REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.16428 of 2022)

SAKSHI ARHA ....APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT & OTHERS ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.18296-18299 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.21644 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.19179 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No. 9544 of 2023)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.5654 of 2023)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The present batch of appellants before us are the members of Other Backward Classes (Non-Creamy Layer i.e., NCL); More Backward Class (NCL) and from the category of Economically Weaker Section (EWS), finally qualified in the selection process held for the post of Civil Judge pursuant to an advertisement issued by the respondent dated 22nd July, 2021 but they have not been considered in the category to which they belong for the reason that the certificate of the category which was furnished by each of the appellant is subsequent to the last date indicated in the advertisement, i.e., 31st August, 2021 and each of them unfortunately could not qualify in open category, filed writ petition under Article 226 of the Constitution that came to be dismissed by the Division Bench of the High Court, which is the subject matter of challenge before this Court.

3. The brief facts of the case emanate from the record are that the post of Civil Judge to which we are concerned is included in the Schedule appended to Rajasthan Judicial Service Rules, 2010 (hereinafter being referred to as the "Rules, 2010") and is to be filled up only by direct recruitment based on the result of competitive examination conducted by the recruiting authority as provided under Part IV of the Rules, 2010.

4. Apart from the method of recruitment, it may be noticed that the reservation is being provided to the members of Scheduled Castes/Schedule Tribes/Other Backward Classes/More Backward Classes/Persons with Disabilities and Women Candidates under Rule 10 of the Rules, 2010. With the stipulation under Rule 10(2) & (5) that in the event of non-availability of suitable candidates amongst OBC/MBC in a particular year of recruitment, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such of the unfilled vacancies be carried forward to the subsequent recruitment year.

5. That as per the Scheme of examination referred to under Rule 20 of the Rules, 2010, the competitive examination for recruitment

to the post of Civil Judge shall be conducted by the recruiting authority in two stages i.e. preliminary examination followed with Main examination as per the Scheme specified in Part-IV of the Rules, 2010. With the stipulation that the marks obtained in the preliminary examination by the candidates who are declared qualified for admission to the Main examination shall not be counted for determining their merit and those who qualified in the Main examination will be called for interview and the marks secured in the Main examination and interview shall be the governing factor in determining merit and those who finally placed in the merit list, their names will be recommended by the recruiting authority for appointment under Rule 24 and the appointments will be made by the appointing authority in consultation with the Court in terms of Rule 26 of Rules, 2010.

6. Around 120 vacancies of the year 2020-21 of Civil Judge came to be advertised by the respondent pursuant to advertisement dated 22nd July, 2021 and category-wise reservation was indicated in the tabulation chart as referred to under Clause 4 of the advertisement, which is reproduced as under:-

Total number of vacancies	**Year**	**General**	**Reserved**					**Persons with Benchmarks Disabilities**
			SC	**ST**	**OBC**	**EWS**	**MBC**	
89	2020 (up to Dec., 2020)	35 Out of which, 10 posts for women Out of 10 posts 02 posts reserved for widow	14 Out of which, 04 posts for women Out of 04 posts 01 post for widow	10 Out of which 03 posts for women	18 Out of which 05 posts for women Out of 05 posts 01 post for widow	08 Out of which 02 posts for women	04 Out of which 01 post for woman	Out of 89 vacancies, 04 posts for persons with Benchmark Disabilities*
31	2021 (up to Dec., 2021)	14 Out of which, 04 posts for women Out of 4 posts 01 post reserved for widow	04 Out of which 01 post for woman	03	06 Out of which 01 post for woman	03	01	Out of 31 vacancies, 01 post for persons with Benchmark Disabilities*

*Out of 05 posts reserved for persons with Benchmark Disabilities, 01(one) post is reserved for blindness and low vision, 01 (one) for deaf and hard of hearing, 01 (one) for locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy and 02 (two) for autism, intellectual disability, specific learning disability and mental illness and multiple disabilities from the amongst persons under Clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities.

7. Under Clause 5 of the advertisement, it is indicated that in the absence of vacancies reserved of various categories remained unfilled, what method has to be adopted in filling those unfilled vacancies with a note appended thereto that the applicants who are from the State of Rajasthan and members of Other Backward Class (Creamy Layer)/More Backward Class (Creamy Layer) and

applicants from other than the State of Rajasthan and members of SC/ST/OBC (Creamy Layer/Non-Creamy Layer) and More Backward Class (Creamy Layer/Non-Creamy Layer) and Economically Weaker Sections (EWS) shall be considered in general category and as referred to under Clause 6(i) and (iii) of the advertisement, caste certificate issued as per Rules in the prescribed format by the competent authority has to be produced for seeking reservation and under Clause 22(3) (Other Important Instructions), it was indicated that the applicant has to produce on demand of the recruiting authority all such documents/certificates while claiming benefit of reservation required by the Rajasthan High Court or the concerned recruiting authority. The extract of Clause 6(i) and (iii) read with Clause 22(3) of the advertisement are reproduced hereunder:

> "**6. In the context of Certificate of various categories**
>
> (i) Caste Certificate issued as per rules in the prescribed format by the Competent Authority will have to be produced for reservation in the Scheduled Caste, Scheduled Tribe, Other Backward Class and Highly Backward Class.
>
> (ii) ……

(iii) Certificate issued as per rules in the prescribed format by the Competent Authority shall have to produce in the event of applicant belongs to Economic Weaker Section.

....

"**22. Other Important Instructions** :-

(1)-(2) .....

(3) It would be mandatory for the applicants to submit all concerning original documents/certificates, on the basis of which they raise any claim on being demanded by the Rajasthan High Court or concerned Appointing authority.

(4) ....."

8. The instructions indicated that in terms of Clause 6(i) & (iii) read with Clause 22(3), the applicants who claim the benefit of reservation, such certificate/document has to be produced on demand by the High Court or concerned Appointing authority. Thus, it is clear that there is no requirement to furnish the caste certificate of the category claiming benefit of reservation either at the stage of filling the application form or at any lager stage, however, it has to be produced on demand by the recruiting authority. It may be noticed that the reservation for MBC (NCL) and EWC are for the first time introduced in the instant selection process held pursuant to an advertisement dated 22nd July, 2021.

9. The relevant requirement was notified by the respondent to be furnished by the applicant claiming reservation against reserved vacancies OBC-NCL, MBC-NCL or EWS category as the case may be, with the stipulation that the certificate must be of the period not prior to one year of the last date of submission of application i.e. 31st August, 2021 for the first time by its notice dated 04th August, 2022 of which reference has been made. The extract of the documents demanded by the respondent in reference to the certificate relating to category, is reproduced as under:-

> "**(iii) <u>Certificate relating to category</u>**
>
> a. OBC/MBC (Non Creamy Layer) certificate issued not prior to one year from the last date of submission of the application form i.e. 31.08.2021.
>
> b. In case OBC/MBC (Non Creamy Layer) certificate is issued between 31.08.2018 and 30.08.2020, an affidavit in prescribed format along with caste certificate has to be produced.
>
> c. In case of EWS category – Income & Asset required for seeking reservation in EWS category must not be issued prior to 01.04.2021.
>
> In case Income & Asset Certificate issued between 01.04.2020 and 31.03.2021, an affidavit in prescribed format along with certificate has to be produced.
>
> d. SC/ST/OBC/MBC/EWS certificate, <u>as the case may be must not have been issued after the last date of submission of the application form i.e. 31.08.2021</u>."
>
> (emphasis supplied)

10. It is not the case of the respondent that either of the appellant does not belong to the respective reserved category i.e. OBC-NCL, MBC-NCL or EWS but their certificate relating to category is of the date later to the cut-off date i.e. 31st August, 2021 but each of the applicant although was permitted to appear in the interview under the interim order of the High Court but were not permitted to claim the benefit of their certificate relating to category which was furnished and were treated to be in the open category.

11. When the result came to be finally published, indisputedly, each of the applicant secured higher marks in their respective category i.e. OBC-NCL, MBC-NCL or EWS as the case may be, and the candidates lower in merit have been selected by the respondent but since their certificate relating to category is somewhere later to the cut-off date i.e. 31st August, 2021 (the last date of application form), the benefit of reservation has not been extended and since each of the applicant failed to qualify in the open category, they were finally denied from being considered for appointment to the post of Civil Judge and this fact can be further supported from the result of recruitment of Civil Judge Cadre 2021 published by

respondent by notice dated 30th August, 2022 that indicates that the present appellants have secured higher marks in their respective category qua those who have been finally recommended for appointment in the category of OBC-NCL, MBC-NCL or EWS category to which the present appellants are concerned and for convenience, comparative statement prepared by the respondent, in the tabulation form is reproduced as under:-

"OBC-NCL category - SLP(C) No.5654/2023, SLP(C) No.16428/2022, SLP(C) Nos.18296-18299/2022

