

BRIEF SYNOPSIS

The present special leave petition is being filed impugning the order and judgment dated 28.07.2021 passed by the Hon'ble High Court in PIL No. 1121 of 2021 where the Hon'ble High Court has erred in dismissing the case of the Petitioners on maintainability. The Hon'ble Court while doing so, erroneously treated the case of the Petitioners to be a service matter challenging the appointment of an officer, instead of a public interest litigation, whereas the Petitioners had challenged, *inter alia*, Rule 18 of the Uttar Pradesh Higher Judicial Service Rules, 1975 (hereinafter referred to as '1975 Rules') and the advertisement dated 18.01.2021 issued by Respondent no. 2 for Direct Recruitment to Uttar Pradesh Higher Judicial Service 2020. The Petitioners had challenged the said Rule 18 on the ground, *inter alia*, that the rule prescribes only one minimum qualification (45% aggregate) for all categories of candidates i.e. General, SC/ST etc. and hence defeats the entire purpose of reservation. This is evident from the fact that since 2012, from a total of 75 vacancies advertised for the category of scheduled castes for Higher Judicial Services, 73 are still vacant and are being carried forward.

The Hon'ble High Court, while passing the impugned order/judgment has erred in relying upon the judgments passed by this Hon'ble Court in *Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo & Ors. (2014) 1 SCC 161* and *Hari Bansh Lal vs. Sahodar Prasad Mahto & Ors. (2010) 9 SCC 655* and failed to consider that the above judgments are not applicable to the case of the Petitioners since in the above mentioned judgments, this Hon'ble Court was seized with writ petitions praying for a writ of quo warranto against a particular appointment and was not adjudicating the validity of recruitment rules of higher judicial services.

Whereas in the case of the Petitioners, the Petitioners have not challenged the appointment of any officer/official to any government post but have challenged Rule 18 of the 1975 Rules and the advertisement dated 18.01.2021 for Direct Recruitment to Uttar Pradesh Higher Judicial Service 2020. Also, the Petitioners had prayed for a writ of Mandamus to Respondent no. 2 to amend the Uttar Pradesh Higher Judicial Service Rules, 1975 in accordance with the recommendations of 'Justice Shetty Commission' on rules for recruitment to higher judicial services which was accepted by this Hon'ble Court, (subject to

modifications)in *All India Judges' Association &Ors. vs. Union of India &Ors. (2002) 4 SCC 247.*

It is pertinent to point out that between years 2012 to 2017,48 vacancies were advertised for the category of scheduled castes for Higher Judicial Services, however, none of the vacancies were filled up due to the stringent recruitment rules under the U.P. Higher Judicial Services, 1975. In 2018, out of 27 vacancies advertised for the category of scheduled castes for Higher Judicial Services, only 2 candidates from the scheduled caste category qualified for the Higher Judicial Services.

Rule 7 of the 1975 Rules provides for reservation of posts for Scheduled Castes etc. As per Rule 7, the reservation for the members of Scheduled Castes shall be in accordance with order of the Government as adopted by the High Court.

Rule 18 of the 1975 Rules provide for procedure of selection. As per Rule 18 of 1975 Rules read with Appendix G, in order to be eligible for the interview, a candidate has to secure minimum aggregate of 45 % marks in the written examination to be eligible for the next stage i.e. viva-voce and have to attain minimum 40 % marks in the interview to be eligible for the final select list. It is submitted that Rule 18 is against the

recommendation no. 10.97 of the Justice Shetty Commission and Rule 10 of the Model Rules framed by it (the Commission). Recommendation 10.97 of Justice Shetty Commission is as follows:-

"10.97 - The Commission has received innumerable complaints that the selection by only viva-voce has more often led to arbitrariness if not whimsical selection, unjust if not unreasonable. With respect to high court, we do not want to carry any such impression. But we do feel that there is less transparency and objectivity in the selection process. We would therefore like to recommend the following procedure to reduce the degrees of subjectivity and arbitrariness and to promote more fairness and objectivity:

- (i) There shall be written examination followed by viva voce.*
- (ii) Written examination must carry 200 marks on the subject/subjects prescribed by the High Court. The paper should be of a duration of minimum of two hours.*
- (iii) The cut off marks in the written examination should be 60% or corresponding grade for general candidates and 50 % or corresponding grade for SC/ST candidates. Those who have secured the marks above the cut off marks shall be called for viva voce test.*
- (iv) The viva-voce should be in a thorough and scientific manner and it should be taken anything between 25 and 30 minutes for each candidate. The viva voce shall carry 50 marks. There shall be no cut off in the viva voce test.*

