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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.42 of 2022

Order reserved on: 24-1-2022

Order delivered on: 1-2-2022

1. Smt. Priya Agrawal,

2. Sangram Singh,

3. Pramod Kumar Verma,

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Directorate of Food, Civil Supplies & Consumer Protection Department, Block 2, Third Floor, Indravati Bhawan, Atal Nagar, Nava Raipur, District Raipur (C.G.)

2. Registrar, Chhattisgarh State Consumer Commission, New Bus Stand, Pandari, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner No.1: Mr. T.K. Jha, Advocate.
For Petitioners No.2 and 3: -
Mr. S.P. Kale, Advocate.
For Respondents/State: Mr. Amrito Das, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order
(Through Video Conferencing)

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners herein have called in question legality, validity and correctness of the advertisement issued by respondent No.1 inviting applications for the vacant posts of President, District Commission for the districts of Raigarh, Surguja (Ambikapur), Koriya (Baikunthpur), Kabirdham (Kawardha), Dhamtari

and Rajnandgaon, total six posts, and selection process conducted therein for the said posts, principally on the ground that rejection of their candidature for the said posts holding them to be over-aged, is contrary to Rule 4 of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (for short, 'the Rules of 2020') and is liable to be quashed, and also on the ground that the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (for short, 'the Act of 1994') has not been followed and privilege of reservation has not been extended to petitioner No.3 being OBC candidate, therefore, it is liable to be quashed. The aforesaid challenge has been made on the following backdrop: -

2. It is the case of petitioner No.1 that she is basically an Advocate and had 12 years experience as Advocate and she was earlier posted as Member of Raipur District Commission and having experience of 8 years as Member of the Raipur District Commission and presently also working as Member of District Commission, Raipur and applied for the post of President of District Commission, Dhamtari. It is the case of petitioner No.2 that he is having experience of 20 years as an Advocate and is presently working as Member of Raipur District Commission and he has applied for the post of President, District Commission, Rajnandgaon. It is the case of petitioner No.3 that he is an Advocate of 12 years experience and earlier, he held the post of Member of District Commission from 11-8-2010 to 11-8-2015 and from 1-2-2016 to 8-6-2020 and presently, he is posted as Member of State Commission since 10-6-2020, and being an OBC candidate, he is also

entitled for the privilege of reservation and the benefit of age relaxation on appointment for the post of President, District Commission and applied for the post of President, District Commission, Raigarh.

3. The Rules of 2020 have been promulgated by the Central Government in exercise of its rule making power conferred under Sections 29 and 43 of the Consumer Protection Act, 2019 by which qualifications for appointment of President and Member of District Commission have been prescribed and it has clearly been provided that a person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge. Qualification for the post of District Judge has been prescribed under clause (2) of Article 233 of the Constitution of India wherein it has been prescribed that a person not already appointed in the Union or the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

4. It is the further case of the petitioners that interview has been fixed for 8-1-2022, but they have not been called for interview and even they have not been informed about the rejection of their applications which is ex facie illegal and bad in law as they are eligible and qualified to be District Judge by virtue of Rule 4(1) of the Rules of 2020 read with Article 233(2) of the Constitution of India and further more, petitioner No.3 is entitled for the benefit of reservation and age relaxation by virtue of the Act of 1994, as such, the entire recruitment process is liable to be quashed.

5. Return has been filed by the respondents stating inter alia that the State Government is required to establish a District Consumer

Disputes Redressal Commission to be known as the District Commission in each district under Section 28(1) of the Consumer Protection Act, 2019 (for short 'the Act of 2019') which has to be fulfilled in accordance with the rules framed by the Central Government under Section 29 of the Act of 2019 and for which rules have been framed by the Central Government which are the Rules of 2020 in which it has clearly been provided in Rule 4(1) that a person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge. Appointment of District Judge has been provided under Article 233(2) of the Constitution of India which clearly provides that a person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has seven years practice as an advocate or a pleader. It has further been pleaded that in furtherance of the prescription provided under Article 233 of the Constitution of India, the State Government has framed the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the Rules of 2006') which provide for qualification for appointment as District Judge by way of direct recruitment. Rule 7 of the Rules of 2006 provides for qualification for direct recruitment under clause (c) of sub-rule (1) of Rule 5 which provides that no person shall be eligible for appointment by direct recruitment unless, he or she *(a)* is a citizen of India; *(b)* has attained the age of 35 years and has not attained the age of 45 years on the first day of January in the year in which applications for appointment are invited, and it provides age relaxation of 3 years for the candidates belonging to SC, ST and OBC; *(c)* has for at least seven years been an advocate on the first day of January of the year in which applications for appointment are invited.

It has further been pleaded in paragraph 12 of the return that by virtue of Rule 7 of the Rules of 2006, upper age limit for the candidates under Rule 4(1) of the Rules of 2020 {qualified to be District Judge} 45 years of age has been prescribed. In paragraph 13 of the return, it has categorically been stated that petitioner No.1 had already completed more than 53 years of age, petitioner No.2 had completed more than 50 years of age and petitioner No.3 had completed more than 47 years of age, therefore, all the petitioners were beyond the eligible age limit of 45 years and were therefore absolutely ineligible and as such, their candidature has rightly been rejected for the reason that they were age barred.

6. It has further been pleaded by the respondents that since a single post of President of the District Commission in each of the above-stated districts is available, therefore, no rule of reservation can be applied for appointment to the said post in terms of the Act of 1994 and as such, since appointment to the post of President of the District Commission is to be made in each district, which is only singular in number, the Act of 1994 providing reservation is not applicable. Even otherwise, the President appointed in one District Commission is not transferable to another District Commission and the President, who is appointed in a District Commission is appointed only for the said District Commission and as such, the post is not interchangeable as amongst the Presidents who are appointed in various District Commissions. It has also been brought on record the judgments of the Supreme Court in which it has been held that as single post cadre shall never attract the rules of reservation, since otherwise it would amount to a 100% reservation to the single post to the exclusion of other general members of the public. It has finally been pleaded that

the petitioners are over-aged having crossed the age of 45 years on the date of application on the basis of record as per the Rule 7 of the Rules of 2006 and single post of President of the District Commission is not covered by the rule of reservation, therefore, the writ petition is liable to be dismissed.