S.No.	**Name**	**Marks**	**Cut off General**	**Cut Off Marks OBC-NCL**	**Date of OBC-NCL Certificates of the Petitioner**	**Date of OBC-NCL Certificate required as per Respondents**
1.	Jyoti Beniwal	176	179.5	163.5	22.06.2016 & 25.07.2022	31.08.2018 to 31.08.2021
2.	Sakshi Arha	166.5	179.5	163.5	27.07.2016 17.06.2022 & 12.08.2022	"-do-"
3.	Priyanka	170	179.5	163.5	23.04.2018 & 20.06.2022	"-do-"
4.	Bhavya Kulhar	165.5	179.5	163.5	19.09.2016 & 16.06.2022	"-do-"
5.	Neha Batar	165	179.5	163.5	28.06.2018 & 21.06.2022	"-do-"
6.	Nikhil Kataria	171.5	179.5	163.5	16.07.2018 & 09.06.2022	"-do-"

"MBC-NCL category – Sunil Gurjar SLP(C) No.19179/22 & Kuldeep Bhatia SLP(C) No.21644/22

S.No.	Name of the Petitioner	Marks Obtained	Cut off General	Cut Off Marks MBC-NCL	Date of MBC-NCL Certificates	Date of MBC-NCL Certificate required as per Respondents
1.	Sunil Singh Gurjar	172	179.5	141	18.06.2018 & 16.06.2022	31.08.2018 to 31.08.2021
2.	Kuldeep Bhatia	141.5	179.5	141	03.08.2012 & 09.03.2022	"-do-"

"EWS category – Parul Jain SLP(C) Diary No.1581 of 2023

S.No.	Name of the Petitioner	Marks Obtained	Cut off General	Cut Off Marks EWS	Date of EWS Certificates	Date of EWS Certificate required as per Respondents
1.	Parul Jain	174.5	179.5	167.5	07.09.2021	31.08.2021 (01.04.2021-31.03.2022 valid AY 2021-22)

12. It is not disputed by the respondent that each of the applicant is holding the certificate of their respective category and it is of prior date when demanded by the respondent under its notice dated 04th August, 2022.

13. This has come on record that circulars are issued by the State of Rajasthan for the purpose of obtaining the certificate relating to category in reference to seeking employment issued by the Department of Social Justice and Empowerment, Jaipur dated

09th September, 2015 followed with 08th October, 2019 indicating the validity of certificate of OBC-NCL, MBC-NCL or EBC and since there was a lot of confusion and the circulars were not accessible to the people at large and litigation was pending before the Courts, the State Government stepped in and in furtherance thereof, issued its directive dated 17th October, 2022 and came with the clarification that if for any reason, the candidate has not produced a certificate issued till the last date of application form and produces a certificate after the last date of filling up of application then in that case, candidate should submit an affidavit that he was having the eligibility of respective category and if the information is found incorrect, then appointment can be cancelled. The extract of the clarification made by the Government in meeting out the exigencies as demanded and to streamline the on-going litigation, under its directive dated 17th October, 2022 is reproduced as under:-

> "If for any reason a candidate has not produced a certificate issued till the last date of application form and produces a certificate which is issued after the last date of filling application form then in that case candidate should write an affidavit to this aspect that he was having the qualification of respective class and if the information is found incorrect then the appointment shall be cancelled."

14. For the sake of repetition, it may be noticed that it is not the case of the respondent that either the appellant is not holding eligibility of the respective category of which he/she belongs in terms of advertisement dated 22nd July, 2021 and their only fault is that their certificate relating to category is of a date later to the last date of application (i.e. 31st August, 2021) in terms of notice dated 04th October, 2022 demanding for furnishing the certificate relating to category to which they were provisionally called for interview.

15. On a writ petition being filed by the appellants assailing the action of the respondent in not permitting them of claiming benefit of reservation to which they belong and each of them have qualified after securing more marks over the cut-off of respective category, the Division Bench of the High Court has non-suited their claim on the premise that each of them had failed to furnish certificate of their category as required on the last date of application i.e. 31st August, 2021 by placing reliance on the judgment of this Court in ***Ashok Kumar Sonkar vs. Union of India and Others*** **(2007) 4 SCC 54** held that the last date of application is a touchstone for determining the eligibility and since each of them had failed to

furnish their respective certificate relating to category on or before 31st August, 2021, they are held ineligible from being considered in the respective category and since each of them had not been able to qualify in the open category considered unsuitable for appointment to the post of Civil Judge, under the impugned judgment dated 18th August, 2022 in the case of ***Jyoti Beniwal vs. The Rajasthan High Court, Jodhpur Through Its Registrar General and Another*** (D.B. Civil Writ Petition No.11784/2022) and that was referred to in the subsequent writ petitions filed and all were disposed of placing reliance on the judgment of ***Jyoti Beniwal* (Supra)** by subsequent impugned judgment dated 06th September, 2022 and in the case of appellant Parul Jain, separate judgment was passed on 18th November, 2022 relying on the same judgment of High Court in ***Jyoti Beniwal* (Supra)** and that became the subject matter of challenge in appeal before us.

16. Learned counsel for the appellants jointly submit that it was nowhere indicated at any stage that certificate of the category upto which date is to be furnished by the applicants/candidates while

claiming reservation and each of the appellant holds the certificate of their respective category and accordingly, each of them mentioned in their application form with regard to the category they intend to participate in the selection process and although the permission granted to appear in the preliminary examination was provisional but no one has examined at any stage that what is the requirement and since there is no reference made either in the Scheme of Rules, 2010 or in the advertisement dated 22nd July, 2021 to the certificate of category to which the appellant claim has to be furnished is of which date or year. Each of them had bona fidely pleaded that the certificate of the category which is being obtained is issued by the competent authority after due compliance for all practical purposes and in the given facts and circumstances, the rigor which has been put by the Division Bench of the High Court under the impugned judgment taking 31st August, 2021 as a sacrosanct date for furnishing the certificate relating to category is nowhere prescribed either under the Rules of 2010 or in the advertisement to which we are concerned hence, the premise on which the High Court has proceeded is completely misconceived.

17. Learned counsel further submits that the judgment on which reliance has been placed is not at all applicable on the facts of the instant case for the reason that the judgments relied upon are related to the minimum academic qualification and in the cases where rules are silent or there is no administrative instruction issued by the competent authority/recruiting authority before the selection process being initiated are in place, this Court has stepped in and laid down a principle that in the absence of rules indicating the requirement of holding academic qualification, the last date of filling application is considered to be a benchmark for the applicant to possess the minimum academic qualification.

18. But we are not dealing in this case with minimum academic qualification or the date of birth which is defined under the Scheme of Rules, 2010. In the given facts and circumstances, the premise on which the claim of the present appellants has been non-suited by the High Court that they failed to furnish the certificate of category on or before 31st August, 2021 is completely without basis/foundation having no nexus and they all have been put to surprise while it was notified to them demanding to furnish the

certificate relating to category on or before 31st August, 2021, which was the last date of submission of application but it was, for the first time, notified when the provisional list of candidates calling for interview was published on 04th August, 2022.

19. Learned counsel further submits that they all are coming from rural background and belonging to a poor strata in society, having no means to know the advanced technology which is available in the urban cities and with the minimal facilities available at their end, still they are able to crack the competitive examination and when this is not the case of the respondents that either of the appellant is not a member of a category which was indicated by him/her in application form originally filed to non-suite them at the stage when they finally qualified the competitive test and as informed that vacancies are available because of non-joining by the candidates, they can easily be adjusted against the unfilled advertised vacancies without disturbing or taking away the rights of the persons/candidates who have been appointed on being declared successful by this authority.

20. Per contra, while supporting the finding recorded by the High Court, learned counsel for the respondent submits that this being settled by this Court in a catena of judgments that eligibility is to be looked into on the last date of submission of application or the cut-off date indicated in the relevant rules. In the instant case, when the rules are silent in such circumstances, what being laid down by this Court is the law on the subject and the eligibility of the applicant is to be looked into on the last date of application which in the instant case is 31st August, 2021 and admittedly, each of the applicant was not holding their certificate related to category as demanded of the period prior to 31st August, 2021 and accordingly, no error was committed by the respondent and have rightly been treated in open category and it is not the case of the appellant that any candidate who has been recommended and appointed in open category is lower in the order of merit in the selection process held by the respondent pursuant to advertisement dated 21st July, 2021 and in support of his submission, learned counsel has placed reliance on the judgment of this Court reported in ***Ashok Kumar Sonkar*** **(Supra)** followed with ***Rakesh Kumar***

Sharma vs. State (NCT of Delhi) and Others **(2013) 11 SCC 58** and submits that this being a settled law held by this Court and relied upon by the High Court, no error has been committed by the High Court, which may called for interference of this Court.

21. We have heard the learned counsel for the parties and with their assistance perused the material available on record.

22. It is not disputed that the post of Civil Judge is included in the Schedule appended to the Rules, 2010 and is to be filled up by direct recruitment in terms of Part IV and the advertisement was notified by the respondents on 22nd July, 2021 holding selection against 120 vacancies of Civil Judge for the year 2020-2021.

23. It is not disputed that the Rules of 2010 is a complete code and silent in reference to the date when certificate of the category has to be furnished and so far as the advertisement is concerned, it nowhere indicates as to what should be the crucial date for the purpose of furnishing the caste related certificate by the applicants who intended to participate in the selection process and admittedly each of the appellant holds the certificate of the category and the

period prior to as have been notified by the respondent while their provisional list of the candidates to be called for interview has been published on 04th August, 2022.

