

RAM BHAGAT SINGH AND ANR.

v

STATE OF HARYANA AND ANR.

APRIL 4, 1990

[SABYASACHI MUKHARJI, CJ, K.N. SAIKIA AND
K. RAMASWAMY, JJ.]

Punjab Civil Services (Judicial Branch) Rules, 1951 (As adapted by Haryana State): Part C—Rule 8—Haryana Judicial Service Examination—Prescription of 55% marks in aggregate for qualifying—Whether results in denial of equality of opportunity to scheduled castes/scheduled tribes candidates.

Constitution of India: Articles 14, 15, 16 & 38—Haryana Judicial Service Examination—Fixation of 55% marks in aggregate for qualifying—Whether results in denial of equality of opportunity to scheduled castes/scheduled tribes candidates.

Rule 8 of the Punjab Civil Services (Judicial Branch Rules, 1951, as adapted by the State of Haryana, lays down that no candidate shall be considered to have qualified in the examination unless he obtains at least 55% marks in the aggregate of all papers, including the *viva-voce* test.

The petitioners assailed the said provision on the ground that fixation of 55% marks has resulted in denial of equality of opportunity to the scheduled castes and scheduled tribes segments of the community vis-a-vis general candidates for determining their suitability and/or eligibility for appointment in the judicial branch of the Haryana Civil Services in the absence of lower percentage having been prescribed for them as in other States.

Disposing of the writ petition and the appeal, the Court,

HELD: 1. Public services and public employment do not exist for providing jobs in terms of equality or otherwise to all. Only public services and public employment must serve public purpose and nothing that hampers or impairs the efficiency or efficacy of public services should be permitted in ensuring conditions of constitutional equality. These should be done objectively, rationally and reasonably.

A 2. Scheduled castes and scheduled tribes for reasons historical or
otherwise, are unequal with the general members of the community in
respect of ability and qualification for public employment. They are
unable to compete in terms of absolute equality with the members of
other communities or groups in the society. Hence, in order to make
them compete on conditions of equality with others in respect of jobs and
B employments of the State certain relaxations and other factors ensuring
equality are imperative. Our Constitution so enjoins it. Article 38 of the
Constitution read with Article 14, 15 and 16 so mandates it. [332D-E; C]

C 3. In the instant case, high efficiency is required because the
recruitment is in the judicial branch, that is to say, for prospective
judicial officers who will be in charge of administration of justice in the
country. But at the same time, if possible, in order to ensure that there
is equality of opportunity, a percentage should be fixed which without,
in any way, compromising with the efficiency required for the job
which will be attainable by backward communities, that is to say,
D scheduled castes and scheduled tribes. Unless such a percentage is fixed
on the aforesaid basis and a percentage is fixed for qualification which
would normally be unattainable by the scheduled castes and scheduled
tribes determined on an objective basis, it would not be possible to
ensure equality of opportunity. [333D—F]

E 4.1 The Government is directed to make a conscious decision
objectively before the next selections take place, and determine a
minimum percentage of marks consistent with efficiency and the need
for ensuring equality of opportunity to scheduled castes and scheduled
tribes. [334B]

F 4.2 The Government should also consider whether further re-
laxation in age in favour of scheduled castes and scheduled tribes can be
made; and if so, to what extent without hampering efficiency of the
administration. This should also be considered before the next selec-
tions for appointment to the post are made. [334C]

G CIVIL ORIGINAL JURISDICTION: Writ Petition No. 1147
of 1988.

(Under Article 32 of the Constitution of India)

WITH

H Civil Appeal No. 1782 of 1990.

From the Judgment and Order dated 5.6.1987 of the Punjab and Haryana High Court in C.W.P. No. 1313 of 1986

R. Venkataramani, Mahabir Singh, M.S. Ganesh and C.M. Nayar for the Appearing Parties.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, CJ. The petitioners are law graduates. They state that they belong to scheduled castes and scheduled tribes segments of the community. They are seeking enforcement of the right to equality of opportunity in the matter of appointment to posts in the subordinate judiciary in the State of Haryana. The State of Haryana has reserved 20% of the posts in the Haryana Civil Service (Judicial Branch) for the scheduled castes and scheduled tribes. It is the case of petitioners that though 20% of the posts in the Haryana Civil Service (Judicial Branch) have been reserved for scheduled castes and scheduled tribes, the strength of the appointments made since 1969 onwards reveals that hardly 8% of the total posts i.e., 40 to 45% only of the cadre strength have been allotted to the scheduled castes and scheduled tribes. The petitioners contend that in other States of India different percentages of marks have been prescribed for scheduled castes, scheduled tribes and general candidates for determining their suitability and/or eligibility for appointment. But in Haryana, they contend, minimum marks have been prescribed as 55% for all categories of candidates, namely, scheduled castes, scheduled tribes and general candidates.

In this connection, it may be appropriate to refer to the fact that under the Punjab Civil Services (Judicial Branch) Rules framed in exercise of powers conferred by Article 234 read with proviso to Article 309 of the Constitution of India, rules have been framed and are prevalent. Part 'C' of the rules deals with the rules and instructions for the examination of the candidates for admission to the judicial branch of the Haryana Civil Service. Part 'C' of the said rules was brought into force by the Haryana Adaptation Laws (State and concurrent subjects) Order, 1968. Rules 7 and 8 of the said rules, *inter alia*, provides as follows:

"7. No candidate shall be called for the *viva-voce* test unless he obtains at least 45% of marks in the aggregate in all the written papers and 33% marks in the language paper, Hindi (in Devanagiri script).