7. Rejoinder has been filed by petitioner No.1 separately stating inter alia that the advertisement Annexure P-1 issued for recruitment on the post of President, District Commission is contrary to sub-rule (1) of Rule 4 of the Rules of 2020. It has further been pleaded that since petitioner No.1 has 12 years experience as an Advocate, she is qualified to be District Judge under Rule 4(1) of the Rules of 2020 and therefore in the light of the decision of the Supreme Court, since she is qualified to be a District Judge in terms of Article 233(2) of the Constitution of India, she is well qualified for the post of President, District Commission and her candidature has wrongly and illegally been rejected, as such, the writ petition deserves to be allowed and the selection procedure deserves to be quashed.

8. Rejoinder has also been filed on behalf of petitioner No.3 stating inter alia that by virtue of Section 32 of the Act of 2019 if, at any time, there is a vacancy in the office of the President or member of a District Commission, the State Government may, by notification, direct any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also or the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also. It has also been submitted that this would show that the post is not a single post cadre and is transferable. Condition No.8 of the advertisement also provides that

candidates shall be considered for any district other than the district for which they have applied for. Therefore, the advertisement is liable to be quashed. It has also been pleaded that petitioner No.3 fulfills the requisite qualification for appointment to the post of President, District Commission and Rule 7 of the Rules of 2006 provides for age relaxation and Rule 6 provides for reservation. As such, non-compliance with the reservation roster in respect of age relaxation as provided in the rules of 2006 is illegal and the advertisement Annexure P-1 is liable to be quashed.

9. Mr. T.K. Jha, learned counsel appearing for petitioner No.1, would submit that petitioner No.1 is an Advocate and she has eight years of experience as Member of Raipur District Commission, she has completed more than 7 years as Advocate, thus, she is eligible and qualified to be appointed as District Judge and is well qualified for the post of President, District Commission in terms of Rule 4(1) of the Rules of 2020 read with Article 233(2) of the Constitution of India. Therefore, petitioner No.1 cannot be declared ineligible on the ground that she is more than 45 years of age, applying the Rules of 2006, which is not applicable, as the Rules of 2020 have been adopted by the Government of Chhattisgarh and the rules framed over and above the Rules of 2020 which have been issued by the State Government and as such, Annexure R-4 is not applicable and the Rules of 2006 are not applicable. He would rely upon the decision of the Supreme Court in the matter of **State of Uttaranchal v. Balwant Singh Chaufal and others**[1] and submits that the entire recruitment process deserves to be quashed.

1 (2010) 3 SCC 402

10. Mr. S.P. Kale, learned counsel appearing for petitioners No.2 & 3, would submit that the impugned recruitment on the post of President, District Commission, would be covered by the provisions of the Act of 1994 and the rules of reservation would apply and petitioner No.3 being member of OBC is entitled for age relaxation as well as for the post of President, District Commission and as such, the post of President, District Commission be also reserved for OBC as provided in the Act of 1994. Even otherwise, by virtue of Section 32 of the Act of 2019, President of District Commission is interchangeable / transferable and therefore all six posts will be taken as one unit and the rules of reservation would apply by virtue of the Act of 1994. He would further submit that declaring both the petitioners as ineligible is ex facie arbitrary and illegal, as such, the entire recruitment process deserves to be quashed.

11. Mr. Amrito Das, learned Additional Advocate General appearing for the State / respondents, would submit as under: -

    1. By virtue of Section 28 of the Act of 2019, in each of the districts for which the subject advertisement has been issued, single post of President, District Commission is available to be filled up and therefore for single post of President, District Commission, the rule of reservation by virtue of the Act of 1994 would not be applicable and the post of President of District Commission is not covered by Section 3 of the Act of 1994. Reliance has been placed upon the decisions of the Supreme Court in the matters of **Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and others**[2], **State of Karnataka and others v. K. Govindappa and another**[3] and **R.R.**

2 (1998) 4 SCC 1
3 (2009) 1 SCC 1

Inamdar v. State of Karnataka and others[4] to buttress the submission so made.

2. By virtue of Article 233 of the Constitution of India read with Rule 7 of the Rules of 2006, upper age limit for the post of President, District Commission would be 45 years and since all the petitioners had already crossed the permissible age limit of 45 years, they are fully ineligible and have rightly been rejected for the reason that they were over-aged and age barred.

3. All the three petitioners, on their own showing, are not qualified to be District Judge in terms of Rule 4(1) of the Rules of 2020 read with Article 233(2) of the Constitution of India, as presently they are not in practice as an Advocate for last seven years on the cut-off date i.e. 15-7-2021 and presently, petitioners No.1 & 2 are working as Members of District Commission and petitioner No.3 is working as Member of the State Commission, therefore, their applications have rightly been rejected.

12. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

13. After hearing learned counsel for the parties and after going through the record, following questions would arise for decision making: -

    1. Whether the rule of reservation as provided in the Act of 1994 would apply to appointment on the post of President of the District Commission under Section 28 of the Act of 2019 read with the Rules of 2020?

4 AIR OnLine 2019 SC 1955 : 2019 (17) SCALE 424

2.1) Whether the respondents are justified in declaring the petitioners as ineligible for the post of President, District Commission holding them as over-aged?

2.2) Whether the respondents are justified in holding the petitioners as ineligible on the ground that they have not completed seven years of practice as an advocate or a pleader, as required under clause (2) of Article 233 of the Constitution of India read with Rule 4(2) of the Rules of 2020 on 15-7-2021 on the date of advertisement?

Answer to question No.1: -

14. It is the case of the petitioners that the Act of 1994 which has been enacted to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, would be applicable and therefore petitioner No.3 being a member of Other Backward Classes (OBC) would be entitled for reservation in OBC category, particularly, he would also be entitled for age relaxation as provided in the Rules of 2006. However, it is the case of the respondents that the rule of reservation as provided in the Act of 1994 would not be applicable since the post of President, District Commission is a single post in every District Commission and therefore no reservation can be applied for appointment to the said post in terms of the Act of 1994 as for applying the rule of reservation, plurality of posts in a cadre is prerequisite and the post of President in one district constituted under Section 28 of the Act of 2019 and appointed on that post is not a transferable post to the other district under the Act of 2019 except to look-after the duties of President of District Commission of other district in case of casual vacancy by

virtue of Section 32 of the Act of 2019 and therefore the post being not interchangeable as amongst the President who were appointed in various District Commissions, the rule of reservation as contemplated under the Act of 1994 cannot be applied.