24. It may be noticed that reservation to MBC (NCL) and EWS category has been introduced for the first time and the candidates are completely alien to the procedure and the format in which the certificate of their category has to be furnished and so far as the candidates who appeared in EWS quota is concerned, it has been submitted that father of the appellant Parul Jain submitted the Income-Tax Returns of the previous years and applied for EWS certificate on E-mitra kiosk on 16th August, 2021 and the appellant was assured that she will receive EWS certificate within 6-7 days but despite the appellant demanding her certificate, it was issued by the E-mitra kiosk on 07th September, 2021 but it is not disputed by the respondent that the appellant belongs to EWS category.

25. It is also not disputed that either in the advertisement which was initially notified on 22nd July, 2021 or at the stage of preliminary examination held on 11th January, 2022 followed with Main examination held on 30th April, 2022 to 01st May, 2022, it was

nowhere notified that the certificate of the category has to be furnished of the period prior to 31st August, 2021 and only when the list came to be published of the candidates provisionally qualified for interview on 04th August, 2022, the respondent came out with a defence that cut-off date for furnishing caste related certificate should be prior to one year from the last date of submission of application i.e. 31st August, 2021 and since each of the applicant from OBC-NCL, MBC-NCL or EWS has furnished their respective certificate of the category after it was brought to their notice by the provisional list published on 04th August, 2022 and so far as the candidate belonging to EWS category is concerned, appellant furnished her caste certificate dated 07th September, 2021 with delay of seven days.

26. In the Scheme of rules, age has to be looked into as on the first date of January following the last date fixed for receipt of application, if one is not holding the age in terms of Rule 17, the applicant stands disqualified provided relaxed by the appointing authority and Rule 18 of the Scheme prescribes the academic qualification and it is nowhere indicated as to when the academic

qualification of the applicant is to be looked into and here this Court has stepped in and the exposition of law on the subject from ***Rekha Chaturvedi (Smt.) vs. University of Rajasthan and Others*** **1993 Supp (3) SCC 168** is consistent and is no more *res integra* that if the rules are silent and no date is being notified on which the qualification/eligibility of the applicant is to be looked into, the best course is to be taken care is the last date of application. To take a judicial note, reference can be made of ***Rekha Chaturvedi*** **(Supra)** which was further noticed in the case of ***Bhupinderpal Singh and Others vs. State of Punjab and Others*** **(2000) 5 SCC 262,** ***Jasbir Rani and Others vs. State of Punjab and Another*** **(2002) 1 SCC 124,** ***Shankar K. Mandal and Others vs. State of Bihar and Others*** **(2003) 9 SCC 519** followed with ***Ashok Kumar Sonkar*** **(Supra)** and ***Rakesh Kumar Sharma*** **(Supra).**

27. This Court in ***Rekha Chaturvedi*** **(Supra)** held as under:-

> "**10**. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of

selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad* v. *B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 4 SLR 235 : (1990) 13 ATC 708] and *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram* v. *M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 4 SLR 237 : (1990) 14 ATC 766]."

(Emphasis supplied)

28. It was later followed in the case of ***Ashok Kumar Sonkar*** **(Supra),** wherein this Court held as under:-

"**17.** In *Bhupinderpal Singh* v. *State of Punjab* [(2000) 5 SCC 262 : 2000 SCC (L&S) 639] this Court moreover disapproved the prevailing practice in the State of Punjab to determine the eligibility with reference to the date of interview, inter alia, stating: (SCC pp. 267-68, para 13)

"*13.* Placing reliance on the decisions of this Court in *Ashok Kumar Sharma* v. *Chander Shekhar* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] , *A.P. Public Service Commission* v. *B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 13 ATC 708] , *Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society* v. *M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] , *Rekha Chaturvedi* v. *University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] , *M.V. Nair (Dr.)* v. *Union of India* [(1993) 2 SCC 429 : 1993 SCC (L&S) 512 : (1993) 24 ATC 236] and *U.P. Public Service Commission* v. *Alpana* [(1994) 2 SCC 723 : 1994 SCC (L&S) 742 : (1994) 27 ATC 101] the High Court has held (*i*) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (*ii*) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."

29. It has been transpired and culled out from the aforementioned decision that:-

(i) the cut-off date by reference to which the eligibility requirement must be satisfied by the applicant seeking a

public employment is the date notified in the relevant service rules.

(ii) If there is no cut-off appointed date indicated under the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(iii) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date notified by which the applications were to be received by the recruiting authority.

30. These principles have been settled by this Court and is no more *res integra* for further discussion that when the rules are silent and no date is notified to satisfy the eligibility requirement under the advertisement, the eligibility criteria shall be applied by reference to the last date of application by which applications are to be received by the recruiting authority.

31. Let us examine the Scheme of Rules, 2010 in other way and Part IV in particular, which provides the method of recruitment in the cadre of Civil Judge, Rule 19 postulates that the candidate has to submit a character certificate while participating for direct recruitment which may qualify him for employment in service, has

to be not more than six months prior to the date of application which the candidate has to enclose while the application form is filled for participation in the selection process and if we proceed on the principles as aforestated, the question arises that if the candidate who has participated in the selection process after furnishing the character certificate along with the application form in terms of Rule 19, if at a later stage in the process of selection involves in any act of moral turpitude before he is actually appointed whether the appointing authority is under an obligation to give him appointment if his name is finally placed in the order of merit, the answer indeed is in negative and the reason is that the character certificate enclosed by the applicant at the time of filling the application form in terms of Rule 19 is only for the purpose of satisfaction in reference to the character of the applicant/candidate who intends to participate in the process of recruitment which may qualify him for employment in service, but if he later gets himself involved in any act of moral turpitude, although there is no restriction/embargo, but the authority is always in its competence to take into consideration the later

developments and upto the date of appointment if the candidate finally selected is found to be unsuitable for appointment which indeed he did not carry at the time when the application form was filled and that too on the last date of application, but that can always be considered as material to adjudge the suitability of the candidate for being considered for appointment and in the given situation the theory of last date of application becomes completely otiose.

32. It is true that the general rule is that while participating in the recruitment process, the person must possess the eligibility qualification on the last date fixed for such purpose unless there is any express provision to the contrary and there can be no relaxation in the matter of holding requisite eligibility qualification by the date fixed and this has to be established by producing necessary certificate or degree, as the case may be. But, at the same time, in order to avail the benefit of reservation or weightage, necessary certificates have to be produced but they are in the nature of proof for the purpose of seeking entitlement to claim the benefit of reservation, but it has no nexus with the last date of the

application and, it may not be proper to apply any rigid principle in the absence of any rule to the contrary. As a matter of caution, every infraction of the rule relating to submission of proof in availing the benefit of reservation may not necessarily result in rejection of the candidature.

33. In the similar circumstances, the vacancies are reserved for various categories i.e. SC/ST/OBC/MBC/Persons with Disabilities and women candidates under the Scheme of Rules, 2010 and that has been notified category-wise under Clause 4 of the advertisement dated 22nd July, 2021 with which we are concerned, and it goes without saying that the candidate must be a member of the reserved category at the time when the application form is filled pursuant to the advertisement in question, but at the same time so far as the scheme of examination and syllabus, as provided in Rule 20 of the Rules, 2010 is concerned, for holding competitive examination for the post of Civil Judge conducted by the recruiting authority is common for all and each of the candidate regardless the category to which one belongs, has to undergo the same process of qualifying the preliminary examination followed with main

examination and interview, except that the candidates are admitted to the main examination followed with interview in terms of the total number of vacancies category-wise.

34. The reservation of vacancies of various categories as referred to in Rule 10 is not a condition of eligibility for the candidate to participate in the selection process as the certificate of category for the purpose of claiming reservation will arise not at the stage when the application form is filled making self-declaration by the individual candidate to participate in the selection process but at the stage when the select list is to be prepared of the candidates who have participated in the selection process since the final select list has to be published category-wise by giving the benefit of reservation to the candidates who have participated in the process of selection and for no other purpose and when the respondent has demanded from the applicant to furnish their respective certificate of the category to which one had participated in the selection process under its notice dated 04th August, 2022, indisputedly each of the applicant had furnished the certificate of their category to which one belong at the time of advertisement when demanded by

the recruiting authority in terms of Clause 6(i) & (iii) read with Clause 22(3) of the advertisement dated 22nd July, 2021.

35. This Court in ***Dolly Chhanda vs. Chairman, Jee & Others*** **(2005) 9 SCC 779,** has considered the situation where the incumbent has failed to furnish the certificate seeking benefit of reservation and after examining the Scheme, this Court in the given circumstances, held as under:

> **"7.** The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

36. Later, in ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and Another*** **(2016) 4 SCC 754,** this Court has examined the question as to whether a candidate who

appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under OBC category and answered it in affirmative as under:-

> "**18.** In our considered view, the decision rendered in *Pushpa* [*Pushpa* v. *Govt. (NCT of Delhi)*, 2009 SCC OnLine Del 281] is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in *Indra Sawhney* [*Indra Sawhney* v. *Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and *Valsamma Paul* [*Valsamma Paul* v. *Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench in Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in *Indra Sawhney* [*Indra Sawhney* v. *Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and *Valsamma Paul* [*Valsamma Paul* v. *Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . Therefore, the impugned judgment and order [*Delhi Subordinate Services Selection Board* v. *Ram Kumar Gijroya*, 2012 SCC OnLine Del 472 : (2012) 128 DRJ 124] passed by the Division Bench of the High

> Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned Single Judge in *Ram Kumar Gijroya* v. *Govt. (NCT of Delhi)* [*Ram Kumar Gijroya* v. *Govt. (NCT of Delhi)*, WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored."