(v) *The merit list will be prepared on the basis of marks/grades obtained both in the written examination and viva voce.*

Rule 10 of the Model Rules framed by the Justice Shetty Commission is as follows:-

10. *Eligibility of the candidates for the interview –*

(1) *For purpose of selection of candidates for interview, the appointing authority shall prepare a list of names of candidates on the basis of the percentage of total marks secured in the qualifying examination in the order of merit and if two or more candidates have secured equal percentage of total marks in the qualifying examination, the order of merit in respect of such candidates shall be fixed on the basis of their age, the person or persons older in age being placed higher in the order of merit. From among the candidates whose names are included in such list, as far as may be, such number of candidates as is equal to ten times the number of vacancies notified, selected in the order of merit, shall be eligible for interview:*

(2) *Where the posts are reserved for Scheduled Castes, Scheduled Tribes, other Backward Classes or others and required number of candidates in terms of sub-rule (1) belonging to such castes, tribes or other classes are not eligible for the interview, then, notwithstanding anything contained in sub-rule (1), such number of candidates as will make up the deficiency, belonging to such castes, tribes or classes selected in the order of merit from the list of names of candidates prepared under sub-rule (1) shall also be eligible for the interview.*

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- (3) For the purpose of this rule-
- (a) 'qualifying examination' means the examination or examinations prescribed as the minimum qualification required for appointment in the rules of recruitment to the cadre concerned;
- (b) Where the qualifying examination consists of more than one examination, the percentage of total marks secured in the qualifying examination shall be the average of the percentage of total marks secured in those examinations.

From a reading of the above rules in light of the recommendations of the Justice Shetty Commission (10.97) it is submitted that Rule 18 of the 1975 Rules is manifestly arbitrary and unreasonable being *ultra vires* of Articles, 14, 15, 16 and 335 of the Constitution because does not prescribe lower minimum qualification (than that for General Category) for Reserved category candidates. It is submitted that the reserved category candidates ought to be given relaxation and preference in the matters of recruitment and promotion since such candidates have been deprived of equal opportunities and belong to backward areas and communities which have faced socio-economic difficulties

The intent and purport of Model Rules of Recruitment recommended by the Justice Shetty Commission is to achieve the aim and object of equality enshrined under Articles 14, 15, 16 and 335 of the Constitution. However, due to the rigorous provisions of Rule 18 of the 1975 Rules read with Appendix G to the 1975 Rules pertaining to recruitment to Higher Judicial Services, the backward class of Scheduled Castes have been suffering since 2012 as despite being meritorious within their category, the candidates are not found eligible due to the blanket threshold set out in 1975 Rules.

Furthermore, it is submitted that in order to achieve the aim and intent of Articles 14, 15 and 16, Article 335 of the Constitution provides an impetus to the members of Scheduled Castes and Scheduled Tribes by allowing for relaxation in qualifying marks or lowering the standards of evaluation for the members of Scheduled Castes and Scheduled Tribes in matters of promotion. Article 335 of the Constitution is set out as follows:-

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the

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making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

It is pertinent to point out that Rule 10 of the Model Rules recommended by the Justice Shetty Commission make it abundantly clear that the minimum marks for qualification in the examinations as well as the interview were deliberately omitted by the Justice Shetty Commission. Furthermore, Rule 10 (2) also ensured the representation of the reserved classes viz. scheduled castes, scheduled tribes and other backward classes in the interview process even if the candidates belonging to reserved categories were found not eligible for the interview. The objective of Article 16 of the Constitution is sought to be achieved through Rule 10 (2) as the said provision of the Constitution aims to ensure equality in matters relating to employment and appointment. Rule 10 (2) thus ensures that there is adequate representation of the reserved category candidates in the higher judicial services of the state.

Therefore, in light of the above facts and circumstances, it is submitted that the Hon'ble High Court wrongly dismissed the case of the Petitioners, and that too on maintainability and hence warrants interference by this Hon'ble Court.

