

(2011) 05 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2183 of 2011 and 2541 of 2011

Narpat Dan

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another

 Narendra Choudhary and Others Vs State of Rajasthan
and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16, 16(3), 16(4)

Citation : (2011) 3 RLW 2487

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In all the above writ petitions, common grievance and question of law is involved, therefore, all these writ petitions are decided by this common judgment/order.

2. In all these writ petitions, common facts are that an advertisement was issued by the Rajasthan State Road Transport Corporation, Jaipur on 5th March, 2010, whereby posts of Driver/Conductor/Artisan Grade-II/Artisan Grade-III in different disciplines were advertised. The Petitioners in the above writ petitions applied under the reserved category of Other Backward Classes (OBC) and other reserved categories for respective post of Driver/Conductor/Artisan Grade-II/Artisan Grade-I. Being eligible and qualified for their respective posts, the Petitioners were allowed to appear in the written examination conducted by the Respondent Corporation. Thereafter, result of the examination was declared in which all these Petitioners were declared unsuccessful under the category of OBC etc. because they did not obtain cut-off marks prescribed for the OBC and other reserved category candidates for the posts of Driver/Conductor/Artisan Grade II/Artisan Grade-III.

3. After declaration of the results when cut-off marks were published by the

Respondents on the website it came to the knowledge of all the candidates belonging to the OBC and other reserved categories that cut-off marks for the General category for the posts of Driver/Conductor/Artisan Grade-II/Artisan Grade-III are less than the cut-off marks prescribed for the OBC category. Further, in some of the categories like Scheduled Caste, Scheduled Tribe and SBC, the cut-off marks are higher than the cut-off marks for the General category. Therefore, raising a legal ground before this Court, all these writ petitions have been filed by the Petitioners and their main contention is that after judgment of Hon''ble Supreme Court in the cases (1) Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., (2) R.K. Sabharwal and others Vs. State of Punjab and others, and (3) Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, at the time of preparing merit for appointment, the State Government is required to first consider the candidature of all the candidates including General and reserved categories against the posts of General category; and, after preparing merit list for the posts of the General category, while considering all the candidates including reserved category candidates, reservation is required to be given as per law in respect of the remaining seats; meaning thereby, main contention of the Petitioners is that after the above referred judgments, no General category candidate can be appointed having less percentage of marks than the candidates of reserved categories and candidates of reserved categories are required to be considered as per their merit against the posts of General category. Therefore, while inviting attention towards the cut-off marks published by the Respondent Corporation, it is submitted by all the learned Counsel appearing on behalf of the Petitioners in these writ petitions that the cut-off marks of the General category is less than cut-off marks of OBC and other reserved categories which is evident from Annex.-7 to the writ petition in S.B. Civil Writ Petition No. 2183/2011, therefore, it is obvious from Annex.-7 that cut-off marks prescribed for General category is less than the cut-off marks for the reserved categories for all the posts; meaning thereby, as per learned Counsel for the Petitioners, the Respondent Corporation has completely bid good-bye to the aforesaid judgments of Hon''ble Supreme Court rendered in Indra Sawhney's, R.K. Sabharwal's and Ritesh R. Sah's cases (supra), therefore, the merit list which is prepared while applying totally illegal method of reservation in contravention of the adjudication made by the Supreme Court deserves to be quashed and directions are required to be given to the Respondent Corporation to prepare fresh merit list for the posts of Driver/Conductor/Artisan Grade-II/Artisan Grade-III while following the adjudication made by the Hon''ble apex Court in the aforesaid judgments.

4. Main contention of all the Petitioners in these writ petitions is that the process of preparing merit and declaring results and prescribing the cut-off marks for General category less than reserved categories is in contravention of the adjudication made by the Hon''ble apex Court and followed by the co-ordinate Bench of this Court in the case of Jitendra Singh Rawat v. State of Rajasthan and Ors. reported in 2007 (1) WLC 129 and another judgment of the co-ordinate

Bench at Jaipur Bench, Jaipur in Sher Singh Yadav's case.

5. While inviting attention of the Court towards above facts and adjudication made by the Hon'ble Supreme Court as well as this Court, it is vehemently argued by all the counsel appearing on behalf of the Petitioners that in this case gross illegality has been committed by the Respondent Corporation while declaring the cut-off marks for the purpose of providing appointment to the candidates falling under different categories. Therefore, the cut-off marks prescribed by the Respondent Corporation for various posts vide Annex.-7 may be quashed and Respondents be directed to prepare fresh merit list and issue proper cut-off marks while taking into consideration the judgments of the Hon'ble Supreme Court in (1) Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., (2) R.K. Sabharwal and others Vs. State of Punjab and others, and (3) Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, .