15. In order to answer the plea raised at the Bar, it would be appropriate to notice Section 28 of the Act of 2019, which states as under: -

> **"Establishment of District Consumer Disputes Redressal Commission**
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> 28. (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:
>
> Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.
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> (2) Each District Commission shall consist of—
>
> (a) a President; and
>
> (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government."

16. A careful perusal of the aforesaid provision would show that the State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State and the proviso appended to sub-section (1) of Section 28 of the Act of 2019 states that the State Government may, if it deems fit, establish more than one District Commission in a district. By virtue of sub-section (2) of Section 28, each District Commission shall consist of a President; and not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

17. Presently, vide Annexure P-1, vacant posts of President, District Commission for the districts of Raigarh, Surguja (Ambikapur), Koriya (Baikunthpur), Kabirdham (Kawardha), Dhamtari and Rajnandgaon, total only six posts, have been notified and at present, the aforesaid districts have only one post of President, District Commission. Therefore, the proviso appended to sub-section (1) of Section 28 of the Act of 2019 would not be applicable, as it is not the case of the parties that in any of the above-stated districts more than one District Commission has been established by the State Government. In that view of the matter, the question would be, whether the rule of reservation as contemplated in the Act of 1994, would be applicable in the single post of President of District Commission in a district under Section 28 of the Act of 2019?

18. The Act of 1994 has been enacted to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto. Section 3 of the Act of 1994, which deals with application of the Act, provides that this Act shall apply to the establishment as defined in this Act but shall not apply to any employments under the Government of India; posts to be filled by transfer or by deputation; and appointments made to the Chhattisgarh Higher Judicial Service. Section 2 of the Act of 1994 is Definitions clause. Clause (b) of Section 2 defines, “Establishment” means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a company, corporation or a co-operative society in which not less than fifty-one percent of the paid up share

capital is held by the State Government or the institutions receiving grant-in-aid or any cash grant from the State Government and includes a work charge or contingency paid establishments and such establishments in which casual appointments are made but does not include the establishments covered under Article 30 of the Constitution. It is the case of the State / respondents that the post of President of District Commission is not covered by the definition of clause 2(b) of the Act of 1994 and therefore the Act of 1994 would not be applicable and it is the further submission on behalf of the State / respondents that even though it is held to be applicable, the President of District Commission in a district is a single isolated post, therefore, the rule of reservation would not be applicable.

19. In order to decide the question, a reference may be made to the Constitution Bench decision of the Supreme Court in **Post Graduate Institute of Medical Education & Research** (supra) in which their Lordships of the Supreme Court have considered the issue whether in a single cadre post, reservation for SCs, STs and OBCs, can be applied either directly or through the roster in which vacancies are rotated amongst general category and reserved category candidates. Answering the issue their Lordships held that in such a situation, the rule of reservation cannot be applied because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented, and observed as under: -

> "34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of

the public. Such total exclusion of general members of the public and cent percent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bound to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society.

36. Mr. Kapil Sibal has contended that in some higher echelon of service in educational and technical institution where special expertise is necessary to hold superior posts like Professors and Readers, there should not be reservation even if there is plurality of posts in such cadre as indicated in the majority view in *Indra Sawhney case*[5]. It is, however, not necessary for us to decide the said contention for the purpose of disposal of these matters, where the question of reservation in single cadre post calls for decision.

37. We, therefore, approve the view taken in *Chakradhar case*[6] that there cannot be any reservation in a single post cadre and we do not approve the reasonings in *Madhav case*[7], *Brij Lal Thakur case*[8] and *Bageshwari Prasad case*[9] upholding reservation in a single post cadre either directly or by device of rotation of roster point. Accordingly, the impugned decision in the case of *Post Graduate Institute of Medical Education & Research*[10] cannot also be sustained. The review petition made in Civil Appeal No. 3175 of 1997 in the case of Post Graduate Institute of Medical Education

5 Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217
6 Chakradhar Paswan (Dr.) v. State of Bihar, (1988) 2 SCC 214
7 Union of India v. Madhav, (1997) 2 SCC 332
8 Union of India v. Brij Lal Thakur, (1997) 4 SCC 278
9 State of Bihar v. Bageshwari Prasad, 1995 Supp (1) SCC 432
10 Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan, (1997) 6 SCC 283

& Research, Chandigarh, is therefore allowed and the judgment dated 2-5-1997 passed in Civil Appeal No. 3175 of 1997 is set aside."

20. The principle of law laid down in **Post Graduate Institute of Medical Education & Research** (supra) has been applied and followed by the Supreme Court in the matter of **State of U.P. and others v. M.C. Chattopadhyaya and others**[11] in which it has been held by their Lordships that there can be a reservation in respect of post of Professor and the provisions of the Reservation Act would apply, but there cannot be a reservation for an isolated post.

21. In **K. Govindappa's** case (supra), following the principle of law laid down by the Supreme Court in **Post Graduate Institute of Medical Education & Research** (supra), it has been held that plurality of posts is necessary for applying the rule of reservation, and observed as under: -

"22. While there can be no difference of opinion that the expressions "cadre", "post" and "service" cannot be equated with each other, at the same time the submission that single and isolated posts in respect of different disciplines cannot exist as a separate cadre cannot be accepted. In order to apply the rule of reservation within a cadre, there has to be plurality of posts. Since there is no scope of interchangeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. In the absence of duality of posts, if the rule of reservation is to be applied, it will offend the constitutional bar against 100% reservation as envisaged in Article 16(1) of the Constitution.

