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DEEPA E.V.

v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 3609 of 2017)

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APRIL 06, 2017

[R. BANUMATHI AND A. M. KHANWILKAR, JJ.]

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Service Law – Recruitment – Reservation for ST/SC/OBC candidates – Post of Laboratory Assistant Grade II – Appellant-OBC, applied under OBC category – Availing of age relaxation as also attending the interview under OBC category – Right to be appointed under the General category – Held: Appellant cannot claim right to be appointed under the General category – On a combined reading of r. 9 of the 1980 Rules and also the proceedings dated 1.7.1998, there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for General Category candidates – Export Inspection Agency (Recruitment) Rules, 1980 – r. 9.

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Dismissing the appeal, the Court

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HELD: 1.1 The appellant, who has applied under OBC Category by availing age relaxation and also attending the interview under the ‘OBC Category’ cannot claim right to be appointed under the General Category. [Para 4] [940-B]

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1.2 On a combined reading of Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980 and also the proceedings dated 1.7.1998, it is found that there is an express bar for the candidates belonging to SC/ST/OBC who have availed relaxation for being considered for General Category candidates. [Para 7] [942-D-E]

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1.3 The appellant did not challenge the constitutional validity of the proceedings dated 1.7.1998 read with Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980. On a perusal of the prayer made in the writ petition, it is found that the appellant has only sought for a declaration that proceedings dated 1.7.1998 is not binding on the appellant. No argument was

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canvassed challenging the constitutional validity of the proceedings before the Single Judge or before the Division Bench of the High Court. [Para 11] [944-C-D] A

Jitendra Kumar Singh and Another v. State of Uttar Pradesh and Ors. (2010) 3 SCC 119 : [2010] 1 SCR 325- held inapplicable. B

Case Law Reference

[2010] 1 SCR 325 held inapplicable Para 8

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3609 of 2017. C

From the Judgment and Order dated 20.07.2015 of the High Court of Kerala at Ernakulam in W. A. No. 827 of 2015.

P. G. Jayashankar, A. Karthik, Ms. Smrithi Suresh, Ms. Liz Mathew, Advs. for the Appellant.

R. Venkataramani, Sr. Adv., L. R. Khatana, Sudhir Naagar, Yashraj Singh Bundela, Shiv Mangal Sharma, Deepak Goel, G. S. Makker, Saurabh Rajpal, Advs. for the Respondents. D

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of the judgment of the Kerala High Court in Writ Appeal No.827 of 2015 dated 20.07.2015 whereby the Division Bench affirmed the order passed by the learned Single Judge. E

2. The appellant applied for the post of Laboratory Assistant Grade II in Export Inspection Council of India functioning under the Ministry of Commerce and Industry, Government of India. The appellant belongs to Dheevara community which is one of the "Other Backward Class". Since the appellant was aged 26 years, she got age relaxation, as was granted to OBC category candidates. The appellant was one of the eleven candidates from OBC who were called for interview. The appellant secured 82 marks (in the list of candidates from OBC category). One Ms. Serena Joseph (OBC), who secured 93 marks was selected and appointed. F G

3. Insofar as the general category is concerned, no candidate has secured the minimum cut off marks i.e. 70 marks. Stating that the H

A appellant has to be accommodated in the general category, she filed a Writ Petition before the High Court, which the learned Single Judge dismissed by judgment dated 16.1.2015. Being aggrieved, the appellant challenged the same in Writ Appeal No.827 of 2015, which came to be dismissed, which is impugned in this appeal.

B 4. The appellant, who has applied under OBC Category by availing age relaxation and also attending the interview under the 'OBC Category' cannot claim right to be appointed under the General Category.

C 5. The recruitment by the Export Inspection Council of India which is functioning under the Ministry of Commerce, Government of India is governed by the Export Inspection Agency (Recruitment) Rules, 1980. As per Rule 9, the Rules regarding relaxation of age limits and other concessions are to be governed by the Rules and also the orders issued by the Central Government from time to time in this regard. Rule 9 reads as under:-

D "9. Saving:

Nothing in these rules affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Caste, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

E 6. Department of Personnel and Training had issued proceedings O.M. No.36012/13/88-Estt. (SCT), dated 22.5.1989 and OM No.36011/1/98-Estt. (Res.), dated 1.7.1998 laying down stipulation to be followed by the various Ministries/Department for recruitment to various posts under the Central Government and the reservation for SC/ST/OBC candidates. The proceedings reads as under:-

F "G.I. Dept. of Per. & Trg., O.M. No. 36012/13/88-Estt. (SCT), dated 22.5.1989 and OM No.36011/1/98-Estt. (Res.), dated 1.7.1998

G "Subject:- Reserved vacancies to be filled up by candidates lower in merit or even by released standards- candidates selected on their own merits not to be adjusted against reserved quota.

H As part of measure to increase the representation of SC/ST in the services under the Central Government, the Government

have reviewed the procedure for implementation the policy of reservation while filling up reserved share of vacancies for Scheduled Castes and Scheduled Tribes by direct recruitment. The practice presently being followed is to adjust SC/ST candidates selected for direct recruitment without relaxation of students against the reserved share of vacancies. The position of such SC and ST candidates in the final select list, however, was determined by their relative merit as assigned to them in the selection process. When sufficient number of suitable Scheduled Caste and Scheduled Tribe candidates were not available to fill up all the reserved share of vacancies, SC/ST candidates were selected by relaxed standards.