6. The Respondent Corporation has filed reply in S.B. Civil Writ Petition No. 2183/2011, Narpat Dan v. R.S.R.T.C. and Anr., in which, Petitioner Narpat Dan had applied for the post of Artisan Grade-III. In the reply, it is submitted that concept of reservation in public employment is clearly envisaged under Article 16(3) and 16(4) of the Constitution of India with the solemn object to water down the social inequalities amongst socially, economically backward classes and to bring them in main stream at par with the other citizens. While accepting all the above facts narrated by the writ Petitioners in these cases, in the reply, it is specifically pleaded in para 12 that in adherence to the policy of reservation in vogue with the Corporation and as per rules the cut-off marks were determined category-wise and on that basis the candidates who were adjudged successful in the written examination were permitted to take up the Trade test.

7. It is further pleaded in the reply by the Respondent Corporation that cut-off marks for each category were determined in strict adherence to the rules and regulations and reservation policy in vogue in the Corporation, therefore, there is no question of violation of Article 14 of the Constitution of India.

8. Learned Senior Advocate Shri P.K. Lohra submits on behalf of the Respondent Corporation that answering Respondent has not infringed any fundamental right of the Petitioners as envisaged under Article 16 of the Constitution of India. In respect of the selection process, it is submitted that selection process was completed as per the programmed notified in the advertisement and incumbents who have secured more marks cumulatively in written examination and Trade test were declared successful and were selected. Therefore, the grounds taken in the writ petitions are absolutely vague and cryptic and Petitioners have unnecessarily taken shelter of law. As per learned Counsel for the Respondent Corporation, the grounds taken in the writ petitions are wholly misconceived, preposterous and untenable because the cut-off marks for each category were determined in strict adherence to the rules and regulations and the reservation policy in vogue with the Corporation and candidature of the candidates in these cases has rightly not been considered as they were having less marks than the

cut-off marks prescribed in their respective category with reference to post applied for. Therefore, all these writ petitions deserve to be dismissed.

9. After hearing both the parties, first of all, I have perused the cut-off marks for all the posts in different categories which is enumerated as under:

RAJASTHAN STATE ROAD TRANSPORT CORPORATION

PARIVAHAN MARG JAIPUR

S.NO

POST

CATEGORY

CUTOFF MARKS

1

DRIVER

GENERAL

50

SC

47

ST

55

OBC

64

SBC

56

2

CONDUCTOR

GENERAL

65

SC

59

ST

69

OBC

77

SBC

73

3

ART.2-MOT./DIESEL MECH.

GENERAL

60

SC

65

ST

67

OBC

69

SBC

NO VACANCY

4

ART.2-BODY BUILDER

GENERAL

51

SC

56

ST

NO VACANCY

OBC

55

SBC

NO VACANCY

5

ART.-2 ELECTRICIAN

GENERAL

61

SC

NO VACANCY

ST

NO VACANCY

OBC

NO VACANCY

SBC

NO VACANCY

6

ART.3-MOT./DIESEL MECH.

GENERAL

68

SC

71

ST

74

OBC

76

SC

55

SBC

78

7

ART.3-BODY BUILDER

GENERAL

51

SC

55

ST

54

OBC

51

SBC

NO VACANCY

10. Upon perusal of the above cut-off marks prescribed by the Respondent Corporation, it is abundantly clear that contention of the Petitioner that the cut-off marks of General category is less than the cut-off marks prescribed for the post in reserved categories is found to be correct. Now, the question arises whether the above cut-off marks on the basis of which the Respondents have undertaken the process of selection is within the parameters of law laid down by the apex Court. It is obvious that the concept of reservation in public employment is clearly envisaged under Article 16(3) and 16(4) with the solemn object to water down the social inequalities amongst socially, economically backward classes and to bring them in main stream at par with the other citizens. The menace of unsociability which was prevalent in our country since time immemorial has created an atmosphere has created fear among them in advancement of their social and educational status resulting in their alienation from public employment, the founding fathers of our Constitution with a view to bringing them at par with other citizens envisaged concept of reservation conceiving egalitarian society. In the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., the Constitution Bench of the Supreme Court upheld the reservation in favour of other backward classes by virtue of Article 16(4) by a majority judgment and following adjudication was made:

In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes, get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

11. Further, in the case of R.K. Sabharwal (supra), Hon''ble Supreme Court reiterated the adjudication made in Indra Sawhney's case. Para 4 of the said judgment runs as under:

When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their

appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make 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. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise make the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.