37. This judgment came up for consideration later before two-Judge Bench of this Court in ***Karn Singh Yadav vs. Govt. of NCT of Delhi and Others*** **(SLP(C) No.14948/2016)** and the Court has some reservations and referred the matter to be placed before three-Judge Bench by order dated 24th January, 2020 and three-Judge Bench of this Court while relying upon ***Ram Kumar Gijroya*** **(Supra)** disposed of the appeal under its order dated 28th September, 2022, it appears that the reference made by two-Judge Bench of this Court remained unnoticed. Be that as it may, the position as on today is that three-Judge Bench of this Court under its order dated 28th September, 2022 has affirmed the view expressed by two-Judge Bench of this Court in ***Ram Kumar Gijroya*** **(Supra).**

38. That apart, taking into consideration the Scheme of Rules, 2010, which is indisputedly, silent on the subject issue and the advertisement dated 22nd July, 2021 nowhere indicates that the

caste certificate/certificate of category has to be produced of the period prior to the last date of the application (31st August, 2021) in the instant case. To the contrary, Clause 6(i) & (iii) read with Clause 22(3) of the advertisement, such certificate of category which one claimed for seeking the benefit of reservation, has to be produced on demand by the recruiting authority.

39. In the given facts and circumstances, when the rules are silent and there is no such instruction that the certificate of the category has to be produced of the period on or before the last date of the application under the advertisement and each of the applicants has produced the certificate relating to category on being demanded by the recruiting authority when the list came to be published of the candidates who were provisionally called for interview on 04th August, 2022, each of the applicants indisputedly has furnished their certificate of the category to which they belong at the time of advertisement and had participated in the process of selection. At this stage, in our view, the High Court had gone wrong and was influenced with the condition of eligibility to be looked into on the last date of application, while examining the production of

certificate of the category to which the candidate belong and participated in the selection process is in no manner co-related with the conditions of eligibility and the judgments relied upon to non-suite the claim of the appellants has no application in the facts of the instant case.

40. To understand the dynamics, the Government has come out with the Circulars earlier dated 9th September, 2015 followed with 08th October, 2019 of which reference has been made, but it has always to commensurate with the process of selection when the advertisement has been published by the recruiting authorities for making open selection and in every advertisement notified by the recruiting authority, the last date of application is bound to differ and that may change the complete dynamics of the certificate which the applicant holds and he is not supposed to obtain the certificate of category in conformity with each advertisement and it is not being practically possible and that appears to be the reason since there was no scheme or instructions in place which may regulate and streamline as to what is the procedure the applicant has to follow while participating in the selection process intending to avail

the benefit of reservation for various categories and to overcome the on-going litigation, the State Government has stepped in and clarified under its directives dated 17th October, 2022 indicating that if the applicant has failed to furnish the certificate on the last date of application or furnish the same of the date later to the last date of application, he has to furnish an affidavit that if it is found to be incorrect or false, such appointment will be cancelled. To our mind, it may be an ad-hoc situation noticed to meet out the current exigency by the Government, but the recruiting authority or the Government, as the case may be, has to examine the issue in totality and take into consideration the grievances which are being raised and considered by the Court at various stages and to issue clear guidelines with wide circulation which the candidates have to follow who wants to avail the benefit of reservation to avoid/overcome the litigation.

41. To sum up further, as noticed by this Court, the final merit list of 120 selected candidates was notified by the respondents as indicated in the notice dated 30th August, 2022 and there is no provision under the Scheme of Rules, 2010 of having any waiting

list/reserve list. Thus, no further appointments could be made after the final select list of 120 candidates has been exhausted on account of non-joining or for any other reason of the candidates.

42. It is informed to this Court that out of 120 candidates who were recommended for appointment, appointment orders were issued to 119 candidates on 09th March, 2023 and five candidates have not joined and that apart in MBC (NCL) category, five vacancies were reserved and only two candidates are appointed and three vacancies are filled by open category. Taking the overall spectrum of the fact situation that the candidates who might be lower in the order of merit vis-à-vis the present appellants have joined and sent for training, but they were never at fault, at the same time, the present appellants also need indulgence of being considered for appointment after they are finally selected and indisputedly have secured higher marks than cut-off in their respective category and this fact has not been disputed by the respondents as well, few of the applicants can be adjusted against the available advertised vacancies and without disturbing or taking away the rights of the candidates who have been appointed by the

recruiting authority, in the peculiar facts and circumstances, in exercise of our power under Article 142 of the Constitution, to do complete justice to the parties, it may be appropriate to direct the respondents to consider each of the appellants for appointment who could not be adjusted against the advertised vacancies of Civil Judge against future vacancies, subject to their suitability under the Scheme of Rules, 2010.

43. The appeals succeed and are accordingly allowed. The impugned judgment of the High Court is hereby quashed and set aside and the respondents are directed to consider candidature of each of the appellant for appointment with consequential benefits including seniority to the post of Civil Judge on their participation in the selection process held pursuant to advertisement dated 22nd July, 2021. The order may be passed subject to their suitability within two months. No costs.

44. Pending applications, if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

NEW DELHI;
MAY 18, 2023.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. …..... OF 2023
(@ SPECIAL LEAVE PETITION (C) No. 16428 OF 2022)

SAKSHI ARHA .....APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT
& ORS. .....RESPONDENT(S)

WITH

CIVIL APPEAL NO. .....… OF 2023
(@SPECIAL LEAVE PETITION (C) NO. 18296-18299 OF 2022)

PRIYANKA ETC. …. APPELLANT(S)

VERSUS

THE REGISTRAR EXAMINATION ETC. …. RESPONDENT(S)

WITH

CIVIL APPEAL NO. …..... OF 2023
(@SPECIAL LEAVE PETITION (C) NO. 21644 OF 2022)

KULDEEP BHATIA …. APPELLANT(S)

VERSUS

REGISTRAR EXAMINATION, RAJASTHAN
HIGH COURT, JODHPUR …. RESPONDENT(S)

WITH

CIVIL APPEAL NO. ..…. OF 2023
(@SPECIAL LEAVE PETITION (C) NO. 19179 OF 2022)

SUNIL SINGH GURJAR …APPELLANT(S)

VERSUS

REGISTRAR EXAMINATION,
RAJASTHAN HIGH COURT, JODHPUR ….RESPONDENT(S)

WITH

CIVIL APPEAL NO. ……. OF 2023
(@SPECIAL LEAVE PETITION (C) NO. 9544 OF 2023)

PARUL JAIN … APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT & ANR. …. RESPONDENT(S)

WITH

CIVIL APPEAL NO. ……. OF 2023
(@SPECIAL LEAVEL PETITION (C) NO. 5654 OF 2023)

JYOTI BENIWAL …. APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT & ANR. ….RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. I have had the opportunity to go through the opinion expressed by my esteemed brother Justice Ajay Rastogi, however I express my inability to agree with the views expressed in the said opinion, and pen down my opinion as under: -

2. Leave granted.

3. The common adjudication is being made having regard to the contextual semblance of facts and legal issues involved in all these appeals. The appellants in all the appeals have challenged the impugned orders passed by the High Court of Judicature for Rajasthan, whereby the High Court has dismissed the writ petitions filed by them. In the writ petitions before the High Court, the primary challenge was to the action of the respondent-High Court in issuing the notice on 04.08.2022 requiring the candidates, who had successfully qualified themselves in the main examination for the post of Civil Judges, to produce the certificates relating to the categories like Other Backward Class / More Backward Class - Non-Creamy Layer and Economically Weaker Section etc. issued within one year from the last date of submission of the application form i.e. 31.08.2021 and not after the said date. The

appellants having produced the certificates showing their status in the respective reserved category, which were issued after the said date 31.08.2021, they were not found eligible for the said post by the respondent-High Court.

Factual Matrix

4. The short facts that emanate from the record of the present batch of appeals are that the respondent-High Court issued an advertisement on 22.07.2021 inviting applications for the recruitment of Civil Judges against the vacancies in the year 2021 as per the Rajasthan Judicial Service Rules, 2010 (hereinafter referred to as the Rules, 2010). The relevant part of the said advertisement is produced hereunder for the better appreciation of the issues involved:

"Rajasthan High Court, Jodhpur

Advertisement No.:- Rajasthan High Court, Jodhpur/Examination Cell/ R.J.S./ Civil Judge Cadre/ 2021/ 780 dated 22.07.2021.

Competitive Examination for Direct Recruitment in Civil Judge Cadre, 2021.

1. Online applications are invited by Rajasthan High Court, Jodhpur for direct recruitment on total 120 vacant posts (89 posts of year 2020 and 31 posts of year 2021) of Civil Judge and Judicial Magistrate on probation in Civil judge Cadre in grade pay 27700-770-33090-920-40450-1080-44770 under Rajasthan Judicial Service Rules, 2010 (as amended).

2 to 3 …….