LIST OF DATES

1975 The Uttar Pradesh Higher Judicial Service Rules, 1975 (hereinafter referred to as '1975 Rules') were framed by the Governor of State of Uttar Pradesh under the proviso to Article 309 read with Article 233 of the Constitution. The 1975 Rules regulated the recruitment and appointment to the Uttar Pradesh Higher Judicial Service and conditions of service and of persons appointed thereto. True copy of Uttar Pradesh Higher Judicial Service Rules, 1975 is annexed herewith as ANNEXURE P-1. [PAGE NO. 19-35]

Part IV of the 1975 Rules deal with the procedure for direct recruitment. As per Rule 18 read with Appendix G, as amended from time to time, only those candidates who

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secure 45% marks in the preliminary examination would be eligible to appear in the main examination. Further, only those candidates shall be eligible for the interview process who secure minimum aggregate of 45% marks in the main examination. In addition to the above provisions, after clearing the preliminary and main examinations, only those candidates securing minimum 40 % marks in the interview shall be eligible to be included in the select list.

However, it is pertinent to mention that no relaxation has been granted under the 1975 Rules to the candidates belonging to the reserved categories, whereas the candidates belonging to the reserved categories have been granted benefits under the Haryana Superior Judicial Service Rules 2007, Delhi Higher Judicial Service Rules 1970, Uttarakhand Higher Judicial Services Rules 2004 either through relaxations in cut off

marks or without prescribing any cut off marks for the examinations.

21.03.1996

The Government of India constituted the National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty (hereinafter referred to as 'Justice Shetty Commission'). The Justice Shetty Commission submitted a final report in 1999 relating to, *inter alia*, the procedure for selection of district judges by direct recruitment to the Hon'ble Supreme Court in W.P. (C) No. 1022 of 1989 titled '*All India Judges' Association & Ors vs. Union of India & Ors.*'

21.03.2002

This Hon'ble Court, in *All India Judges' Association & Ors. vs. Union of India & Ors.* (2002) 4 SCC 247, accepted the recommendation as stated in the report of Justice Shetty Commission subject to certain modifications therein. The Hon'ble Supreme Court, in para 38 of its judgment, further

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directed that the statutory rules were required to be amended for effective implementation of the abovementioned judgment.

As per clause 10.97 of the recommendations governing the procedure for selection, it has been stated as under:-

10.97 - The Commission has received innumerable complaints that the selection by only viva-voce has more often led to arbitrariness if not whimsical selection, unjust if not unreasonable. With respect to high court, we do not want to carry any such impression. But we do feel that there is less transparency and objectivity in the selection process. We would therefore like to recommend the following procedure to reduce the degrees of subjectivity and arbitrariness and to promote more fairness and objectivity:

(i) There shall be written examination followed by viva voce.

(ii) Written examination must carry 200 marks on the subject/subjects prescribed by the High Court. The paper should be of a duration of minimum of two hours.

(iii) *The cut off marks in the written examination should be 60% or corresponding grade for general candidates and 50 % or corresponding grade for SC/ST candidates. Those who have secured the marks above the cut off marks shall be called for viva voce test.*

(iv) *The viva-voce should be in a thorough and scientific manner and it should be taken anything between 25 and 30 minutes for each candidate. The viva voce shall carry 50 marks. There shall be no cut off in the viva voce test.*

(v) *The merit list will be prepared on the basis of marks/grades obtained both in the written examination and viva voce.*

Rules 9, 10, 11 and 12 of the Model Rules for Recruitment to District Court Service recommended by Justice Shetty Commission governed the procedure for selection to higher judicial services by direct recruitment.

9. Direct Recruitment –

(1) *The appointing authority may intimate the Selecting Authority in the month of*

January every year the number of direct recruitment vacancies existing and likely to occur during the year in different category of posts (cadres). The Selecting Authority shall invite applications by giving adequate publicity indicating total number of vacancies reserved for different reserved categories.

(2) Subject to rules 10 to 13, direct recruitment shall be made, on the basis of the percentage of total marks secured in the qualifying examination as determined under Rule 10 and of the marks secured at the interview under Rule 11, by the Selecting Authority.

