

IN THE HIGH COURT OF JHARKHAND AT RANCHI

1. WP(S)No. 5572/2017

[Raj Kumar Mahto Vs. The State of Jharkhand and Ors]

- WITH -

2. WP(S)No. 1048/2018

[Shishir Bodra Vs. The State of Jharkhand and Ors]

- WITH -

3. WP(S)No. 2398/2018

[Md. Parwez Hussain Vs. The State of Jharkhand and Ors]

- WITH -

4. W.P.(S) No. 2907 of 2018

[Sewti Hansa and others Vs. State of Jharkhand and others]

WITH -

5. WP(S)No. 2950/2019

[Manoj Kumar Gupta & Anr. Vs. State of Jharkhand and others]

- WITH -

6. WP(S)No. 2954/2019

[Pinky Kumar & Ors. Vs. State of Jharkhand and Ors.]

- WITH -

7. W.P.(S) No. 306 of 2019

[Pratibha Surin and another Vs. State of Jharkhand and others]

- WITH -

8. W.P.(S) No. 3151 of 2018

[Dr. Nutan Indwar @ Nutan Indwar Vs. The State of Jharkhand and others]

- WITH -

9. W.P.(S) No. 3152 of 2018

[Dr. Sweta Kumari @ Sweta Kumari Vs. The State of Jharkhand and others]

- WITH -

10. WP(S)No. 3216/2018

[Vikash Kumar Pandit & Ors. Vs. State of Jharkhand and Ors.]

- WITH -

11. WP(S)No. 3220/2018

[Pawan Kumar Sahu & Ors. Vs. State Of Jharkhand And Ors.]

- WITH -

12. WP(S)No. 3248/2018

[Sunny Kumar Verma Vs. State Of Jharkhand And Ors.]

- WITH -

13. WP(S)No. 3261/2018

[Pradeep Kumar Mahto & Ors. Vs. State Of Jharkhand And Ors.]

- WITH -

14. WP(S)No. 3262/2018

[Sharvan Kumar Vs. State of Jharkhand and others]

- WITH -

15. WP(S)No. 3322/2019

[Kumari Rupa Vs. State of Jharkhand and others]

- WITH -

16. W.P.(S) No. 3347 of 2018

[Dr. Akanksha Choudhary and others Vs. The State of Jharkhand and others]

- WITH -

17. WP(S)No. 3350/2018

[Rashmi Kumari Vs. State Of Jharkhand And Ors.]

- WITH -

18. W.P.(S) No. 3374 of 2018

[Anshika Priya and others Vs. The State of Jharkhand and others]

- WITH -

19. WP(S)No. 3428/2018

[Rashmi Oraon Vs. State of Jharkhand and others]

- WITH -

20. WP(S)No. 3460/2018

[Rohit Anand Vs. State of Jharkhand and others]

- WITH -

21. WP(S)No.3476 /2018

[Raju Kumar Chaudhary & Ors. Vs. State of Jharkhand and others]

- WITH -

22. WP(S)No.3509 /2018

[Ramawadh Kumar Singh Vs. State of Jharkhand and others]

- WITH -

23. WP(S)No. 3535/2018

[Ganesh Shankar Mahato Vs. State of Jharkhand and others]

- WITH -

24. W.P.(S) No. 3539 of 2018

[Sudeepankar Sardar Vs. The State of Jharkhand and others]

- WITH -

25. WP(S)No. 3540/2018

[Rupesh Kumar Yadav & Ors. State Of Jharkhand And Ors]

- WITH -

26. W.P.(S) No. 3549 of 2018

[Dr. Sachin Kumar Mehta Vs. The State of Jharkhand and others]

- WITH -

27. WP(S)No.3636 /2018

[Prity Kachhap Vs. State of Jharkhand and others]

- WITH -

28. WP(S)No.3812 /2018

[Md. Ilyas Ansari Vs. State Of Jharkhand And Ors.]