24. In our view, the present case falls within the category of single isolated posts within a cadre in respect whereof the rule of reservation is inapplicable and the said principle has been correctly applied by the High Court in the facts of this case. As indicated by the High Court, each discipline which consisted of a single post will have to be dealt with

11 (2004) 12 SCC 333

as a separate cadre for the said discipline and in view of the settled law that there can be no reservation in respect of a single post, the appointment of Respondent 1 cannot be faulted. This is particularly so having regard to the fact that the several disciplines are confined to one college alone. That is what distinguishes the facts of this case from those of *Arati Ray Choudhury case*[12] in which the rule of rotation could be applied on account of the fact that two posts of headmistress were available in two colleges run by the same management. Moreover, in *Chakradhar Paswan (Dr.) case*[6] on which reliance was placed by the High Court it was noticed that while upholding the rule of rotation the Constitution Bench in *Arati Ray Choudhary case*[12] did not support reservation in a single cadre post."

22. Similarly, in **R.R. Inamdar** (supra), it has been held by the Supreme Court that rule of reservation shall not apply to the single isolated post as there is no scope of inter-changeability of posts in the different disciplines, and observed as under: -

"9. We are unable to accept the submission for more than one reason. The circular dated 31 May 1991 is prior to the decision of the Constitution Bench in Post Graduate Institute of Medical Education and Research (supra). As a matter of fact, the circular is prior to the decision in K Govindappa (supra) as well. The principle which has been enunciated by this Court is that there can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts. Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. If this principle were not to be followed, reservation would be in breach of the ceiling governed by the decisions of this Court. A circular, of the nature that has been issued by the State of Karnataka, cannot take away the binding effect of the decisions of this Court interpreting the policy of reservation in the context of Article 16(4)."

23. Lastly, in the matter of **State of Uttar Pradesh and others v. Bharat Singh and others**[13], it has been held by their Lordships of the Supreme

12 Arati Ray Choudhury v. Union of India, (1974) 1 SCC 87
13 (2011) 4 SCC 120

Court that a single post in the cadre is not amenable to any reservation, by observing as under: -

> "61. It is abundantly clear from the above that the attribute of interchangeability and transferability is missing in the case of Principals – in much the same measure as in the case of teachers, in the lower cadre. We have, therefore, no hesitation in holding that there is no cadre of Principals serving in different aided and affiliated institutions and that the Principal's post is a solitary post in an institution. Reservation of such a post is clearly impermissible not only because the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 provides for reservation based on the "cadre strength" in aided institutions but also because such strength being limited to only one post in the cadre is legally not amenable to reservations in the light of the pronouncement of this Court to which we shall presently refer.
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> 73. In the light of the above decision, we have no hesitation in holding that the post of Principals in each one of the aided/affiliated institution being a single post in the cadre is not amenable to any reservation. Question (ii) is accordingly answered in the affirmative."

24. Reverting to the facts of the case in the light of the principles of law laid down by their Lordships of the Supreme Court in the aforesaid judgments (supra) in which it is held that single isolated post in the cadre is not amenable to the rule of reservation, it is quite vivid that the post of President of District Commission has been notified for six districts namely, Raigarh, Surguja (Ambikapur), Koriya (Baikunthpur), Kabirdham (Kawardha), Dhamtari and Rajnandgaon; there is only one post of President, District Commission in the aforesaid districts and there is only single isolated post of President of the District Commission in each of the districts, as such, the rule of reservation as contemplated in the Act of 1994 would not be applicable.

25. At this stage, it would be appropriate to notice the submission of Mr. Kale, learned counsel appearing for petitioners No.2 & 3, that the post

of President of the District Commission is transferable from one District Commission to the other District Commission by virtue of Section 32 of the Act of 2019 and therefore it cannot be said that the post of President of District Commission is a single isolated post of a particular district.

26. Section 32 of the Act of 2019 provides as under: -

> "**Vacancy in office of member of District Commission**
>
> 32. If, at any time, there is a vacancy in the office of the President or member of a District Commission, the State Government may, by notification, direct—
>
> (a) any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also; or
>
> (b) the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also."

27. A focused glance of the aforesaid provision would show that the legislature has enacted the above-stated provision for the contingency where vacancy in the office of President or member of District Commission arises and in that case, by virtue of Section 32 of the Act of 2019, the State Government has been empowered by notification to direct any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also, or the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also. As such, this provision is only for meeting out the exigency in case vacancy arises and the post of President, District Commission becomes vacant at any point of time, but by no stretch of imagination it can be held that the post of President of District Commission has the attribute of

interchangeability and transferability, therefore, it cannot be held that the post of President of District Commission is transferable to other districts and the submission made in this behalf is liable to be rejected.

28. Faced with this situation, Mr. Kale has brought to the notice of this Court paragraph No.8 of the impugned advertisement (Annexure P-1) which states as under: -

> ''8/ अभ्यर्थी द्वारा आवेदित जिला के अतिरिक्त किसी अन्य जिला में भी नियुक्त किये जाने पर विचार किया जा सकता है।''

29. By reading the aforesaid clause in the advertisement, it is clear that the notification simply states that the candidature of a candidate who has applied for one district can be considered for other district also, but it nowhere empowers the State Government or nowhere states that the post of President of District Commission is transferable from one district to other district and there is interchangeability of President of one District Commission to other District Commission of a district. Therefore, the submission raised by learned counsel for the petitioners that the post of President of District Commission is transferable and there is interchangeability of posts between President of one District Commission to other District Commission, and taking all the six posts as one unit, the rule of reservation as contemplated under the Act of 1994 cannot be accepted, as the attribute of interchangeability and transferablility is absolutely missing in case of President of District Commission constituted under Section 28(1) of the Act of 2019 and appointed under Section 28(2) of the Act of 2019. It is accordingly held that the post of President, District Commission, in the instant case, the aforesaid six District Commissions in each of the districts is a solitary post in the District

Commission and reservation of such a post is clearly impermissible and cadre strength at present is limited to only one, is not amenable to reservation in the light of the principles of law laid down by the Supreme Court in the aforesaid judgments (supra), otherwise, it would amount to 100% reservation to the exclusion of general members of public, which is impermissible in law, as noticed herein-above. Question No.1 is answered accordingly against the petitioners.