A 8. No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent marks in the aggregate of all papers including the *viva-voce* test.”

B It is the case of the petitioners that fixation of the standard of marks which the petitioners describe as high standard, has resulted in denial of opportunity to the scheduled castes and scheduled tribes thus amounting to denial of equality of opportunity in the jobs which, the petitioners contend, the State otherwise sought to achieve and ought to achieve in favour of scheduled castes and scheduled tribes.

C We are of the opinion that equality of opportunity should be striven for and ensured in public employment. Steps should be taken to see where unequals are competing, conditions must be created by relaxation or otherwise so that unequals compete in terms of equality with others in respect of jobs and employments of the State. Our Constitution so enjoins it. Article 38 of the Constitution read with D Articles 14, 15 and 16 so mandates it. In order, therefore, to give those who are unequals, and it is accepted that scheduled castes and scheduled tribes for reasons historical or otherwise, are unequal with the general members of the community in respect of ability and qualification for public employment. Hence, in order to make the unequals E compete on conditions of equality certain relaxations and other factors ensuring equality are imperative. Those groups or segments of society which are by reasons of history or otherwise unable to compete in terms of absolute equality with the members of other communities or groups in the society, should be ensured and assured chances of competing in terms of equality. They must be helped to compete equally F but it is important to emphasise that equality of opportunity is sought to be achieved for the public services or employment. The efficacy and efficiency of that service is of prime consideration. Equality must be there for all to compete for the public services. Public services and public employment do not exist for providing jobs in terms of equality or otherwise to all. Only public services and public employment must G serve public purpose and nothing that hampers or impairs the efficiency or efficacy of public services cannot and should not be permitted in ensuring conditions of constitutional equality. These should be done objectively, rationally and reasonably. As is often said, it may be that need to ensure equality for scheduled castes and scheduled tribes should not be surrendered on the facile and value based perception of H efficiency. Yet efficiency must be ensured. Real equality must be accorded.

As mentioned hereinbefore, the contention of the petitioners is that 55% marks in aggregate in all papers including *viva voce* test constitute rather a high standard for qualification and eligibility. They contend that for most of the scheduled caste and scheduled tribe aspirants for the job it is difficult to achieve that standard. It is said that in other parts of this vast land of ours the standard is not as high as that. Sri Venkatramani, advocate for the petitioners, contended that in other States on an all-India basis such a high standard of marks is not envisaged. Sri Mahabir Singh, learned advocate appearing for the State of Haryana and Sri C.M. Nayar, learned advocate for the Public Service Commission contend that it must be presumed that the minimum percentage desirable for the purpose of efficiency has been prescribed. It was further submitted by Sri Nayar that in respect of candidates other than scheduled castes and scheduled tribes, normally those obtaining far higher than 55% marks become eligible for consideration. That may or may not be so but what is required is that we must ensure efficiency in administration. We must, therefore, objectively, rationally and by a conscious process—conscious in the sense by application of mind to the relevant factors arrive at a percentage which should be considered to be a minimum one in order to ensure the efficiency of the administration. We are conscious that high efficiency is required because the recruitment is in the judicial branch, that is to say, for prospective judicial officers who will be in charge of administration of justice in the country. But at the same time, if possible, in order to ensure that there is equality of opportunity, a percentage should be fixed which without, in any way, compromising with the efficiency required for the job which will be attainable by backward communities, that is to say, scheduled castes and scheduled tribes. Unless such a percentage is fixed on the aforesaid basis and a percentage is fixed for qualification which would normally be unattainable by the scheduled castes and scheduled tribes determined on an objective basis, it would not be possible to ensure equality of opportunity. Both S/Sri Mahabir Singh and Nayar have urged that the minimum must be presumed to have been so fixed in the Haryana Service. However, that fact is not apparent and there is nothing on record to indicate that this percentage was fixed deliberately on an analysis and careful examination and determination on the lines and the principles indicated above.

In that view of the matter, in our opinion, in the interest of justice and our constitutional mandates and in the light of the efficiency of the services and with a view to create a sense of justice, it is necessary for the Government concerned to consider this question as

A to what should be the minimum percentage of marks necessary for the administration. We direct that the Government will make a conscious decision objectively before the next selections for the post in Haryana Judicial Service take place, and determine a minimum percentage of marks consistent with efficiency and the need for ensuring equality of opportunity to scheduled castes and scheduled tribes.

B

It was also contended by Sri Venkataramani that some of the candidates belonging to the scheduled castes and scheduled tribes have become overaged, therefore, the Government should also consider whether further relaxation in age in favour of scheduled castes and scheduled tribes can be made; and if so, to what extent without hampering efficiency of the administration. This should also be considered before the next selections for appointment to the post are made.

C

In the aforesaid light, special leave is granted in civil appeal No. 15,000/88 and the judgment and order of the High Court of Punjab & Haryana, dated 5th June, 1987 are modified to the extent indicated above. The writ petition and the appeals are disposed of accordingly without any order as to costs.

D

P.S.S.

Petition disposed of.