- WITH -

29. W.P.(S) No. 3876 of 2018

[Dr. Rishi Raj Vs. State of Jharkhand and Another]

- WITH -

30. W.P.(S) No. 3887 of 2018

[Khushboo Garg Vs. State of Jharkhand and others]

- WITH -

31. W.P.(S) No. 3931 of 2018

[Neha Noopur Vs. The State of Jharkhand and Another]

- WITH -

32. WP(S)No.4249 /2018

[Saheb Ali Vs. State of Jharkhand and others]

- WITH -

33. WP(S)No.4255 /2018

[Pankaj Das Vs. State of Jharkhand and others]

- WITH -

34. W.P.(S) No. 4610 of 2018

[Pakesh Kumar Pradhan Vs. The State of Jharkhand and others]

- WITH -

35. WP(S)No. 5364/2018

[Chirag Kumar Vs. The State of Jharkhand and Ors.]

- WITH -

36. W.P.(S) No. 5514 of 2018

[Khushma Kumari Vs. State Of Jharkhand and Ors.]

- WITH -

37. WP(S)No. 5558/2018

[Ms. Sабita Kumari Vs. State Of Jharkhand And Ors.]

- WITH -

38. W.P.(S) No. 5596 of 2018

[Mona Kumari Vs. State Of Jharkhand and Ors.]

- WITH -

39. W.P(S) No. 5896/ 2018

[Neha Kumari Vs. State Of Jharkhand and Ors.]

- WITH -

40. WP(S)No. 5903/2018

[Kumari Punam Jyoti Vs. State Of Jharkhand And Ors]

- WITH -

41. WP(S)No.6017/2018

[Sonu Priya Vs. State of Jharkhand and others]

- WITH -

42. WP(S)No. 6170 of 2017

[Virendra Prasad Vs. State of Jharkhand and others]

- WITH -

43. W.P(S) No. 6601/ 2017

[Suraj Kumar Gupta Vs. State Of Jharkhand and Ors]

- WITH -

44. WP(S)No. 7370/2017

[Afroj Ansari Vs. Jharkhand Staff Selection Commission and Another]

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK

For the Petitioners :

Mr. Anil Kumar Sinha, Sr. Advocate
 Mr. Rajiv Ranjan, Sr. Advocate.
 Mr. Anil Kumar, Sr. Advocate
 Mr. P.P.N. Roy, Sr. Advocate
 Mr. Rajendra Krishna, Advocate
 Mr. Pandey Neeraj Rai, Advocate.
 Mr. Krishna Murari, Advocate
 Mr. Shresth Gautam, Advocate
 Mr. Mahesh Tewari, Advocate.
 Mr. Nitin Pasari, Advocate.
 Mr. Piyush Chitresh, Advocate.
 Mr. Amritansh Vats, Advocate.
 Ms. Neeta Krishna, Advocate
 Mr. Rohit Sinha, Advocate.
 Mr. Amit Sinha, Advocate.
 Mr. Debarsi Mondal, Advocate
 Mr. Rahul Dev, Advocate
 Mr. Kumar Sundaram, Advocate
 Mr. Pandey A.N. Roy, Advocate
 Mr. Omprakash, Advocate.
 Mr. Mohammad Asghar, Advocate.
 Mr. Raunak Sahay, Advocate.
 Mr. Pramod Kumar, Advocate
 Mr. Kishlay Kumar, Advocate.
 Mr. Abhishek Kumar, Advocate
 Ms. Chandana, Advocate.
 Ms. Pragati Prasad, Advocate.
 Ms. Shahbaz Zama, Advocate.
 Mr. Deb Nandan Rajak, Advocate.
 Mr. Mukesh Kumar Dubey, Advocate.

For the State:

Mr. Jai Prakash, AAG
 Mr. Himanshu Kumar Mehta, AAG
 Mr. Rahul Gupta, Sr. SC-I
 Mrs. Chandra Prabha, SC-IV
 Ms. Chaitali C. Sinha, AC to AAG
 Ms. Kanchan Kumari, AC to AAG.

For the JPSC & JSSC

Mr. Sanjoy Piprawall, Advocate
 Mr. Tejo Mistri, Advocate.
 Mr. Prince Kumar, Advocate.
 Mr. Rakesh Ranjan, Advocate

C.A.V. On 02.08.2019

Pronounced on 20.12.2019

Dr. S.N. Pathak, J. The issues involved in all the writ petitions are same, similar or identical and as such all have been tagged and heard together and are being disposed of by this common order.