10. Eligibility of the candidates for the interview –

(1) For purpose of selection of candidates for interview, the appointing authority shall prepare a list of names of candidates on the basis of the percentage of total marks secured in the qualifying examination in the order of merit and if two or more candidates have secured equal percentage of total marks in the qualifying examination, the order of merit in respect of such candidates shall be fixed on the basis of their age, the person or persons older in age being placed higher in the order of merit. From among the candidates whose

names are included in such list, as far as may be, such number of candidates as is equal to ten times the number of vacancies notified, selected in the order of merit, shall be eligible for interview:

(2) Where the posts are reserved for Scheduled Castes, Scheduled Tribes, other Backward Classes or others and required number of candidates in terms of sub-rule (1) belonging to such castes, tribes or other classes are not eligible for the interview, then, notwithstanding anything contained in sub-rule (1), such number of candidates as will make up the deficiency, belonging to such castes, tribes or classes selected in the order of merit from the list of names of candidates prepared under sub-rule (1) shall also be eligible for the interview.

(3) For the purpose of this rule-

(a) 'qualifying examination' means the examination or examinations prescribed as the minimum qualification required for appointment in the rules of recruitment to the cadre concerned;

(b) Where the qualifying examination consists of more than one examination, the

percentage of total marks secured in the qualifying examination shall be the average of the percentage of total marks secured in those examinations.

11. **Interview –**

(1) Selecting Authority shall interview the eligible candidates selected under Rule 10 and award marks on the basis of their performance in the interview. The maximum marks for interview shall be twenty-five. The object of such interview is to assess the suitability of the candidates for appointment to the cadre or post applied for by them and their calibre including intellectual and social traits of the personality.

(2) The Selecting Authority shall publish on the notice board of its office on the day on which the interview is held or on the day following but before the commencement of the interview on that day, a list of marks obtained by each candidate in the said interview:

Provided that where the interview is held at any place other than the place of its office, the said list shall be published in such other place.

12. *List of selected candidates –*

(1) *The Selecting Authority shall on the basis of the aggregate of the percentage of the total marks secured in the qualifying examination as determined under rule 10 and of the marks secured at the interview under rule 11 and taking into consideration the orders in force relating to reservation of posts for Scheduled Castes, Scheduled Tribes, Other Backward Classes and others prepare in the order of merit a list of candidates eligible for appointment to the category of post and if the aggregate of the percentage of total marks secured in the qualifying examinations as determined under rule 10, and of the marks secured at the interview under rule 11, of two or more candidates is equal, the order of merit in respect of such candidates shall be fixed on the basis of their age, the person or persons older in age being placed higher in the order of merit. The number of names of candidates to be included in such list shall be equal to the number of vacancies notified for recruitment.*

(2) *The Selecting Authority shall in accordance with the provisions of sub-rule (1) also prepare an additional list of names of candidates not included in the list prepared*

under sub-rule (1) in which the number of candidates to be included shall, as far as possible, be ten percent of the number of vacancies notified.

(3) The lists so prepared under sub rules (1) and (2) shall be published in such manner as the High Court may direct.

True copy of the Model Rules for Recruitment recommended by the Justice Shetty Commission is annexed herewith as ANNEXURE P-2. [PAGE NO. 36-64]

True copy of the relevant extract of recommendations of Justice Shetty Commission is annexed herewith as ANNEXURE P-3. [PAGE NO. 65-79]

01.02.2010

This Hon'ble Court in *Ramesh Kumar vs. High Court of Delhi* (2010) 3 SCC 104 held as follows:-

"18. This Court in *All India Judges' Assn. (3) case* [(2002) 4 SCC 247 : 2002 SCC (L&S) 508 : AIR 2002 SC 1752] had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks

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in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates....”

2012 – 2020

Respondent no. 2 conducted examinations for recruitment to higher judicial services in the State of Uttar Pradesh in accordance with the 1975 Rules. However, it is pertinent to mention that due to the cut off marks prescribed in 1975 Rules and without any relaxation in the cut off marks for the reserved category candidates, the candidates found it impossible to compete at par with the candidates belonging to unreserved category. Therefore, from a total of 75 vacancies advertised for the category of scheduled castes for Higher Judicial Services from 2012 to 2020, 73 vacancies are pending for

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scheduled castes for Higher Judicial Services in the State of Uttar Pradesh. True copy of tabular representation showing the selection of reserved category candidates in higher judicial services examination is annexed herewith as ANNEXURE P- 4. [PAGE NO. 80]

18.01.2021

Respondent no. 2 issued the impugned advertisement for direct recruitment to Uttar Pradesh Higher Judicial Service 2020. It is pertinent to mention that the recommendations of Justice Shetty Commission as well as the Model Rules expressly ruled against having any cut off marks for viva voce and the final select list whereas the advertisement, in pursuance to the 1975 Rules, issued by the Respondent states that candidate securing minimum 40 % marks in the interview shall only be eligible to be included in the final select list.