4. **Number of Vacant posts and Reservation.**

Total No. of Vacancies	Year	General	Reserved					Persons with Benchmark
			SC	ST	OBC	EWS	MBC	

								Disabilities
89	2020 (upto Dec. 2020)	35 Out of which, 10 posts for women Out of 10 posts 02 posts reserved for Widow	14 Out of which, 04 posts for women Out of 04 posts 01 post for Widow	10 Out of which, 03 posts for women	18 Out of which, 05 posts for women Out of 05 posts 01 post for widow	08 Out of which, 02 posts for women	04 Out of which, 01 post for women	Out of 9 vacancies, 04 posts for persons with Benchmark Disabilities*
31	2021 (upto Dec. 2021)	14 Out of which, 04 posts for women Out of 04 posts 01 post reserved for Widow	04 Out of which, 01 post for women	03	06 Out of which, 01 post for women	03	01	Out of 31 vacancies, 01 post for persons with Benchmark Disabilities*

*Out of 05 posts reserved for persons with Benchmark Disabilities, 01 (One) post is reserved for blindness and low vision, 01 (One) for deaf and hard of hearing, 01 (one) for locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy and 02 (two) for autism, intellectual disability, specific learning disability and mental illness and multiple disabilities from the amongst persons under clauses (a) to (d) including deaf blindness in the posts identified for each disabilities.

Note- The number of aforesaid vacant posts can be increased or decreased as per rules for which no re-advertisement or corrigendum will be published.

5. Regarding reservation of various categories-

i. Reservation for posts reserved for women (including widow and divorced women) shall be treated as horizontal against category wise vacant posts meaning thereby women of which category (Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ More Backward Classes/ Economically Weaker Sections/ General Category) will be selected, such woman candidate will be adjusted against the concerned category of which she is an applicant.

ii. Reservation for posts reserved for Persons with Disabilities shall be treated as horizontal against total vacant posts meaning thereby persons with disabilities of which category (Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ More Backward Classes/

Economically Weaker Sections/ General Category) will be selected, such candidates will be adjusted against the concerned category of which they are applicant.

iii. In the event of non-availability of eligible and suitable candidates against the posts reserved for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes/ Most Backward Classes /Economically Weaker Sections/ women (including widow and divorced women) / Persons with Disabilities of Rajasthan, these posts will be filled by the procedure and manner prescribed in Rajasthan Judicial Service Rules, 2010 (as amended).

iv. For selection against posts meant for general category, it will be essential for reserved category candidates to be eligible as general category candidates.

Note- Applicants from creamy layer category of Other Backward Class and More Backward Class of Rajasthan and Scheduled Castes/ Scheduled Tribes/ Other Backward Class (Creamy layer and non-creamy layer)/ More Backward Class (Creamy layer and non-creamy layer)/ Economically Weaker Sections of other states, shall be treated as general category candidates.

6. <u>Regarding certificates of various categories-</u>

i. For reservation as Scheduled Castes/ Scheduled Tribes/ Other Backward Classes and More Backward Class, certificate issued by the Competent authority as per rules in the prescribed format, will have to be furnished.

ii. For the applicants coming within Persons with Disability category, such candidates will have to furnish Certificate of Disability issued in the prescribed format by Authorized Certifying Authority authorized by appropriate Government, as and when demanded by Rajasthan High Court. As per the extant rules applicable in this regard, only Disability Certificate Holder candidates shall be considered eligible for selection and appointment against the posts reserved for the Persons with Disabilities.

iii. In case of Economically Weaker Sections applicants, such candidates will have to furnish the certificate duly issued as per rules of the Competent Authority.

iv. For availing benefit of reservation meant for married women candidates of Scheduled Castes and Scheduled Tribes, such women candidates will have to furnish caste certificate based on the name and address of father issued in the prescribed format as per rules. The certificate based on the basis of name, address and income of the husband shall not be applicable.

v. For availing benefit of reservation meant for married women candidates of Other Backward Classes and More Backward Classes, such women candidates will have to furnish caste certificate based on the name and address of father issued in the prescribed format as per rules. The certificate based on the basis of name, address and income of the husband shall not be applicable.

vi. In case of widow women candidate, she will have to furnish death certificate of her husband issued by the Competent authority and in case of Divorcee women candidate, she will have to furnish proof of Divorce.

7 to 9. ……

10. <u>AGE:</u> -

A candidate must have attained the age of 21 years on 01st January 2022 however must not have attained the age of 40 years.
Provided that –

(i) the upper age limit mentioned above shall be relaxed by 5 years in case of candidates belonging to the Scheduled Castes/Scheduled Tribes, Other Backward Classes/More Backward Classes/ Economically Weaker Sections and Women Candidates.

11 to 16. ……

17. <u>Time Limit to Apply:-</u>

Sr.No.	Description	Date
1.	Time limit for applying online	From 1:00 pm on 30.07.2021 (Friday) to 5.00 PM on 31.08.2021 (Tuesday)

18. <u>Important Instructions to Apply</u>:-

1. Any applicant under which category he is eligible to apply should apply in the same category. **The category filled in the application will not be changed under any circumstances on the request of the applicant.**

2. Before applying online application, the applicant must ensure that he/ she meets all the eligibility conditions as per the conditions mentioned in the advertisement and all the information required in the online application form is filled in correctly and fully in the relevant column. The information filled in the online application form will be considered as correct and provisional admission will be given in the examination. Therefore, the applicant himself/herself will be responsible for the information filled in the online application form.

3. Only the applications filled by the last date of online application will be accepted. In case all the entries are not complete and correct, the application will be rejected by the Rajasthan High Court.

4. No change can be made in the entries once finally entered in the online application, nor will any application in this regard be accepted for consideration.

19 to 21. …..

22. <u>Other Important Instructions:-</u>

1….
2….

3. The candidates will be required to produce all the relevant original documents/certificates, on the basis of which they make any claim, if required by the Rajasthan High Court or the concerned appointing authority.

4 to 8……

9. Only such applicants, who have successfully deposited the examination fee by applying online till the last date, will be provisionally allowed to appear in the examination by the Rajasthan High Court. Merely issuing the admit card to an applicant to appear in the examination would not mean that his candidature has been finally accepted by the Rajasthan High Court or that the entries made by the applicant in the application form have been treated as correct and true. While checking the eligibility of the applicant from the

> original documents by the Rajasthan High Court and as per rule, if his/her ineligibility is detected on the ground of non-fulfilment of other essential conditions of eligibility on the basis of age, educational qualification and SC/ST/OBC/More Backward Class/EWS/PH/Women/ Widow/Abandoned (Divorced) etc., his/her candidature for this examination is liable to be cancelled at any stage, the responsibility of which will be that of the applicant himself."

5. All the appellants claiming to be the members of OBC/MBC-NCL/EWS, appeared in the main examinations conducted by the respondent and successfully cleared the same. They having been provisionally qualified to be called for the interview, were invited by the respondent for the interview between 20.08.2022 to 27.08.2022, vide the notice dated 04.08.2022. In the said notice it was directed that the candidates had to bring all the original documents along with the attested/certified photocopies at the time of interview. The precise directions contained in the said notice are reproduced as under:

> "The candidates are required to remain present for Interview on the date and reporting time mentioned above in the temporary office of Registrar (Examination), at Rajasthan State Judicial Academy, Jodhpur, Near Jhalamand Circle, Old Pall Road, Jodhpur (Rajasthan) with their original documents/certificates for verification. The candidates are directed to bring all the following original documents along with two attested/certified photo copies of each document: -
>
> i….
>
> ii….
>
> iii. **Certificate relating to category:-**
>
> (a) OBC/MBC (Non Creamy layer) certificate issued not prior to one year from the last date of submission of the application form i.e. 31.08.2021.
>
> (b) In case OBC/MBC (Non Creamy Layer) certificate is issued between 31.08.2018 and

> 30.08.2020, an affidavit in prescribed format along with caste certificate has to be produced.
> (c) In case of EWS category - Income & Asset Certificate required for seeking reservation in EWS category must not be issued prior to 01.04.2021. In case Income & Asset Certificate issued between 01.04.2019 and 31.03.2021, an affidavit in prescribed format along with certificate has to be produced.
> (d) SC/ST/OBC/MBC/EWS certificate, as the case may be must not have been issued after the last date of submission of the application form i.e. 31.08.2021."

6. The appellant Jyoti Beniwal (SLP (C) No. 5654/2023) who had applied under the category OBC-NCL for the said post of Civil Judge, filed the writ petition being No. 11784 of 2022 *inter alia* challenging the conditions imposed in the said notice dated 04.08.2022 requiring the candidates to furnish the OBC-NCL certificates issued between 31.08.2018 to 31.08.2021, and declaring that the certificates issued after 31.08.2021 would not be accepted. The Division Bench of the High Court dismissed the said petition vide the judgment and order dated 18.08.2022, which is impugned before this Court.

7. The appellant Kuldeep Bhatia (SLP (C) No. 21644 of 2022) also filed writ petition being no. 12022 of 2022 before the High Court challenging the said notice dated 04.08.2022 prescribing the requirement of furnishing the OBC (NCL) certificate of the period not prior to one year preceding the last date of submission of application form. The said petition also came to

be dismissed by the High Court vide the order dated 06.09.2022, which is also impugned before us in this batch of appeals. Similar writ petitions filed by the other appellants-writ petitioners came to be dismissed by the High Court by passing separate orders relying upon the decisions in case of Jyoti Beniwal and Kuldeep Bhatia.