2. Heard learned counsel for the parties.
3. The core issue involved in all these writ petitions is *as to whether benefits of reservations under SC, ST, BC-I and BC-II categories can be given to concerned petitioners even when they failed to produce valid Caste Certificates at the time of verification of certificates in proforma as mentioned in the advertisements or issued prior to last date of submission of on-line application forms by the competent authorities in terms of the respective Advertisements.*
4. The writ petitioner in W.P.(S) No. 3887 of 2018 has prayed for appropriate directions upon the respondents to declare him successful in the examination – cum – merit list of BC-I categories Dental Doctors (Basic Grade) Examination held pursuant to Advertisement No. 02/2016 by the JPSC since he has secured 156 marks in total (written plus interview) and, therefore, he should have been placed at 1st position in the final selection list recommended vide forwarding letter no. 1148, dated 27.05.2018.

Petitioner has further prayed for quashing the remarks given in the final mark-sheet issued in her favour in which remarks has been made that candidature of the petitioner has been treated in unreserved category due to non-submission of the requisite caste certificate.

Petitioner has further prayed for a direction upon the respondents to consider her case for appointment to the post of Dental Doctors (Basic Grade) in BC-1 category on the ground that she admittedly belongs to BC-1 category and accordingly Caste Certificate has been issued by the competent authority on 16.06.2009.

5. In all the other writ petitions also, petitioners have claimed the benefits of reservation since they have been declared successful in the respective examination conducted by the respective Commissions and have scored more marks than the last selected candidates in their respective categories but their candidatures have been considered in unreserved category only on hyper technical grounds that they have failed to submit the caste certificate as per the online applications and also in proper proforma and not issued by the competent authority and in most of the cases the caste certificates issued after the cut-off date and as such the petitioners were treated in unreserved category and benefits of reservations were not extended to them.

ARGUMENTS ADVANCED BY LEARNED COUNSELS FOR THE PETITIONERS:

6. Learned Sr. Counsels appearing for the petitioners strenuously urges that once petitioners have been allowed to appear in the examination as a reserved category candidates, their candidatures cannot be considered in an unreserved category at a subsequent stage and as such change of categories is not permissible once the petitioners have appeared in the selection process as a candidate of reserved category. Learned Sr. Counsels further argues that petitioners have obtained more marks in their respective categories than the last selected candidates and by changing the categories of the petitioners, the respondents – Commissions are trying to frustrate their candidatures. It has further been argued that the issues involved in the batch of writ petitions are no more res integra as the same have been affirmed by the Hon'ble Apex Court in the case of ***Ram Kumar Gijroya***. It has further been argued that similar issues fell for considered before this Hon'ble Court in the case of ***Anil Tanti*** and the same was affirmed by the Hon'ble Division Bench and also by the Hon'ble Apex Court. Admittedly the caste of the petitioners in their respective categories are not in dispute. Merely as they failed to abide by the terms and conditions of the advertisement which was beyond their reach due to prevailing circumstances, their candidature ought not to have been rejected. It was further argued that at the time of verification of the certificates, admittedly petitioners produced their caste certificate as per the terms and conditions of the advertisement and as such it ought to have been accepted by the respondents – Commission and their cases would have been recommended for appointment as they have been declared successful and have obtained more marks than the last selected candidates in their respective categories.
7. To buttress their arguments, learned Sr. Counsels have placed heavy reliance on the following Judgments:-
 - (i) ***Anil Tanti Vs. State of Jharkhand and others*** reported in ***2018(1) JCR 226 (Jhr.)***, affirmed up to Hon'ble Apex Court;
 - (ii) ***Aman Krishna Patel Vs. State of Jharkhand*** in ***W.P.(S) No. 5865 of 2017***;
 - (iii) ***Abdul Rashid Vs. Union of India*** in ***W.P.(C) No. 39210 of 2015***;
 - (iv) ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Another*** reported in ***(2016) 4 SCC 754***.