Therefore, the impugned advertisement issued by Respondent no. 2 is violative of the recommendations of Justice Shetty



Commission as well as the judgment of the Hon'ble Supreme Court in *All India Judges' Association & Ors. vs. Union of India & Ors.* (2002) 4 SCC 247.

Furthermore, neither the 1975 Rules nor the impugned advertisement issued by Respondent no. 2 provide for any relaxation to the candidates belonging to the reserved categories.

True copy of the advertisement dated 18.01.2021 issued by Respondent no. 2 for direct recruitment to Uttar Pradesh Higher Judicial Service 2020 is annexed herewith as **ANNEXURE P-5. [PAGE NO. 81-95]**

15.03.2021

The Petitioners filed PIL No. 1121 of 2021 before the Hon'ble High Court praying for, *inter alia*, as follows:-

(i) *Issue a writ of Certiorari or any other appropriate writ/order/direction thereby quashing the Advertisement issued by the Respondent for direct recruitment to Uttar Pradesh Higher Judicial Service 2020 as*

being ultra vires the provisions of the Constitution as well as the judgment of the Hon'ble Supreme Court in All India Judges' Association and Ors. vs. Union of India and Ors. (2002) 4 SCC 247.

- (ii) Issue a writ of Certiorari or any other appropriate writ/order/direction thereby quashing Rule 18 and Appendix G of the Uttar Pradesh Higher Judicial Services Rules, 1975 as being ultra virus Articles 14 and 16 of the Constitution; AND
- (iii) Issue a writ of Mandamus or any other appropriate writ/order/direction to the Respondent no. 1 to re-frame the rules for recruitment to higher judicial services in the State of Uttar Pradesh in accordance with the dictum laid down by the Hon'ble Supreme Court in All India Judges' Association and Ors. vs. Union of India and Ors. (2002) 4 SCC 247 as well as the Model Rules for recruitment formulated by Justice Shetty Commission; AND/OR
- (iv) Issue a writ of Mandamus or any other appropriate writ/order/direction to the Respondent to direct to respondents to conduct the examination for higher judicial service through Uttar Pradesh public service commission and as per the dictum laid down

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by the Hon'ble Supreme Court in All India Judges' Association and Ors. vs. Union of India and Ors. (2002) 4 SCC 247 as well as the Model Rules for recruitment formulated by Justice Shetty Commission.

(v) Issue any other suitable writ, order or direction which may deem fit and proper under the facts and circumstances of the case.

True copy of PIL No. 1121 of 2021 filed by the Petitioners before the Hon'ble High of Judicature at Allahabad Court is annexed herewith as ANNEXURE P – 6. [PAGE NO. 96-127]

19.03.2021

Respondent no. 2 issued a notice stating that the preliminary examination of Direct Recruitment to U.P. Higher Judicial Service, 2020 is scheduled to be held on 04.04.2021.

True copy of the notice dated 19.03.2021 issued by Respondent no. 2 is annexed herewith as ANNEXURE P – 7. [PAGE NO. 128]

25.03.2021

Respondent no. 2 issued another notice stating that the preliminary examination of Direct Recruitment to U.P. Higher Judicial Service,

2020, scheduled to be held on 04.04.2021, was postponed till further notice due to unavoidable circumstances. True copy of the notice dated 25.03.2021 issued by Respondent no. 2 is annexed herewith as ANNEXURE P - 8. [PAGE NO. 129]

27.07.2021

Respondent no. 2 issued a notice informing the tentative date for the preliminary examination of Direct Recruitment to U.P. Higher Judicial Service, 2020, scheduled to be held on 04.04.2021, was 05.09.2021. True copy of the notice dated 27.07.2021 issued by Respondent no. 2 is annexed herewith as ANNEXURE P - 9. [PAGE NO. 130]

28.07.2021

The Hon'ble High Court passed the impugned order dismissing the writ petition on the ground that the writ petition, being a public interest litigation, is not maintainable in the instant case.

09.08.2021

Hence, the present special leave petition.