Answer to question No.2.1: -

30. All the three petitioners have been declared ineligible on the ground firstly, that petitioner No.1 had already completed 53 years of age on the date of application, petitioner No.2 completed 50 years of age and petitioner No.3 completed 47 years of age and thus, all the three petitioners, therefore, were beyond the age limit of 45 years and as such, they were absolutely ineligible being over-aged.

31. The Central Government in exercise of the powers conferred by Sections 29 and 43 read with clauses (n) and (w) of sub-section (2) of Section 101 of the Consumer Protection Act, 2019 has framed the Rules of 2020. Rule 4 of the Rules of 2020 provides for qualifications for appointment of President and member of District Commission which states as under: -

> "**4. Qualifications for appointment of President and member of District Commission**.—(1) A person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge.
>
> (2) A person shall not be qualified for appointment as member unless he-
>
> (a) is of not less than thirty-five years of age;
>
> (b) possesses a bachelor's degree from a recognised University; and

(c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.

(3) At least one member or the President of the District Commission shall be a woman."

32. A focused glance of sub-rule (1) of Rule 4 of the Rules of 2020 would show that a person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge. The present petitioners being Advocates have claimed themselves to be "qualified to be a District Judge", by virtue of Article 233(2) of the Constitution of India and their case is not covered by first and second phrases "is, or has been" a District Judge.

33. It is the case of the State / respondents and also the submission of Mr. Das, learned Additional Advocate General, that the State Government has framed the Rules of 2006 which provide for appointment as District Judge by way of direct recruitment in which the age limit has been prescribed by virtue of Rule 7 and which would apply in case of the petitioners also. Rule 7(i)(b) of the Rules of 2006 clearly provides that if a person attains the age of 35 years and not attains the age of 45 years on the first day of January in the year in which applications for appointment are invited, he shall not be eligible for appointment and in case of the candidates belonging to SC, ST and OBC, 3 years age relaxation can be granted. According to Mr. Das, learned Additional Advocate General, for a person to be qualified for appointment as District Judge, he must have attained the age of 35 years and should not have attained the age of 45 years on the first day of January in the year in which applications for appointment are

invited and the persons who have also put in at least seven years of practice as an advocate on the first day of January of the year in which applications for appointment are invited, are also eligible for appointment as District Judge. Since the petitioners had already crossed 45 years of age on the date of issuance of advertisement (dated 15-7-2021), the Scrutiny Committee has rightly held them to be ineligible which has been opposed by learned counsel for the petitioners on the ground that Rule 4(1) of the Rules of 2020 only provides qualifications to the post of President of District Commission which states that he must be qualified to be a District Judge and since the petitioners have completed seven years of practice as advocate in terms of Article 233(2) of the Constitution, they are eligible for appointment and the condition provided in Rule 7(i)(b) of the Rules of 2006 would not apply to the post of President, District Commission, as only the qualification prescribed in Article 233(2) of the Constitution would be applicable and the age limit prescribed in Rule 7(i)(b) of the Rules of 2006 would not be applicable, particularly when the Rules of 2020 clearly prescribe that the President of District Commission shall hold the office for a period of four years or up to the age of sixty-five years, whichever is earlier, which is indicative of the legislative intent that the age limit prescribed for actual appointment of a District Judge by the Rules of 2006, would not be applicable for President of District Commission under Section 28(2) of the Act of 2019 read with Rule 4(1) of the Rules of 2020.

34. At this stage, it would be appropriate to notice Rule 4(1) of the Rules of 2020 which provides qualifications for appointment of President and member of District Commission. According to Rule 4(1) of the Rules of 2020, in order to qualify for the post of President, District

Commission, one must be a District Judge at present or he has been a District Judge or he is qualified to be a District Judge. Here, in fact, by Rule 4(1) of the Rules of 2020, the rule making authority has applied the qualification prescribed for the post of District Judge as the qualification for the post of President, District Commission and qualification for the post of District Judge is prescribed by Article 233(2) of the Constitution of India which states as under: -

> "**233. Appointment of district judges**.—(1) xxx xxx xxx
>
> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

35. Article 233(2) of the Constitution of India provides for appointment by direct recruitment of the District Judge from the Bar. It provides that the candidate should not be in judicial service of the Union or of the State and should have been practicing as an advocate or a pleader for not less than seven years as on the cut-off date, but he ought to have and must continue at the time of appointment and should be recommended by the High Court. However, interpretation of Article 233(2) of the Constitution of India came up for consideration before a 3-Judge Bench of the Supreme Court recently in the matter of **Dheeraj Mor v. High Court of Delhi**[14] in which their Lordships have considered Article 233(2) of the Constitution and held that in order to be appointed as a District Judge, advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. It has been held

14 (2020) 7 SCC 401

succinctly by their Lordships in paragraphs 45 and 47 of the report as under: -

> "45. In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practicing advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/ pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practicing advocate having minimum 7 years' experience.
>
> 46. xxx xxx xxx
>
> 47. We answer the reference as under:
>
> 47.1. The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.
>
> 47.2. The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.
>
> 47.3. Under Article 232(2), an Advocate or a pleader with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.
>
> 47.4. For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.
>
> 47.5. The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by

way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

47.6. The decision in *Vijay Kumar Mishra*[15] providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled."

36. From the principle of law laid down by their Lordships of the Supreme Court in **Dheeraj Mor** (supra), noticed herein-above, it is quite vivid that qualification for appointment on the post of District Judge is that an advocate or a pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment.

37. Keeping in view the eligibility condition / qualification prescribed for the post of District Judge under Article 233(2) of the Constitution of India which Rule 4(1) of the Rules of 2020 incorporates as qualification for the post of President, District Commission, the question would be, whether Rule 7(i)(b) of the Rules of 2006, which provides for age limit for appointment on the post of District Judge as 45 years + 3 years age relaxation in case of SC, ST and OBC, would be applicable for the petitioners who have laid their claim for the post of President, District Commission?