Learned Sr. Counsels further drew attention of this Court towards

paragraphs 14 to 18 of the Judgment passed by Hon'ble Apex Court in the case of **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Another**, which reads as under:-

"14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa. In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India as well as Valsamma Paul v. Cochin University. The learned Single Judge in Pushpa also considered another judgment of the Delhi High Court, in Tej Pal Singh, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 has been extracted in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] along with the speech delivered by Dr Ambedkar in the Constituent Assembly and reads thus:

"9. ... '251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to "a minority of seats", lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. ... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. ... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same

time satisfy the demand of communities which have not had so far representation in the State.... ”.]

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.’ (Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , SCC pp. 433-34, para 251) ”

16. *In Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant paragraphs from Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] have also been extracted, which read thus: (Pushpa case[Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)*

“11. ... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4),

therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and enshrined in the fundamental rights and directive principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.' (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del paras 15-16)"

17. *Further, in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant portion from the judgment of Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] has also been extracted, which reads as under: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)*

"11. ... '17. ... "21. The Constitution through its Preamble, fundamental rights and directive principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.' (Valsamma Paul case[Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] , SCC pp. 560-61, para 21)' (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del para 17)"

18. *In our considered view, the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench*

in Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . Therefore, the impugned judgment and order [Delhi Subordinate Services Selection Board v. Ram Kumar Gijroya, 2012 SCC OnLine Del 472 : (2012) 128 DRJ 124] passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned Single Judge in Ram Kumar Gijroya v. Govt. (NCT of Delhi) [Ram Kumar Gijroya v. Govt. (NCT of Delhi), WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored."

8. It is further argued by counsel for the petitioners that respondents – Commissions have tried to threadbare the entire judgment of the case of **Ram Kumar Gijroya** in order to get better out of it and in order to showcase that the judgment is based on the proposition that change of game in the amidst is impermissible in the case of advertisement whereas that is not the case in hand. Controverting stands and referring to the basic contention in the facts of the present case that the present petitioners had all submitted the required documents in the required formats at the time of document verification which is admitted as per the counter affidavits filed in all the writ applications. The basic bone of contention in regard to rejecting candidature of the petitioners is that petitioners have submitted their respective caste certificates obtained after the last date of filling up of the application forms and as such, their candidatures have been rejected.
9. Referring to the points of law formulated by the Hon'ble Court vide order dated 12.12.2018 first, whether there was any cut-off date mentioned in the advertisement, it is argued by learned counsel for the petitioners that Cut-off date is the date on which a candidate is required to submit a document. In the present case in all the cases it was mentioned in the column "Anyaay" i.e. the last clause of the advertisement, that the candidate who would be required to submit the required documents in the particular format on the date on which they are called for document verification and as such, there was no specific cut-off date which was merely mentioned that on date on which they required us to submit a certificate that would be the cut-off date and on the cut-off date that is the date of document verification the petitioners have submitted their certificate. Respondents have tried to canvas a case that there is a **cut-off date in regard to issuance of certificate as well as this issue has been set at rest in the case of Abdul Rashid affirmed by the Hon'ble Supreme Court**

referred supra. Second, whether caste certificate was required to be submitted on or before the cut-off date. Cut-off date is merely the date of document verification and on that date petitioners had duly submitted all the required certificates as per the advertisements. Third, whether the cut-off date so fixed was the date of verification of caste certificate or the last date of submission of the application form. Learned counsel submits that this issue has also been answered in issue no.1 i.e. *the cut-off date is the date for verification of caste certificate and not the date of submission of the forms as held in the case of Abdul Rashid*. Learned counsels appearing on behalf of the petitioners submit that in the light of aforesaid, case of the petitioners ought to have been considered and their cases ought to have been allowed. It is further essential to point out that in one of the writ applications being W.P.(S)No.3261 of 2018 an affidavit was filed on 11.12.2018 wherein it was categorically mentioned at paragraph no.8 that there are certain candidates who had provided different details at the time of online application and submitted different caste certificate at the time of document verification same as the case of the petitioner but, were allowed joining and are also undergoing training whereas, the case of the petitioners have been rejected. The aforesaid application/affidavit has not been replied to/rebutted to and as such, under Order 8 Rule 5 and in terms of **doctrine of non-traverse** it is an admission on part of the respondents.