12. In the case of Ritesh R. Sah (supra), in para 17 of the judgment, following adjudication is made by the Hon''ble apex Court:

In view of the legal position enunciated by the Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been

kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

13. In one other case, reported in (2005) 12 SCC 311, Yoganand Vishwarao Patil v. State of Maharashtra and Ors., in para 8, Hon"ble Supreme Court again reiterated the very same proposition of law:

8. The legal position has been clarified in Ritesh R. Sah that a student, who is entitled to be admitted on the basis of merit, though belonging to reserved category, cannot be considered to be admitted in seats reserved for reserved category but, at the same time, provision should be made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the less meritorious reserved category candidate. It was further held that while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation, he will be deemed to have been admitted as an open category candidate. In fairness to the Respondent State, it is not being contended before us that because the rule has not been framed, the State Government is not required to implement the judgment in Ritesh R. Sah in letter and spirit. In fact, in purported implementation of the decision of this Court, the Director of Medical Education and Research, Mumbai, by communication dated 31.3.2005 sent to its learned advocate, i.e., Standing Counsel, has stated that the directions of this Court are being complied with in letter and spirit by the competent authority while making admission to the postgraduate courses.

14. The co-ordinate Bench of this Court, at Jaipur Bench, in the case of Jitendra Singh Rawat v. State of Rajasthan and Ors. reported in 2007 (1) WLC 129, after considering all the above judgments of Hon"ble Supreme Court, in para 11 and 13 of the judgment it is observed as follows:

11. The Respondents were required to appoint the Petitioner against the post meant for unreserved category on the basis of his own merit by applying the above principles of law. As held by their Lordships of the Hon"ble Supreme Court in Indra Sawhney (supra) "reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Schedule Castes; they will be treated as open competition candidates." The Hon"ble Supreme Court in the case of R.K. Sabharwal (supra) reiterated the same proposition of law when their Lordships held that "the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation.

13. An analysis of the law referred to above would show the underlying philosophy of reservation made in favour of SC and ST with reference to Article 15(4) and 16(4) of the Constitution of India. These provisions confer certain benefits on the persons belonging to these categories which are not in substitution of any other right, which may be otherwise available to them as citizens of country. Benefit of reservation does not substitute or supplant any other right of a person belonging to SC or ST. Such benefit would be in addition to an already existing right including the fundamental right of equality. If any scheme of reservation or the procedure evolved with a view to giving effect to such scheme, is made to depend upon the condition of truncating the fundamental or any other right of an individual, such scheme of reservation would be contrary to the constitutional provisions and the law to the extent it curtails fundamental right or any other right of a person belonging to such category. Reserving certain posts or seats for different groups of the community in the first instance means that these posts and/or seats are meant for members belonging to such specified group. This is an additional benefit conferred on them. On account of such additional benefit however they are not precluded from claiming ordinary benefits otherwise available to them. Members belonging to SC and ST for whom reservation of posts is made are not reserved for these posts although its converse is true. They cannot be asked to occupy only reserved posts. They would be free to occupy any posts including unreserved posts. However, the requirement of law is that while claiming appointment against unreserved posts/seats, they should prove their merit like any other citizen, who is not entitled to the benefit of reservation. No provision of law whether substantive or procedural, can be interpreted so as to run contrary to this basic tenet of the Constitution of India.

15. After considering the facts and law laid down by the apex Court in all the above judgments, the essence of the adjudication of Hon"ble Supreme Court is that first of all, all the candidates appearing for appointment on the posts are required to be considered according to their merit irrespective of the fact that they belong to any reserved category. The merit list of General category candidates is required to be prepared while considering the candidature of all the candidates including reserved categories; and, after preparing merit for unreserved posts, benefit of reservation which is in addition to the already existing right including right of equality is required to be given to the reserved category candidates. The right of considering the candidature of reserved category in General category does not curtail any other fundamental right granted by the Constitution. Therefore, while following the adjudication made by Hon"ble Supreme Court, I am of the opinion that the action of the Respondent Corporation prescribing less cut-off marks for the General category candidates and higher cut-off marks for the reserved category candidates is in flagrant violation of the adjudication made and law laid down by Hon"ble Supreme Court in (1) Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., (2) R.K. Sabharwal and others Vs. State of Punjab and others, and (3) Ritesh R. Sah Vs.

Dr. Y.L. Yamul and others,

16. In this view of the matter, all these writ petitions are allowed. The cut-off marks declared by the Respondent Corporation vide Annex.-7 (filed in S.B. Civil Writ Petition No. 2183/2011) for selection on the posts of Driver/Conductor/ Artisan Grade-II/Artisan Grade-III and further proceedings of selection made in pursuance thereof is hereby quashed. The Respondent Corporation is hereby directed to re-draw the merit while considering the candidates of reserved categories of SC/ST/OBC/SBC against unreserved posts as per their respective merit and, thereafter, remaining candidates of reserved categories of OBC and other reserved categories may be considered against the quota of reservation prescribed according to rules and, then, publish cut-off marks for reserved categories and General category strictly as per adjudication made by Hon''ble Supreme Court in the aforesaid cases. Thereafter, further process of selection may be proceeded with. Entire exercise shall be completed within a period of three months from the date of receipt of certified copy of this judgment/order.

17. There shall, however, be no order as to costs.