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2. It has now been decided that in cases of direct recruitment to vacancies in posts under the Central Government, the SC and ST candidates who are selected on their own merit, without relaxed standards along with candidates belonging to the other communities, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible SC and ST candidates which will thus comprise SC and ST candidates who are lower in merit than the last candidate on the merit list but otherwise found suitable for appointment even by relaxed standards, if necessary.

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3. All Ministries/Departments will immediately review the various Recruitment Rules/Examination Rules to ensure that if any provision is contrary to the decision contained in previous paragraph exist in such rules, they are immediately suitably modified or deleted.

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4. These instructions shall take immediate effect in respect of direct recruitment made hereafter. These will also apply to selections where though the recruitment process has started, the result have not yet been announced unless in the Examination/ Recruitment Rules or in the advertisement notified earlier there is a specific provision to the contrary and the manner in which the SC/ST vacancies could be filled has been indicated.

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Clarification:- The instructions contained in the above OM apply in all types of direct recruitment whether by written test alone or written test followed by the interview alone.

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A 2. The above OM and the O.M. No.36012/2/96-Estt.(Res.), dated
2.7.1997 provide that in cases of direct recruitment, the SC/ST/
OBC candidates who are selected on their own merit will not be
B adjusted against reserved vacancies. 3. In this connection, it is
clarified that only such SC/ST/OBC candidates who are selected
on the same standards as applied to general candidates shall not
C be adjusted against reserved vacancies. In other words, when a
relaxed standard is applied in selecting an SC/ST/OBC
candidates, for example in the age-limit, experience, qualification,
permitted number of chances in written examination, extended
zone of consideration larger than what is provided for general
category candidates, etc., the SC/ST/OBC candidates are to be
counted against reserved vacancies. Such candidates would be
deemed as unavailable for consideration against unreserved
vacancies.”

(Underlining added)

D 7. On a combined reading of Rule 9 of the Export Inspection
Agency (Recruitment) Rules, 1980 and also the proceedings dated
1.7.1998, we find that there is an express bar for the candidates belonging
to SC/ST/OBC who have availed relaxation for being considered for
General Category candidates.

E 8. Learned counsel for the appellant mainly relied upon the
judgment of this Court in Jitendra Kumar Singh and Another v. State of
Uttar Pradesh and Others, reported in (2010) 3 SCC 119, which deals
with the U.P. Public Services (Reservation for Scheduled Castes,
Scheduled Tribes and Other Backward Classes) Act, 1994 and
F Government order dated 25.3.1994. On a perusal of the above judgment,
we find that there is no express bar in the said U.P. Act for the candidates
of SC/ST/OBC being considered for the posts under General Category.
In such facts and circumstances of the said case, this Court has taken
the view that the relaxation granted to the reserved category candidates
will operate a level playing field. In the light of the express bar provided
G under the proceedings dated 1.7.1998 the principle laid down in Jitendra
Kumar Singh (supra) cannot be applied to the case in hand.

H 9. Learned senior counsel appearing for the respondents has
also drawn our attention to paragraph Nos.65 and 72 in Jitendra Kumar
Singh (supra) to contend that principle in Jitendra Kumar Singh (supra)

are in the context of interpretation of U.P. Act 1994 and in the particular factual situation of the said case. Paragraphs 65 and 72, read as under:-

“65. In any event the entire issue in the present appeals need not be decided on the general principles of law laid down in various judgments as noticed above. In these matters, we are concerned with the interpretation of the 1994 Act, the Instructions dated 25.3.1994 and the G.O. dated 26.2.1999. The controversy herein centres around the limited issue as to whether an OBC who has applied exercising his option as a reserved category candidate, thus becoming eligible to be considered against a reserved vacancy, can also be considered against an unreserved vacancy if he/she secures more marks than the last candidate in the general category.

72. Soon after the enforcement of the 1994 Act the Government issued instructions dated 25.3.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:-

“4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category.”

From the above it becomes quite apparent that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. Main Written Test followed by Interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government Orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation

A in upper age limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.”

B 10. Having regard to the observations in paragraphs 65 and 72, in our view, the principles laid down in *Jitendra Kumar Singh (supra)* cannot be applied to the case in hand. As rightly pointed out by the High Court that judgment in *Jitendra Kumar Singh (supra)* was based on the statutory interpretation of the U.P. Act, 1994 and Government order dated 25.3.1994 which provides for entirely a different scheme.

C 11. Be it noted, in the instant case, the appellant has not challenged the constitutional validity of the proceedings dated 1.7.1998 read with Rule 9 of the Export Inspection Agency (Recruitment) Rules, 1980. On a perusal of the prayer made in the writ petition we find that the appellant has only sought for a declaration that Exhibit P5 (proceedings dated 1.7.1998) is not binding on the appellant. No argument was canvassed challenging the constitutional validity of the proceedings before the learned Single Judge or before the Division Bench of the High Court.

D 12. We do not find any merit in this appeal, which is, accordingly, dismissed.

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

E 14. There shall be no orders as to costs.