38. As noticed herein-above, qualification for appointment of District Judge is prescribed by Article 233(2) of the Constitution of India and an advocate would be eligible to be appointed as District Judge if he has been for not less than seven years practicing as Advocate and is recommended by the High Court for appointment. Maximum age limit for appointment on the post of District Judge does not find place in

15 Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313

Article 233(2) of the Constitution of India. The provision contained in Rule 7(i)(b) of the Rules of 2006 prescribing maximum age limit for appointment of District Judge is 45 years and in case of SC, ST and OBC, it is 48 years, however, it is not a provision prescribing qualification for appointment of District Judge, but otherwise, it could have been provided in Article 233(2) of the Constitution of India. Rule 7(i)(b) of the Rules of 2006 prescribing maximum age limit for appointment on the post of District Judge is a specific provision for appointment of District Judge and as such, all the provisions which relate to and applicable for appointment of District Judge would not apply for appointment of President, District Commission, as the Rules of 2020 are already in place and only qualifications prescribed for appointment of District Judge (by prescribing to be qualified as District Judge) have been lifted and made applicable. Even otherwise, the Rules of 2020 framed by the rule making authority i.e. the Central Government in exercise of power under Section 29 of the Act of 2019 prescribing qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission etc., is already in place, particularly Rule 10 of the Rules of 2020 has already prescribed the age of superannuation for President of District Commission holding that the President of District Commission shall hold the office [for a term of 4 years] or up to the age of 65 years, whichever is earlier. As such, the rule making authority has consciously prescribed the age of superannuation of President, District Commission to be 65 years and the Legislature has omitted to prescribe age limit for appointment on the post of President, District Commission. Therefore, the maximum age limit prescribed in

Rule 7(i)(b) of the Rules of 2006 applicable for appointment on the post of District Judge (direct recruitment) cannot be imported for appointment on the post of President, District Commission, as it is not a qualification prescribed for appointment on the post of President, District Commission, it is a provision for appointment of District Judge.

39. In this regard, the Constitution Bench decision rendered by their Lordships of the Supreme Court in the matter of **Atlas Cycle Industries, Ltd. Sonepat v. Their Workmen**[16] may be noticed profitably herein in which one of the qualifications prescribed for member of Industrial Tribunal by virtue of Section 7(3)(c) of the Industrial Disputes Act, 1947 was that a person should be qualified for appointment as Judge of the High Court. The Supreme Court while considering the matter with reference to Article 217(1) of the Constitution of India (which provides that Judge of a High Court shall hold office until he attains the age of 62 years) has held that the prescription as to age in Article 217(1) is not a qualification to the office of a Judge under Article 217(2), it is a condition attached to the duration of the office and further held that Section 7(3)(c) of the Industrial Disputes Act, 1947 does not import any qualification based on the age of the person to be appointed and the appointment of a person / an Advocate, who was over sixty years, to the Tribunal, is valid under Section 7(3)(c). It has been held by their Lordships as under: -

> "9. We agree that there is implicit in Art. 217(1) a prohibition against appointment as a Judge of a person who has attained the age of sixty years. But, in our view, that is in the nature of a condition governing the appointment to the office-not a qualification with reference to a person who is to be appointed thereto. There is manifest on the terms and on the scheme of the article a

16 AIR 1962 SC 1100

clear distinction between requirements as to the age of a person who could be appointed as a Judge and his fitness based on experience and ability to fill the office. Art. 217(1) deals with the former, and, in form, it has reference to the termination of the office and can therefore be properly read only as imposing, by implication, a restriction on making the appointment. In strong contrast to this is Art. 217(2) which expressly refers to the qualifications of the person to be appointed such as his having held a judicial post or having been an Advocate for a period of not less than ten years. We think that on a true construction of the article the prescription as to age is a condition attached to the duration of the office and not a qualification for appointment to it."

40. Their Lordships repelled the argument based on age and held that if a retired Judge of the age of sixty can fill the office of a Tribunal under Section 7 of the Industrial Disputes Act, 1947, an Advocate of that age can also fill the office fittingly, and observed as under: -

"12. Though the true meaning of Art. 217 has figured largely in the argument before us, it is to be noted that we are primarily concerned in this appeal with the interpretation of S. 7(3)(c) of the Act, and that must ultimately turn on its own context. Section 7(3)(a) provides for the appointment of a High Court Judge, sitting or retired as a Member of the Tribunal. Age is clearly not a qualification under this sub-clause, as the age for retirement for a Judge of the High Court is sixty. Likewise, cl. (b) provides for the appointment of a District Judge, setting or retired, as a Member. A retired District Judge who is aged over sixty will be eligible for appointment under this sub-clause. Thus the age of a person does not enter into his qualifications under sub-cls. (a) and (b). It would therefore be legitimate to construe sub-cl. (c) as not importing any qualification on the ground of age. But it is said that sub-cls. (a) and (b) form a distinct group having reference to judicial officers, whereas, cl. (c) is confined to Advocates, who form a distinct category by themselves, and that in view of this difference considerations as to age applicable to cl. (a) and (b) need not be applicable to cl. (c). There is undoubtedly a distinction between cls. (a) and (b) on the one hand and c1. (c) on the other. But the question is whether this has any reasonable relation to the difference which is sought to be made between the two classes with reference to the age of appointment. If a retired Judge of the age of sixty can fittingly fill the office of

a Member of the Tribunal under S. 7, an Advocate of that age can likewise do so. In our view, there is no ground for importing in S. 7(3)(c) an implied qualification as to age, which is not applicable to cl. 7(3)(a) and (b).

13. This question was considered by a Bench of the Punjab High Court in Prabhudayal v. State of Punjab, AIR 1959 Punj. 460. There the validity of the appointment of Shri A.N. Gujral under the notification dated 29th August 1953, which is the very point now under debate, was challenged on the ground that as he was over sixty on that date, he was not qualified to be appointed under S. 7(3)(c). The Court held, approving of the decision in G.D. Karkare's case, I.L.R. (1952) Nag. 409 : (AIR 1952 Nag. 330), that the prescription as to age in Art. 217(1) was not a qualification to the office of a Judge under Art. 217(2), and that a person who was more than sixty was qualified for appointment under S. 7(3)(c).