8. For the better understanding and for the sake of convenience, a comparative statement showing the facts in case of each of the appellants is produced hereunder:

I. <u>OBC-NCL category SLP 5654/2023, SLP 16428/2022, SLP 18296 – 18299/22</u>

S. No.	Name	Marks	Cut off General	Cut off marks OBC-NCL	Date of OBC-NCL Certificates of the Petitioner	Date of OBC-NCL Certificate required as per Respondents
SLP 5654/2023						
1.	Jyoti Beniwal	176	179.5	163.5	22.06.2016 & 25.07.2022	31.08.2018 to 31.08.2021
SLP 16428/2022						
2.	Sakshi Arha	166.5	179.5	163.5	27.07.2016 17.06.2022 & 12.08.2022	“-do- “
SLP 18296-18299/2022						
3.	Priyanka	170	179.5	163.5	23.04.2018 & 20.06.2022	“-do-“
4.	Bhavya Kulhar	165.5	179.5	163.5	19.09.2016 & 16.06.2022	“-do-“
5.	Neha Batar	165	179.5	163.5	28.06.2018 & 21.06.2022	“-do-“
6.	Nikhil Kataria	171.5	179.5	163.5	16.07.2018 & 09.06.2022	“-do-“

II. MBC-NCL category-Sunil Gurjar SLP(C) NO. 19179/22 & Kuldeep Bhatia SLP(C) NO. 21644/22

S. No.	Name of the petitioner	Marks Obtained	Cut off General	Cut off marks MBC-NCL	Date of MBC-NCL Certificates	Date of MBC-NCL Certificate required as per Respondents
SLP(C) NO. 19179/22						
1.	Sunil Singh Gurjar	172	179.5	141	18.06.2018 & 16.06.2022	31.08.2018 to 31.08.2021
SLP(C) NO. 21644/22						
2.	Kuldeep Bhatia	141.5	179.5	141	03.08.2012 & 09.03.2022	"-do-"

III. EWS Category-Parul Jain SLP (C) No. 9544 OF 2023

S. No.	Name of the petitioner	Marks Obtained	Cut off in General Category	Cut off-EWS	Date of EWS Certificates of the Petitioner	Date of EWS Certificate required as per Respondents
1.	Parul Jain	174.5	179.5	167.5	07.09.2021	31.08.2021 (01.04.2021-31.03.2022 valid AY 2021-22)

9. It is pertinent to note that as per Clause-6 read with the important instructions mentioned in the advertisement dated 22.07.2021, the candidates belonging to various reserved categories had to produce legally valid certificates issued by the competent authority. It may be further noted that the Department of Social Justice and Empowerment, Government of Rajasthan keeps on issuing the guidelines and directions

from time to time for the issuance of caste certificates to the SCs, STs, OBCs, MBCs and EWS. The circulars prevalent at the relevant time were the circulars dated 09.09.2015 and 08.08.2019. The relevant paragraph 4 of the Circular dated 09.09.2015 with regard to issuance of caste certificates reads as under:

> **"4. <u>Validity Period of Caste Certificate</u>: -**
>
> 1. The validity of caste certificates issued for SC / ST will be lifetime whereas the certificate for OBC will be issued only once but the fact that the person is not in the creamy layer will be recognised on the basis of a valid affidavit up to three years.
>
> 2. The certificate of non-creamy layer will be valid for one year. Once the certificate of non-creamy layer is obtained, if the applicant is not in the creamy layer in the next year as well, then in such a situation an affidavit (Appendix-D) will be obtained from him, where the earlier issued non-creamy layer certificate shall be deemed valid, this can be done for a maximum period of three years."

10. The relevant part of the Circular dated 08.08.2019 clarifying the aforesaid direction contained in the circular dated 09.09.2015 reads as under:

> **"Government of Rajasthan**
> **Department of Social Justice and Empowerment**
>
> **No. F-11/S.C.S.T.OBC/S.B.C** **Date: 08.08.2019**
>
> …Therefore, it is once again clarified in this regard that the caste certificate of Other Backward Classes shall be valid for one year, however, in a situation where the applicant has been issued a certificate for not falling in the creamy layer category and if such applicant does not fall within the creamy layer in the subsequent year as well, in that situation, previously issued certificate of falling within the non-creamy layer will be treated as valid after obtaining an attested affidavit from the applicant, which can be done maximum for a period of three years."

11. The substance of the above circulars was that the certificate of OBC-NCL issued to a person would be valid for one year, however in the subsequent year also if he continues to remain in the “non-creamy layer” category, the previously issued certificate would be treated valid after obtaining an attested affidavit from such person, and such procedure could be followed for a maximum period of three years.

Submissions:

12. The Learned Counsels appearing for the appellants made following submissions:

(i) The appellants having complied with all requisites in form as well as in substance have been wrongly not considered for the post of Civil Judge and the lesser meritorious candidates in the respective categories have been selected for the said post.

(ii) In absence of any specification with regard to the date of certificates to be produced by the candidates applying under the reserved categories either in the recruitment advertisement dated 22.07.2021 or in the said Rules of 2010, the prescriptions contained in the notice dated

04.08.2022 requiring the candidates to produce the certificates as per Clause 3 thereof tantamount to changing the rules of game in the midst of the recruitment process, which is not permissible in the eye of law.

(iii) The impugned conditions introduced by the respondents in the notice dated 04.08.2022 limiting the chances of the appellants being selected were absolutely unreasonable and arbitrary.

(iv) For availing the benefit of reservation, the appellants were required to produce the relevant certificates, however any rigid principle with regard to the date of certificate as the proof for the purpose of seeking entitlement to claim the benefit of reservation, had no nexus with the last date of submission of application.

(v) Relying upon the decision of this Court in ***Dolly Chhanda Vs. Chairman, JEE & Ors.***[1], it is submitted that there can be some relaxation in the matter of submission of proof of the certificates/documents and it would not be proper to

1 (2005) 9 SCC 779

apply any rigid principle. Every infraction of rule relating to submission of proof need not be necessarily result in rejection of candidature.

(vi) Reliance has been placed in case of *Ram Kumar* ***Gijroya Vs. Delhi Subordinate Services Selection Board & Anr.***[2]**,** to submit that the submission of certificate after the last date mentioned in the advertisement was valid for the selection of the candidate under the reserved category. According to the appellants, the said view was affirmed by Three-Judge Bench in case of ***Karn Singh Yadav Vs. Government of NCT of Delhi & Ors.***[3] **(SLP (C) 14948/2016)**.

(vii) Distinguishing the judgment of ***Ashok Kumar Sonkar Vs. Union of India & Ors.***[4]**,** relied upon by the respondent, it was submitted that the ratio laid down in the said judgment had no relevance to the facts of the present appeals in as much as the said case pertained to the qualification of candidates at the time of selection, whereas in the instant appeals

2 (2016) 4 SCC 754
3 2022 SCC OnLine SC 1341
4 (2007) 4 SCC 54

the issue is with regard to the date of the issuance of certificates which is only procedural matter.

13. The Learned Counsel for the Respondents made the following submissions:

(i) The appellants had failed to reproduce valid certificates as mentioned in the advertisement dated 22.07.2021 and notice dated 04.08.2022.

(ii) The State Government had issued the circulars dated 09.09.2015 and 08.08.2019 in which it was clarified that the OBC certificate shall be issued only once, and the certificate regarding Non-Creamy Layer would also be valid for one year only, however, if the applicant continues to hold the position of “Non-Creamy Layer” in the subsequent year, then the certificate issued in previous year would be treated valid with an affidavit of the candidate. In the instant appeals the appellants claiming to be belonging to OBC-NCL had not produced the requisite valid certificates nor the affidavit in that regard.

(iii) As held in *Ashok Kumar Sonkar* (supra), the last date for filing application is required to be treated as

the cut-off date in absence of any date specified in this behalf either in the advertisement or in the rules.

(iv) Relying upon ***Rakesh Kumar Sharma Vs. State (NCT of Delhi) & Ors.***[5]**,** it has been submitted that the eligibility criteria/conditions should be examined as on the last date of the receipt of the application. The appellants having acquired the requisite certificates after the cut-off date of last date of submission of applications, they were rightly not considered for selection for the post in question.

(v) The reservation under the category of OBC-NCL and EWS is on the basis of the current economic status of the candidates, whereas the caste status of person i.e., a candidate being SC, ST or OBC would be dependent on the birth of the person which factor remains static. Hence, considering the dynamic state of the category of OBC-NCL and EWS, the Government had issued the circulars dated 08.08.2009 and 09.09.2015 for issuing the requisite certificates by the competent authority, and

5 (2013) 11 SCC 58

the appellants accordingly had to produce the valid certificates issued by such competent authorities as per the said circulars, which the appellants had failed to produce in the instant cases.

Analysis and Reasoning:

14. At the outset, it deserves to be noted that the certificates to the persons belonging to the reserved categories like SC/ST/OBC-NCL/MBC-NCL/EWS are being issued by the competent authorities of the respective State Governments keeping in view the provisions contained in the Constitution of India and the guidelines/principles laid down by this Court from time to time. The status of a person whether he belongs to SC or ST category depends on the caste which he belongs to by birth, and such status would remain unchanged and would be static, however, the status of a person whether he belongs to OBC-NCL/MBC-NCL/EWS would depend upon his/her social and economic status, and such status would keep on changing depending on his/her income and therefore would be dynamic. It is very well settled position of law that the persons belonging to the Scheduled Castes and Scheduled Tribes were and are treated as a separate category, and the principle of “creamy layer” does not apply to the said categories. It applies only to

the persons belonging to the socially and the economically backward classes. Ergo, the date of issuance of certificate to the persons belonging to OBC-NCL/MBC-NCL/EWS categories assumes significance for the purpose of ascertaining as to whether the candidate claiming to belong to a particular reserved category on the date when he/she applied for the post in question under such category, in fact belonged to the said category on the date on which such application was made or on the date prescribed in the advertisement.

