gov.in. पर उपलब्ध है।

Clause 22.(ग). *आवेदक यह सुनिश्चित करेंगे की सभी वांछित प्रमाण पत्र उनके पास आवेदन भरने हेतु विज्ञापन में निर्धारित अंतिम तिथि के बाद का नहीं होना चाहिए।*

Clause22.(ञ). *Online Applicationमें अभ्यर्थी द्वारा दी गई सूचना के आधार पर उनकी अभ्यर्थिता सुनिश्चित की जाएगी। अभ्यर्थी Online Applicationभली-भाँति विज्ञापन में निहित प्रावधान एवं निर्देश के अनुसार ही भरे। एक बार Online Application में की गई*

प्रविष्टि (Entry) के उपरान्त उसे अंतिम रूप से Submitकरने के पश्चात् किसी भी तरह के परिवर्तन का अनुरोध स्वीकार्य नहीं होगा।

Clause 22. (द) *आवेदन भरते समय आवेदक शैक्षणिक योग्यता से संबंधित विवरण उम संबंधीप्रवेशिका (मैट्रिक) प्रमाण पत्र, मेडिकल बोर्ड द्वारा निर्गतदिव्यांगता प्रमाण पत्र, जाति प्रमाण पत्र, भूतपूर्व सैनिक प्रमाण पत्र, खेल्कुद संबंधी प्रमाण पत्र ऑनलाइन (online) आवेदन पत्र में निर्धारित कंडिकाओंमें अवश्यप्रविष्टि करेंगे। अंतवींीक्षा के समय जांच के कम में उपरोक्त संबंधित प्रमाण पत्र की मूल प्रति प्रस्तुत करना अनिवार्य होगा अन्यथा अभ्यर्थिता रद्द कर दी जाएगी तथा इसके लिए आवेदक स्वयं जिम्मेदार होंगे।"*

25. The *proviso* of Clause – 26 of Examination Rule, 2021 is very much clear that the candidates claiming the reservation under EWS category shall submit their Income and Assets certificate (Certificate of Eligibility) at the time of submission of detailed application form of the mains (written examination).

26. It is an admitted case of the petitioner that he had submitted his Income and Assets certificate issued on 22.03.2021 at the time of filling-up the form of Mains Examination.

27. The last date of filling-up the application form for the Mains Examination was 25.02.2022; as such, at the time of filling-up the application form for Mains Examination; admittedly, the petitioner is having the eligibility certificate for claiming the benefit of reservation under EWS Category.

28. Further, the clause-7 of the Advertisement provides that the candidates must submit their certificates at the time of interview and document verification as per the claim mention in the online application form, further the said clause provides that the candidate are required to submit the EWS certificate in

prescribed proforma issued by the office of Deputy Commissioner/ Sub Divisional Officer/ Circle Officer.

29. Clause – 22 (*ग*) of the Advertisement provides that a candidate must be having all desirable certificates at the last date of filling-up of application form.

30. There is no dispute that the EWS certificate was issued in prescribed proforma from the competent authority in terms of the advertisement and the only objections/reasons for rejection mentioned by the JPSC is that the petitioner has uploaded the EWS certificate dated 06.04.2021 which is after the closing date of online application form.

31. However, the stand of the JPSC that the cut -off date for having the EWS certificate is the last date of filling-up the online application form at the time of PT Examination, is not at all tenable with respect to the petitioner, who has applied under EWS category, since as per the proviso of *Clause – 26 of Examination Rule, 2021* the candidates claiming for EWS reservation has to submit their Income and Assets Certificate at the time of submission of detailed application form for the mains examination, which has admittedly been complied by the petitioner.

32. The Law is well settled that a *proviso* is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the

enacting clause. Sometimes a *proviso* may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself. Therefore, a proviso cannot always be subordinate to the main section and in cases like the present it can represent different intention of the draftsman The Hon'ble Apex Court in the case of ***S. Sundaram Pillai v. V.R. Pattabiraman***, reported in ***(1985) 1 SCC 59***, has discussed in length the purpose of a proviso. The relevant observations of the Hon'ble Supreme Court contained in Paras 30, 35, 36, 37 and 43 are reproduced hereinbelow: -

> ***"30.*** *Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:*
> *(a)When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.*
> *(b)A proviso must be construed with reference to the preceding parts of the clause to which it is appended.*
> *(c)Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.*
> *(d)Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.*
> *(e)The proviso is subordinate to the main section.*
> *(f)A proviso does not enlarge an enactment except for compelling reasons.*
> *(g)Sometimes an unnecessary proviso is inserted by way of abundant caution.*
> *(h)A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.*
> *(i)When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.*
> *(j)A proviso may sometimes contain a substantive provision.*
> ***35.*** *A very apt description and extent of a proviso was given by Lord Oreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [1909 AC 253 : 100 LT 713 (HL)] where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [1940 AC 206 : (1939) 4 All ER 464 : 162 LT 1 (HL)] where it was observed thus:*
> *"We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a*

> *consistent meaning, if possible, given to every part of it. The words are:... 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place...' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25 per cent of the population mentioned in the opening words of the section."*
> ***36.*** *While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.*
> ***37.*** *In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.*
> ***43.*** *We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:*
> *(1) qualifying or excepting certain provisions from the main enactment:*
> *(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:*
> *(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
> *(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision****."***

33. Thus, from bare perusal of *proviso* of Clause – 26 of the Examination Rules, 2021, it is clear that there is no requirement of EWS certificate to be produced prior to the last date of submission of application form for PT Examination; rather in the *proviso,* it is clearly mentioned that the candidate claiming the EWS reservation has to submit their certificate prior to the last date of filling-up the detailed application form of the mains (Written Examination), which has admittedly been complied by the petitioner.