15. … The argument of the appellant is that, in prescribing the age as a qualification under S. 7C, the Legislature only made explicit what was implicit in S. 7(3)(c), and that therefore the qualification on the basis of age should also be imported in S. 7(3)(c). This inference does not, in our opinion, follow. The insertion of age qualification in S. 7C is more consistent with an intention on the part of the Legislature to add; in the light of the working of the repealed S. 7, a new provision prescribing the age of retirement for Members. We agree with the decision of the Punjab High Court in Prabhudayal's case, A.I.R. 1959 Punj. 460 and hold that S. 7(3)(c) does not import any qualification based on the age of the person to be appointed, and that the appointment of Shri A.N. Gujral on 29th August 1953, was valid, under S. 7(3)(c)."

41. Similarly, the principle of law laid down in **Atlas Cycle Industries, Ltd.** (supra) has been followed in the matter of **Binay Kant Mani Tripathi v. Union of India and others**[17] in which their Lordships of the Supreme Court while considering the provisions contained in Sections 6(2)(a) (which provides qualifications for appointment as Vice-Chairman of CAT, unless, he is, or has been, or is qualified to be a Judge of a High Court) and 8 (which provides term of Chairman/Vice-Chairman as 65 years) of the Administrative Tribunals Act, 1985 held that the petitioner

17 (1993) 4 SCC 49

therein having crossed the age of 62 years does not render him (who is qualified to be a Judge of High Court), ineligible for appointment as Vice-Chairman of the Central Administrative Tribunal for which post, the age of superannuation is 65 years and further held that age is a condition attached to the tenure of the office and not a qualification for appointment. Their Lordships following the principle of law laid down in **Atlas Cycle Industries, Ltd.** (supra) passed following order in **Binay Kant Mani Tripathi (supra)**: -

> "1. The petitioner has challenged the appointment of D.K. Agarwal to the office of Vice-Chairman, Central Administrative Tribunal. The only point raised by the learned counsel for the petitioner is that the appointment of Agarwal is in violation of Section 6 of the Administrative Tribunals Act, 1985 (the Act). Section 6 of the Act provides:
>
> "(2) A person shall not be qualified for appointment as the Vice-Chairman, unless he—
>
> (a) is, or has been, or is qualified to be a Judge of a High Court; or
>
> (b) has, for a period of not less than three years, held office as a Judicial Member of an Administrative Tribunal."
>
> 2. Agarwal was appointed Vice-Chairman, Central Administrative Tribunal by the order dated May 15, 1992. He had attained the age of 62 years on February 27, 1992. The precise argument is that having crossed the age of 62 years, Agarwal could not be considered for appointment as a Judge of the High Court under Article 217(1) of the Constitution of India and as a consequence he became ineligible for appointment as Vice-Chairman of the Tribunal under Section 6 of the Act.
>
> 3. We have heard learned counsel for the parties. The point raised by the learned counsel for the petitioner is not res integra. While interpreting Section 7(3)(c) of Industrial Disputes Act, 1947, which is similar to Section 6 of the Act, this Court in *Atlas Cycle Industries Ltd. v. Workmen*[16] held as under:
>
> "We agree that there is implicit in Article 217(1) a prohibition against appointment as a Judge of a

person who has attained the age of sixty years. But, in our view, that is in the nature of a condition governing the appointment to the office – not a qualification with reference to a person who is to be appointed thereto. There is manifest on the terms and on the scheme of the article a clear distinction between requirements as to the age of a person who could be appointed as a Judge and his fitness based on experience and ability to fill the office. Article 217(1) deals with the former, and, in form, it has reference to the termination of the office and can therefore be properly read only as imposing, by implication, a restriction on making the appointment. In strong contrast to this is Article 217(2) which expressly refers to the qualifications of the person to be appointed such as his having held a judicial post or having been an Advocate for a period of not less than ten years. We think that on a true construction of the article the prescription as to age is a condition attached to the duration of the office and not a qualification for appointment to it."

4. This Court clearly held in *Atlas Cycle Industries case*[16] that the prescription as to age for the retirement of a Judge of the High Court under Article 217(1) of the Constitution of India is a condition attached to the tenure of the office and not a qualification for appointment to the said office.

5. Following the reasoning and the conclusions reached by this Court in *Atlas Cycle Industries case*[16] we reject the contention of the learned counsel for the petitioner. The age of superannuation for the office of Vice-Chairman is 65 years and Agarwal being qualified to be a Judge of the High Court, his appointment cannot be challenged on the ground that he has crossed the age of 62 years.

6. The writ petition is dismissed. No costs."

42. The principle of law laid down in **Atlas Cycle Industries, Ltd.** (supra) has further been followed by their Lordships of the Supreme Court in **Balwant Singh Chaufal's** case (supra). As such, following the principle of law in the aforesaid judgments (supra), it is quite vivid that only the qualification laid down in Article 233(2) of the Constitution of India for appointment of District Judge would be applicable for holding a

candidate – Advocate to be qualified for the post of President of District Commission and the prescription of maximum age limit by virtue of Rule 7(i)(b) of the Rules of 2006 for appointment of District Judge is a special provision applicable for appointment of District Judge and that is not a qualification for appointment to the office of the President of District Commission. Consequently, the Rules of 2006 prescribing age limit for appointment of District Judge from amongst Advocates would not be applicable for the post of President of District Commission. If a sitting District Judge of the age of fifty five years or a retired District Judge of the age of sixty years can hold the office of President, District Commission competently and appropriately as well, in my considered opinion, an Advocate of that age can also hold the said office appositely and I do not see any reason to hold otherwise, as competence of an Advocate for the office of President, District Commission cannot be misjudged in view of the judgment of the Supreme Court in the matter of **Ramon Services Pvt. Ltd. v. Subhash Kapoor and others**[18] in which their Lordships of the Supreme Court have lucidly described the role of advocates qua society as under: -

> "20. Persons belonging to the legal profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the polity as a whole. Citizenry looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of the mankind. The lawyers, who have been acknowledged being sober, task-oriented, professionally-responsible stratum of the population, are further obliged to utilise their skills for socio-political modernisation of the country. The lawyers are a force for the preservance and strengthening of constitutional government as they are guardians of the modern legal system."

18 (2001) 1 SCC 118

43. Consequently, in view of the above-stated finding, rejection of the petitioners' candidature for the post of President, District Commission on the ground that they are over-aged having completed the age of 45 years, is clearly arbitrary, illegal and declared without authority of law. Question No.2.1 is answered accordingly.