15. In this regard, before adverting to the submissions made by the learned counsels for the parties, let us peep into the brief history of reservations, more particularly for the category of "Other Backward Classes" and "Economically Weaker Sections", with which I am concerned. The most landmark decision on the issue of reservations for the "Other Backward Class" category is the Nine-Judge Bench decision in case of ***Indra Sawhney & Ors. Vs. Union of India & Ors.***[6]**,** in which it was noticed that amongst the backward class, there is a section of the backward class which belong to the affluent section of society and they do not deserve any sort of reservation for further progress in life. In the majority judgment opined by B.P.

6 1992 Supp (3) 217

Jeevan Reddy, J., it was observed while discussing the issue under the head “Means test” and “creamy layer”, that “Means test’ signifies imposition of an income limit, for the purpose of excluding persons from the backward class whose income is above the said limit, (also referred as the persons belonging to creamy layer). It was further opined that the exclusion of “creamy layer” must be on the basis of social advancement and not on the basis of mere economic criteria. At the same time, income to the extent of property held by person can be taken as a measure of social advancement and on that basis “creamy layer” of all given caste/community/occupational group can be excluded to arrive at a true backward class. It was further opined that it is not impermissible for the State to categorize backward classes into backward and more backward on the basis of their relative social backwardness. It was finally concluded while answering various questions dealt with by the majority *inter alia* that (i) ‘creamy layer’ can be, and must be excluded; (ii) it is not necessary for class to be designated as a backward class that it is situated similarly to the Scheduled Castes/Scheduled Tribes; (iii) a backward class of citizens cannot be identified only and exclusively with reference to economic criteria. It is of course permissible for the Government

or other authority to identify backward class of citizen on the basis of occupation-cum-income, without reference to caste, if it is so advised; (iv) there is no Constitutional bar to classify backward classes of citizens into backward or more backward categories; (v) the Government of India and the State Governments have the power to, and ought to, create a permanent mechanism in the nature of commission etc.

16. In another significant decision in case of ***M. Nagaraj & Ors. Vs. Union of India & Ors.***[7], the Constitution Bench while propounding the concepts of "formal equality" and "proportional equality", as the basis of distribution of benefits and burdens, referred the concept of "creamy layer" evolved in case of *Indra Sawhney* (supra), and opined as under:

> **"120.** At this stage, one aspect needs to be mentioned. Social justice is concerned with the distribution of benefits and burdens. The basis of distribution is the area of conflict between rights, needs and means. These three criteria can be put under two concepts of equality, namely, "formal equality" and "proportional equality". Formal equality means that law treats everyone equal. Concept of egalitarian equality is the concept of proportional equality and it expects the States to take affirmative action in favour of disadvantaged sections of society within the framework of democratic polity. In *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] all the Judges except Pandian, J. held that the "means test" should be adopted to exclude the creamy layer from the protected group earmarked for reservation. In *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] this Court has, therefore, accepted caste as a determinant of backwardness and yet it has struck a balance with the principle of secularism

7 (2006) 8 SCC 212

which is the basic feature of the Constitution by bringing in the concept of creamy layer……..”

17. In another significant decision of the Constitution Bench in case of ***Ashoka Kumar Thakur Vs. Union of India & Ors***.[8], it was opined, again referring to the principle of “creamy layer” introduced in *Indra Sawhney* (supra) that: -

> **“168.** As noticed earlier, determination of backward class cannot be exclusively based on caste. Poverty, social backwardness, economic backwardness, all are criteria for determination of backwardness. It has been noticed in *Indra Sawhney case* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] that among the backward class, a section of the backward class is a member of the affluent section of society. They do not deserve any sort of reservation for further progress in life. They are socially and educationally advanced enough to compete for the general seats along with other candidates.
>
> **169……**
>
> **170.** It is to be understood that “creamy layer” principle is introduced merely to exclude a section of a particular caste on the ground that they are economically advanced or educationally forward. They are excluded because unless this segment of caste is excluded from that caste group, there cannot be proper identification of the backward class. If the “creamy layer” principle is not applied, it could easily be said that all the castes that have been included among the socially and educationally backward classes have been included exclusively on the basis of caste. Identification of SEBC for the purpose of either Articles 15(4), 15(5) or 16(4) solely on the basis of caste is expressly prohibited by various decisions of this Court and it is also against Article 15(1) and Article 16(1) of the Constitution. To fulfil the conditions and to find out truly what is socially and educationally backward class, the exclusion of “creamy layer” is essential.
>
> **171-185…….**
>
> - It was further held:
>
> **186.** Moreover, right from the beginning, the Scheduled Castes and Scheduled Tribes were treated as a separate category and nobody ever disputed identification of such classes. So long as “creamy layer” is not applied as one of

8 (2008) 6 SCC 1

> the principles of equality, it cannot be applied to the Scheduled Castes and Scheduled Tribes. So far, it is applied only to identify the socially and educationally backward classes. We make it clear that for the purpose of reservation, the principles of "creamy layer" are not applicable for Scheduled Castes and Scheduled Tribes."

18. So far as Economically Weaker Section category is concerned, the Parliament by 103rd amendment had inserted Clause (6) in Article 15 and Clause (6) in Article 16 of the Constitution of India. In the statement of objects and reasons of the said Amendment, it was stated that the Economically weaker sections of the citizens were not eligible for the benefit of reservation, and with a view to fulfil the mandate of Article 46 and to ensure that economically weaker sections of the citizens get a fair chance of receiving higher education and participation in the employment in the services of the State, it was decided to amend the Constitution of India. The Constitutional validity of the said 103rd amendment was challenged before this Court in case of ***Janhit Abhiyan Vs. Union of India***[9] and by 3:2 the validity of the said amendment was upheld, vide the judgment dated 07.11.2022.

19. The reason for quoting the aforesaid judgments is only to demonstrate that the status of the candidates claiming reservation under the category SCs and STs would be static,

9 W.P. (C) 55/2019

whereas the status of the candidates claiming reservation under the category OBC-NCL, MBC-NCL and EWS would be fluid, dynamic and not static. Under the circumstances, the State Governments are issuing the guidelines from time to time laying down the eligibility criteria for deciding the economic status of a person and the methodology or procedure to be followed for issuing the certificates to the persons belonging to the OBC-NCL/EWS categories.

20. In the instant case, the State of Rajasthan had issued the Circular dated 09.09.2015 with regard to the validity period of caste certificate, in which it was stated *inter alia* that the validity of caste certificates issued for SC/ST will be lifetime whereas the certificate for OBC will be issued only once, and that the certificate of non-creamy layer will be valid for one year. However, once the certificate of “non-creamy layer” is issued, and if the applicant remains in the category of non-creamy layer in the subsequent year also, then in such a situation an affidavit in the prescribed form will be furnished by him, in which case the earlier issued “non-creamy layer” certificate shall be deemed valid, and such procedure could be followed for a maximum period of three years. The said Circular 09.09.2015 was further clarified vide Circular dated 08.08.2019 in which it

was stated that the caste certificate of other backward classes shall be valid for one year, however in a situation where the applicant has been issued a certificate of “not falling in the creamy layer” category, and if such applicant does not fall within “creamy layer” in the subsequent year as well, in that situation, previously issued certificate of falling within the “non-creamy layer” will be treated as valid on his furnishing an attested affidavit, which could be followed for maximum period of three years.

21. So far as the facts of the present case are concerned, as stated in the Clause 6 of the advertisement dated 22.07.2021, the candidates claiming reservation under the categories of SC/ST/OBC-NCL/MBC-NCL/EWS had to furnish valid certificates duly issued by the competent authority as per the rules in the prescribed format. It was also stated in the important instructions of the advertisement that the category filled in the application will not be changed under any circumstances, and that the candidates will be required to produce all the original documents/certificates on the basis of which they made claim of reservation, if required by the Rajasthan High Court or the concerned appointing authority.

22. Having regard to the said instructions contained in the said advertisement dated 22.07.2021, there remains no shadow of doubt that if a candidate had applied under any of the reserved categories, he or she was expected to have a valid certificate issued by the competent authority as per rules in the prescribed format, to show his or her eligibility to apply under such category. The time limit for making such application as stated in Clause 17 of the said advertisement was upto 5 PM on 31.08.2021. Under the circumstances, the candidate was expected to have the requisite certificate to show that he or she belonged to the concerned reserved category, on the date of making application or on the last date fixed for the submission of applications i.e. 31.08.2021. Such certificate to be produced by the concerned candidate had to be a valid certificate issued by the competent authority in consonance with the circulars issued by the State Government dated 09.09.2015 and as clarified in the Circular dated 08.08.2019, which governed the issue with regard to the validity of such certificates.