10. Learned Sr. Counsels assisted by other counsels appearing on behalf of petitioners submits that they have also filed I.A. in many writ applications in order to implead and array the newly selected candidates as party – respondents as because in furtherance to the aforesaid advertisements appointment has already been made. Learned Sr. Counsels further submits that as per submissions made in the open court, there are certain posts which are still vacant but the details of the same are with the respondents-State authorities which the petitioners do not have in their hand. It is further pointed out that in two of the writ applications, **no cut-off date for issuance of caste certificate** has been issued and petitioners have submitted caste certificates prior to declaration of their results and as such the same are completely covered by the judgement passed in the case of **Ram Kumar Gijroya**. It has further been pointed out that Hon'ble Supreme Court in the case of **Ram Kumar Gijroya** had held that the *Constitutional mandates and benefits provided to an individual by virtue of his/her birth in reserved category is a special benefit which*

is being provided and a proof in that regards can be given any time prior to final appointment and this has further been dealt in case of Anil Tanti by the Hon'ble Division Bench wherein it has been observed that Minor Discrepancies must be overlooked.

ARGUMENTS ADVANCED BY LEARNED COUNSEL FOR THE RESPONDENTS:

11. Mr. Sanjoy Piprawal, learned counsel appearing on behalf of the respondents – Commission [JPSC as well as JSSC] submits that the main dispute that has arisen in the instant case is the *question of not extending the benefits of reservation to the candidate of reserved categories of the respective categories*. Learned counsel, for reference purposes, has referred Clause-9 of one of the Advertisement No. 02/2016, which relates to Reservation. Learned counsel further submits that similar clauses are there in almost all the advertisements, but for the sake of brevity, relevant clause of one of the advertisements is being placed herewith:

Clause- 9- आरक्षण:-

(क) ऑनलाईन (Online) आवेदन में नियत प्रविष्टि के अधीन इंगित आरक्षण का दावा नहीं करने पर आरक्षण का लाभ नहीं मिलेगा। ऐसे अभ्यर्थियों को अनारक्षित कोटि में शामिल किया जायेगा।

(ख) आरक्षण का लाभ केवल झारखण्ड राज्य के स्थायी निवासी को झारखण्ड राज्य के सक्षम स्तर के पदाधिकारी अर्थात् उपायुक्त/अनुमंडल पदाधिकारी स्तर से निर्गत जाति प्रमाण पत्र के आधार पर ही देय होगा। झारखण्ड राज्य के बाहर के जाति प्रमाण पत्र धारक अभ्यर्थी के लिए आरक्षण के लाभ हेतु किया गया दावा अनुमान्य नहीं होगा। केन्द्रीय सरकार के अधीन नियोजन/शैक्षणिक संस्थानों में नामांकन के उद्देश्य से निर्गत पिछड़ी जाति (OBC) का प्रमाण पत्र भी अमान्य होगा एवं आरक्षण का दावा अनुमान्य नहीं होगा।

(ग) झारखण्ड सरकार द्वारा लागू अघतन आरक्षण संबंधी नियम प्रभावी होंगे। अन्य राज्यों एवं केन्द्रशासित प्रदेशों के उम्मीदवार चाहे वे किसी भी जाति के हों, आरक्षण का लाभ नहीं मिलेगा तथा वे अनारक्षित कोटि के उम्मीदवार माने जायेंगे। अतएव ऐसे उम्मीदवार Online आवेदन पत्र में अपनी कोटि अनारक्षित (UNR) प्रविष्ट करेंगे।

(घ) झारखण्ड राज्य के उम्मीदवार, जो अनुसूचित जाति/अनुसूचित जनजाति/पिछड़ा वर्ग-I (BC-I)/ पिछड़ा वर्ग-II (BC-II) के हैं, को आरक्षण का लाभ प्राप्त करने के लिए झारखण्ड राज्यान्तर्गत उपायुक्त/अनुमंडल पदाधिकारी स्तर से कमशः कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड सरकार का ज्ञापांक – 5682, दिनांक – 22. 10.2008 एवं ज्ञापांक – 10007, दिनांक – 29.08.2012 द्वारा निर्गत निर्धारित विहित प्रपत्र-I अथवा प्रपत्र-II का विवरण ऑनलाईन आवेदन पत्र में प्रविष्ट करेंगे। अन्यथा अभ्यर्थी अनारक्षित कोटि के माने जायेंगे। निर्धारित प्रपत्र