Answer to question No.2.2: -

44. The next ground on which the petitioners have been declared ineligible is that they have not completed 7 years of practice regularly as required under Article 233(2) of the Constitution of India on the date of issuance of advertisement dated 15-7-2021 and they have not attached required certificate along with application for making them qualified for the post of President, District Commission.

45. The State / respondents have filed scrutiny papers (Annexure R-7) done by the Scrutiny Committee and in paragraph 1, in remarks column of third row at Sl.No.01.2, reasons have been recorded (petitioner No.1's application has been dealt with at No.13, petitioner No.2's application has been dealt with at No.6 and petitioner No.3's application has been dealt with at No.16) which are as under: -

1. परीक्षण में निर्धारित मापदण्ड पूर्ण नहीं करने वाले आवेदन पत्रों का विवरण–

क्र०	विवरण	आवेदन पत्र क्रमांक	रिमार्क
01.2	विधि व्यावसाय में अनुभव दिनांक 15.07.2021 तक लगातार 07 वर्ष का अनुभव	06, 10, 13, 14, 16, 18, 20, 21, 25	06– विज्ञापन तिथि से 07 वर्ष पूर्व तक लगातार विधि व्यावसाय का प्रमाण पत्र संलग्न नहीं, बल्कि वर्तमान में जिला उपभोक्ता आयोग रायपुर में सदस्य के रूप में कार्यरत । (Petitioner No.2) 10– xxxxx 13– विज्ञापन तिथि से 07 वर्ष पूर्व तक लगातार विधि व्यावसाय का प्रमाण पत्र संलग्न नहीं, बल्कि अप्रैल 2012 से

			2017 तक तथा वर्तमान में भी जिला उपभोक्ता आयोग रायपुर में सदस्य होने का प्रमाण पत्र संलग्न । **(Petitioner No.1)** 14– xxxxx 16– विज्ञापन तिथि से 07 वर्ष पूर्व तक लगातार विधि व्यावसाय का प्रमाण पत्र संलग्न नहीं , वर्तमान में राज्य उपभोक्ता आयोग रायपुर में सदस्य, इससे पूर्व जिला उपभोक्ता आयोग में सदस्य के रूप में कार्य अनुभव । **(Petitioner No.3)**

46. A careful perusal of the aforesaid reasons recorded by the Scrutiny Committee would show that the Scrutiny Committee has clearly recorded finding that the petitioners were not continuously practicing as Advocates for last seven years on the date of advertisement / cut-off date i.e. 15-7-2021 and therefore they are ineligible for appearing in the interview for appointment on the post of President, District Commission.

47. Mr. Das, learned Additional Advocate General appearing for the State / respondents, has also taken me through the applications filed by the petitioners, which have been filed as Annexure R-6 collectively, in which petitioner No.1 has mentioned her present occupation as Member, District Commission, Raipur and in paragraph 7, she has mentioned that she has 12 years of experience in the field of advocacy as an Advocate. Likewise, petitioner No.2 has mentioned his present occupation as Member of District Commission, Raipur and in paragraph 7, he has stated that he is having 9 years of service as Advocate. Petitioner No.3 has stated that he has 12 years of experience as advocate in paragraph 8.2 of the writ petition and he has simply stated in paragraph 9 that his present occupation is

Member, State Commission. This goes to show that petitioners No.1 & 2 are presently holding the post of Member of District Commission, Raipur and petitioner No.3 is holding the post of Member of State Commission and admittedly, on their own showing, they are not practicing as Advocates as on date and they have not completed seven years continuously as Advocate in terms of Article 233(2) of the Constitution of India as interpreted by their Lordships of the Supreme Court in **Dheeraj Mor** (supra) in which it has clearly been held that for the purpose of Article 233(2) of the Constitution, advocate / pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. Admittedly and undisputedly, the petitioners are not practicing as Advocates on the cut-off date i.e. 15-7-2021 as petitioners No.1 & 2 are holding the post of Member of District Commission and petitioner No.3 is holding the post of Member of State Commission and therefore they cannot be said to be qualified to be a District Judge in terms of Rule 4(1) of the Rules of 2020 and consequently, they are ineligible to be considered and appointed on the post of President, District Commission. Consequently, the respondent State Government is perfectly justified in declaring them ineligible in terms of Rule 4(1) of the Rules of 2020 read with Article 233(2) of the Constitution, particularly when they have also not seriously questioned that part of declaring them ineligible in the writ petition filed before this Court by making appropriate pleading and demonstrating that they are continuously practicing as an Advocate for last seven years as on cut-off date i.e. 15-7-2021. Annexures R-7 has been filed by the State showing Annexure R-7 clearly informing the petitioners that they have

been held to be ineligible being not qualified for the above-stated reason. Question No.2.2 is answered accordingly.

48. In view of the aforesaid legal analysis, my conclusions are as under: -

1. The post of President of District Commission under Section 28(1) of the Act of 2019 for the aforesaid six districts is a single isolated post in each district and therefore it is not amenable to the rule of reservation under the Act of 1994.

2. The petitioners, though are more than 45 years of age on the date of advertisement 15-7-2021, are fully eligible qua their age for appointment on the post of President, District Commission and the act of the respondents declaring them ineligible is clearly arbitrary.

3. The petitioners are not qualified for the post of President, District Commission in terms of Rule 4(1) of the Rules of 2020 read with Article 233(2) of the Constitution of India.

49. As a fallout and consequence of the above-stated legal analysis, though the petitioners are eligible for the post of President, District Commission qua their age, but are not qualified for the post of President, District Commission. Accordingly, they are not entitled for any relief and the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

50. Interim order dated 6-1-2022 stands vacated.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.42 of 2022

Smt. Priya Agrawal and others

Versus

State of Chhattisgarh and another

Head Note

Advocates more than 45 years of age are also eligible for appointment on the post of President, District Consumer Disputes Redressal Commission.

45 वर्ष से अधिक आयु के अधिवक्ता भी जिला उपभोक्ता विवाद प्रतितोषण आयोग के अध्यक्ष पद पर नियुक्ति हेतु पात्र है।