23. Admittedly, all the appellants had the certificates issued after the last date fixed for the submission of their applications i.e., 31.08.2021. So far as OBC-NCL category was concerned the appellant Jyoti Beniwal had furnished the OBC-NCL certificate

dated 25.07.2022, appellant Sakshi Arha had the certificate dated 12.08.2022, appellant Priyanka had the certificate dated 20.06.2022, appellant Bhavya Kulhar had the certificate dated 16.06.2022, appellant Neha Batar had the certificate dated 21.06.2022 and appellant Nikhil Kataria had the certificate dated 09.06.2022. So far as MBC-NCL is concerned, the appellant Sunil Singh Gurjar had the certificate dated 16.06.2022 and appellant Kuldeep Bhatia had the certificate dated 09.03.2022. So far as EWS category is concerned, the appellant Parul Jain had the certificate dated 07.09.2021. Thus, all the appellants had produced their respective certificates which were obtained by them after the last date fixed for the submission of the application i.e., 31.08.2021, and had also not produced the documents/affidavits in support thereof, in compliance with the circulars dated 09.09.2015 and 08.08.2019. Therefore, the certificates produced by the appellants at the time of interview could not said to be valid certificates as mandated in the advertisement dated 22.07.2021 by the respondents.

24. It was sought to be submitted by learned counsel for the appellants that there was no specific date mentioned in the advertisement dated 22.07.2021 as to the validity period of the

certificates to be furnished by the appellants, and subsequent notice dated 04.08.2022 directing the appellants to produce the certificates as mentioned therein was highly unreasonable, and tantamount to changing the rules of game after the process of selection had started. The Court does not find any substance in the said argument. As stated earlier, there were specific instructions given in the advertisement that the candidates applying under the reserved categories had to submit the valid certificates issued by the competent authority, and therefore such certificates had to be in consonance with the circulars of the State Government dated 09.09.2015 and 08.08.2019 which governed the validity period of such certificates. The subsequent notice dated 04.08.2022 given by the respondent-High Court requiring the candidates belonging to OBC/MBC(NCL) to produce the certificates issued not prior to one year from the last date fixed for the submission of application form i.e., 31.08.2021, was absolutely in consonance with the said circulars issued by the State Government. It was also mentioned in the said notice dated 04.08.2022 that in case the OBC/MBC(NCL) certificate was issued between 31.08.2018 and 30.08.2020, an affidavit in prescribed format along with the caste certificate had to be produced. For the EWS category, it

was stated that the Income and Asset certificate required for seeking reservation in EWS category must not have been issued prior to 01.04.2021 and in case the Income and Asset certificate was issued between 01.04.2019 and 31.03.2021, then an affidavit in the prescribed format along with the certificate had to be produced. It was specifically mentioned therein that SC/ST/OBC/MBC/EWS certificate, as the case may be, must not have been issued after the last date of submission of the application form i.e., 31.08.2021. Such instructions requiring the reserved category candidates to produce the requisite certificates could neither be said to be unreasonable nor could be construed as changing the rules of game after selection process was started, they being in consonance with the important instructions given in the advertisement dated 22.07.2021, and in consonance with the circulars issued by the State Government with regard to the validity period of caste certificates.

25. It is needless to say that when a candidate applies under a particular reserved category, he or she is required to have the certificate of that particular category on the date on which he or she makes the application to show his or her eligibility to apply under the said category. If such certificates are obtained

subsequent to date of their application or subsequent to the last date of submission of the applications mentioned in the advertisement, such certificates could not be said to be valid certificates, more particularly in cases where the candidate applies under OBC-NCL or EWS, which category is highly dynamic and not static, as the economic status of the candidate would keep on changing depending on the income of the candidate.

26. The submission made by the learned counsel for the appellants that in absence of a fixed date specified in the advertisement and in absence of any provision in the Rules, the certificates produced on the date of interview should be treated as valid, cannot be accepted. Though, reliance was sought to be placed by the learned counsel for the appellants on *Dolly Chhanda v. Chairman, JEE and Others (*supra*), Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and Another (*supra) and *Karn Singh Yadav vs. Govt. Of NCT Of Delhi & Ors.* (SLP (C) No. 14948 of 2016) they are hardly of any help to the appellants. In Dolly Chhanda *(supra),* this Court while observing that every infraction of rule relating to submission of proof need not necessarily result in rejection of candidature, had emphasized that:

> "**7.** The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in the application form as the case may be, unless there is an expressed provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail the benefit of reservation or weightage etc. necessary certificates have to be produced. These are the documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation.."

27. In *Ram Kumar Gijroya* (Supra), the two Judge Bench of this Court had found the candidate eligible for selection to the concerned post under the OBC category, though the certificate in that regard was submitted after the last date mentioned in the advertisement, however another two judge Bench of this Court in Karn Singh Yadav (supra) had expressed reservation in that regard, and had referred the matter to the Three-Judge Bench vide the order dated 24.01.2020. The Three-Judge Bench in the said case of *Karn Singh Yadav* (supra) however relying upon *Ram Kumar Gijroya* (supra) disposed of the appeal vide the order dated 28.09.2022, without noticing the reference made by the two Judge Bench in the said case. Be that as it may, in none of these two cases, was there an issue whether the candidate could have produced the requisite certificate showing his reserved category, issued after the last date fixed for the

submission of the applications mentioned in the advertisement, as has been done in the instant appeals.

28. Further, none of the appellants had raised any such contention in their writ petitions that they had applied on time and the delay in issuing certificates was on the part of the competent authorities. Admittedly, no such affidavits as contemplated in the circulars dated 09.09.2015 and 08.08.2019 were filed by the appellants either before the competent authority issuing the certificates or before the respective High Court at the time of interview, though indicated in the notice dated 04.08.2022.

Conclusion:

29. It is no more *res integra* that in absence of a fixed date indicated in the advertisement inviting applications, with reference to which the requisite eligibility is to be judged, and when the rules are silent, the only certain date for the scrutiny of the eligibility of a candidate would be the last date for making the applications. It cannot be gain said that the date of interview or selection would always be uncertain and the uncertainty of the date may lead to an anomalous situation in as much as even those candidates who were not eligible to apply under the reserved category on the date of making application, may apply

under the reserved category and subsequently obtain the certificate by the time the interviews are held. In such circumstance, the possibility of playing mischief also cannot be ruled out. In the instant case, the last date for the submission of applications was 31.08.2021 and the interviews were fixed in August 2022. So, there was a gap of one full year between the last date for submission of the applications and the date of interview, during which period the economic status and resultant status of "creamy layer/non-creamy layer/EWS" of the candidates might have also changed. Therefore, the exposition of law settled by this Court is that in absence of a fixed date indicated in the advertisement, and when the rules are also silent, the last date fixed for submitting the applications would be the date for the scrutiny of the eligibility of the candidates.

30. A Three-Judge Bench of this Court in ***Dr. M.V. Nair Vs. Union of India & Ors***.[10], had held *inter alia* that the qualification and eligibility have to be considered with reference to the last date for receiving the applications, unless the notification calling for applications itself specifies a date.

31. In ***Rekha Chaturvedi v. University of Rajasthan and Others***[11], this Court held as under: -

10 (1993) 2 SCC 429
11 1993 Supp (3) SCC 168

> **"10.** The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad* v. *B. Sarat Chandra* [(1990) 2 SCC 669 : 1990 SCC (L&S) 377 : (1990) 4 SLR 235 : (1990) 13 ATC 708] and *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society*, *Vizianagaram* v. *M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 4 SLR 237 : (1990) 14 ATC 766] ."

32. A Three-Judge Bench of this Court *in* ***Ashok Kumar Sharma & Ors. Vs. Chander Shekhar & Anr.***[12]**,** observed as under: -

> **"6.** The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone,

12 (1997) 4 SCC 18

> is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis."

33. It is also pertinent to note that if the appellants were allowed to produce the certificates issued after the last date fixed for the submission of applications mentioned in the advertisement i.e. 31.08.2021, the other candidates similarly situated as the appellants might raise a grievance for not giving them such opportunity. The appellants who are the defaulters could not be given preferential treatment by accepting the certificates produced by them as valid, though the same were obtained by them after the last date for the submission of applications fixed in the advertisement. The said certificates were also not supported by the requisite affidavits as per the Government circulars dated 09.09.2015 and 08.08.2019.

34. In view of the afore-stated factual and legal aspects of the matter, I do not find any error having been committed by the High Court while passing the impugned judgments and orders.

In that view of the matter, the appeals being devoid of merits are dismissed.

….....J.
[BELA M. TRIVEDI]

NEW DELHI;
18.05.2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.16428 of 2022)

SAKSHI ARHA ....APPELLANT(S)

VERSUS

THE RAJASTHAN HIGH COURT
& OTHERS ....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.18296-18299 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.21644 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.19179 of 2022)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No. 9544 of 2023)

CIVIL APPEAL NO(S). OF 2023
(Arising out of SLP(C) No.5654 of 2023)

O R D E R

In view of the split view expressed by us in the instant appeals, let the matter be placed before Hon'ble The Chief Justice of India to place the matter before an appropriate Bench. We hope that looking to the urgency of the matter, hearing of the appeals may be expedited.

.....J.
[AJAY RASTOGI]

.....J.
[BELA M. TRIVEDI]

New Delhi;
MAY 18, 2023.