आयोग के बेवसाईट – www.jpsc.gov.in पर उपलब्ध है।

(ङ) आवेदन के प्राप्ति की अंतिम तिथि तक आरक्षण हेतु संलग्न विहित प्रपत्र । एवं प्रपत्र-॥ में जाति प्रमाण पत्र, जिसे आयोग द्वारा अन्तर्वर्का के समय प्रमाण पत्र सत्यापन प्रक्रिया के दौरान मूल रूप में प्रमाण पत्र प्रस्तुत करना अनिवार्य होगा अन्यथा अभ्यर्थिता रद्द कर दी जायेगी ।

(च) साक्षात्कार के समय ऑनलाईन आवेदन में दिये गये प्रविष्टि (Entry) एवं मुद्रित आवेदन के साथ संलग्न सभी प्रमाण पत्रों की संबंधित मूल प्रति प्रस्तुत करना अनिवार्य होगा । अन्यथा अभ्यर्थिता रद्द कर दी जायेगी ।

Learned counsel further draws attention towards **Clause-12 (घ) (iii) of the said Advertisement**, wherein candidates were also instructed that they are required to mention about their certificate and caste certificate in the prescribed column of the Online Application Form and original copy of aforesaid certificates will have to be produced before the J.P.S.C. at the time of interview and if any discrepancy is found at the time of verification of the documents about the details mentioned in the Online Application Form and documents produced by the candidates at the time of verification, candidature of the candidates will be rejected. Learned counsel submits that Proforma of the caste certificates i.e. Appendix-I (for SC/ST candidates) and Appendix-II (for BC-I & BC-II candidates) have been brought on record at page No.24 and 25 of the Counter Affidavit filed in W.P.(S) No. 3887 of 2018.

Learned counsel further submits that from the perusal of **Clause 9(Gha)** of the Advertisement it is clearly evident that the reserved categories *candidates were required to submit Caste Certificate issued by an officer not below the rank of Sub divisional Officer* in a Proforma as indicated in Advertisement *i.e. for S.C/S.T categories candidates in Proforma- I and for E.B.C-I and B.C-II categories candidates in Proforma-II* and it was clearly mentioned that *other Caste Certificates will not be valid for extending the benefits of reservation*.

Learned counsel submits that it would be also evident from perusal of **Clause-9(Gha) of the Advertisement that reserved categories candidates who have claimed the benefits of reservation were required to mention details of their Caste Certificates in their Online Application Form**. Further from **perusal of clause-9(Angh) of the Advertisement, it is evident that candidates were instructed that only after obtaining the requisite caste certificate in the prescribed Proforma before the last date of submission of Application Form and thereafter submit their Online Application Form** and same will have to be produced at the time of verification of testimonials.

Learned counsel submits that it would be also evident from perusal of **Clause-9(Cha) of the Advertisement that reserved categories candidates who have**

claimed the benefits of reservation were also required to produce their caste and other certificates which have been mentioned in their Online Application Form before the J.P.S.C at the time of interview for verification.

Learned counsel further submits that it would be evident from perusal of Advertisement ***that last date for submission of Application Form was fixed as 29.2.2016 however the last date of submission of Application Form was extended upto 15.03.2016.***