34. So far as the Judgement of Hon'ble Supreme Court in the case of ***Divya (Supra)*** is distinguishable on facts. In the said case, the requirement to possess the Income and Assets

certificate as on the closing date of the application form was expressly prescribed by the *Civil Services Examination Rules, 2022*; however in the present case, the *Proviso* of *Clause – 26 of Examination Rules, 2021* expressly provides that the candidate claiming the reservation of EWS shall have to submit his Income and Assets certificate at the time of submission of detailed application form of Mains Examination.

35. The Hon'ble Supreme Court in the case of ***Malik Mazhar Sultan v. U.P. Public Service Commission***, reported in ***(2006) 9 SCC 507,*** has categorically held that recruitments to service has to be made strictly in accordance with the rules and advertisement cannot override the rules to create any right in the favour of a candidate. Therefore, if there is any error in the advertisement which makes it inconsistent with the rules, the recruitment rules shall prevail.

The relevant observations of the court in para 21 is reproduced hereinbelow:-

> ***21.*** *The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules****."*

36. The Hon'ble Supreme Court in the case of ***Ashish Kumar v. State of U.P***., reported in ***(2018) 3 SCC 55*** following its earlier decision in the case of *Malik Mazhar (supra)*, has again held that for a candidate to secure an appointment, he has to be eligible as per the rules and therefore, if the advertisement is contrary to the rules, the rules shall prevail. The relevant observations of the Hon'ble Court in para 27 is reproduced hereinbelow: -

> ***"27.*** *Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence. In this context, reference is made in the judgment of this Court in Malik Mazhar Sultan v. U.P. Public Service Commission [Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507 : 2006 SCC (L&S) 1870] . Para 21 of the judgment lays down the above proposition which is to the following effect: (SCC p. 512)*
> *"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules****."***

37. That the Hon'ble Apex Court in the case of ***ESI Corpn. v. Union of India,*** reported in ***(2022) 11 SCC 392*** taking into consideration its earlier decisions in the case of ***Malik Mazhar***

(supra) and ***Ashish Kumar (supra***) have reiterated that it is now a settled principle that when there is a conflict between advertisement and the rules, the rules shall take precedence. The relevant observations of the Hon'ble Court is reproduced hereinbelow:-

> ***"20.*** *The advertisements issued by the appellant mentioned that the DACP scheme would be applicable for its recruits. However, it is a settled principle of service jurisprudence that in the event of a conflict between a statement in an advertisement and service regulations, the latter shall prevail. In Malik Mazhar Sultan v. U.P. Public Service Commission [Malik Mazhar Sultan v. U.P. Public Service Commission, (2006) 9 SCC 507 : 2006 SCC (L&S) 1870] ("Malik Mazhar Sultan") a two-Judge Bench of this Court clarified that an erroneous advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held : (SCC p. 512, para 21)*
>
> *"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."*
>
> ***21.*** *In Ashish Kumar v. State of U.P. [Ashish Kumar v. State of U.P., (2018) 3 SCC 55 : (2018) 1 SCC (L&S) 464] a two-Judge Bench of this Court followed the decision in Malik Mazhar Sultan [Malik Mazhar Sultanv. U.P. Public Service Commission, (2006) 9 SCC 507 : 2006 SCC (L&S) 1870] in interpreting an advertisement issued by the Director, Social Welfare Department, Uttar Pradesh for the position of a psychologist. This Court declined to give precedence to*

> *the erroneous qualifications prescribed in the advertisement against the relevant recruitment rules and held : (Ashish Kumar case [Ashish Kumar v. State of U.P., (2018) 3 SCC 55, para 27 : (2018) 1 SCC (L&S) 464] , SCC p. 64, para 27)*
> *"27. Any part of the advertisement which is contrary to the statutory rules has to give way to the statutory prescription. Thus, looking to the qualification prescribed in the statutory rules, the appellant fulfils the qualification and after being selected for the post denying appointment to him is arbitrary and illegal. It is well settled that when there is variance in the advertisement and in the statutory rules, it is the statutory rules which take precedence***."**

38. It is a settled principle of law, as enunciated by the Hon'ble Supreme Court in the decisions referred to hereinabove, that where there exists any inconsistency or contradiction between the terms of an Advertisement and the statutory Rules governing the recruitment; the Rules shall prevail and take precedence over the Advertisement.

39. In the present case, however, this Court finds no real conflict or contradiction between the Examination Rules, 2021 and the Advertisement. The *proviso* of Clause 26 of the Examination Rules, 2021 is clear and unambiguous in prescribing the last date for submission of the EWS Certificate. Thus, where the Rules specifically prescribe a condition of eligibility, such prescription reflects the intent of the rule-making authority and the object sought to be achieved thereby.

40. This Court is, therefore, of the considered view that the condition so prescribed under *proviso* of Clause 26 of the Examination Rule, 2021 must be given full effect and shall prevail over any other term or condition.

41. Even otherwise, assuming any divergence were to exist, the Examination Rules, 2021 would take precedence over the Advertisement in view of the settled principle noted above.

42. Having regards to the aforesaid discussion, this Court holds that the action of JPSC by not recommending the candidature of petitioner for appointment is arbitrary, and accordingly, the respondent-JPSC is directed to treat the candidature of petitioner under EWS category and recommend him for appointment to State Government within a period of 6 weeks and upon the receipt of such recommendation made by JPSC as directed above, the respondent-State is directed to issue appointment letter to the petitioner within a further period of 2 weeks.

43. Accordingly, the instant writ application stands allowed. Pending I.As, if any, also stands disposed of.

(Deepak Roshan, J.)

Dated: 02 / 11/2026
Amardeep/
A.F.R
Uploaded on
3.11.2026