12. It has been pointed out by Mr. Sanjoy Piprawal, learned counsel appearing on behalf of the JPSC as well as JSSC that after publication of the Advertisement, several candidates including the Petitioners, after going through the terms and conditions of the Advertisement, submitted their online application forms before the commission for considering their candidature for appointment against the advertised posts. In this connection, learned counsel specifically gives example of Online Application Form of petitioner Khushboo Garg in W.P.(S) No. 3887 of 2018 and submits that she has ***claimed the benefits of reservation as BC-I category candidate and has mentioned Caste Certificate No. 5185/09 dated 09.06.2009 in her On-line Application Form, which has been brought on record vide Annexure- B*** to the Counter Affidavit in the said writ petition. Respondent – JPSC, ***on the basis of the declaration made by the Petitioner in her online application form, allowed her to appear in the examination.*** After the examination, JPSC published the ***result on 21.02.2018*** in which Petitioner was also declared successful vide Annexure- 3 page- 33 of the said Writ Application. Said writ ***petitioner has claimed benefits of reservation under BC-I category in her on-line application form and as such her candidature was treated under BC-I category and she was also declared successful in the written examination as a BC-I category candidate.*** However, after publication of result, said writ petitioner was issued interview letter, in which, the ***date of verification of documents has been given on 7.3.2018 and date of interview was fixed on 8.3.2018, vide Annexure-4 page- 34 of the said writ application.***

It has been further pointed out by learned counsel that from perusal of ***Clause-2 (v) of the interview letter, it is evident that candidates were directed to bring their caste certificate, as mentioned in their on-line application form, issued by the competent authority (not below the rank of Sub Divisional Officer as mentioned in Advertisement) for S.C. and S.T. of the State of Jharkhand in Performa-I and for B.C-I and B.C.-II categories of the State of Jharkhand in Performa-II, with non-creamy layer certificate and no other caste certificate***

will be entertained. On the **date of verification of documents**, i.e. on **7.3.2018** in terms of Annexure-4 page- 34 of the said writ application, said writ petitioner – Khushboo Garg appeared before the JPSC and submitted her Caste Certificate bearing No. 4344 dated 16.06.2009 of B.C-I category issued by the Sub Divisional Officer, which is placed at Annexure-5 page- 35 of the said writ application. The said *Caste Certificate No. 4344/09 dated 16.06.2009 is not valid for extending the benefit of reservation under B.C.-I category for the services in the State of Jharkhand in view of the fact that in the aforesaid caste certificate there is no mentioning about the creamy layer and more so ever the same is also not in Proforma- II mentioned in the Advertisement.*

Learned counsel further submits that it is not out of place to mention here that said writ *petitioner did not produce the Caste Certificate No. 5185/09 dated 09.06.2009 of BC- I category as mentioned by her in her on-line application form and as such her candidature was considered under unreserved category*. Petitioner – Khushboo Garg did not produce Caste Certificate in terms of Advertisement and as such her candidature was considered under unreserved category and as such there is no illegality in considering the candidature of the petitioner as unreserved category candidate. Said petitioner – Khushboo Garg *has secured only 156 marks whereas the last selected candidate in unreserved category has secured 158 marks and as such she was not declared successful*. JPSC, after conducting the interview, has *already made recommendation for Appointment of successful candidates on the post of Dentist (Basic Cadre) to the State Government vide letter No. 1148, dated 17.05.2018 [Annexure- 7 page- 39 of W.P.(S) No. 3887 of 2018].*

Learned counsel submits that thus it would be clearly evident from the facts stated above that **selection process for appointment of Dentists (Basic Cadre) in terms of Advertisement No. 2/2016 has already been completed.**

13. Learned counsel further submits that this Court in *W.P.(C) No. 6149 of 2018, vide order dated 29.01.2019* in the case of *Pankaj kumar-Vs- State and others*, has been pleased to held that “*benefits of reservation to a member of B.C-I category is to be extended in favour of such candidate who is not coming under creamy- layer but the caste certificate is simplicitor as a caste certificate showing the petitioner a member of the B.C-I category but whether he is entitled to get benefits of reservation in the initial recruitment would be depend when a certificate to that effect would be issued by the competent authority taking into consideration the income but the same is not available in the caste certificate as*

*Annexed as annexure-6” and after considering the facts and circumstances of the case **and specific terms and condition of the Advertisement, the Hon’ble single judge has been pleased to dismiss the same in terms of the order dated 29.01.2019.***

Learned counsel submits that in view of the facts and circumstances of the case *and in view of the specific terms and condition of the Advertisement about obtaining the Caste Certificate first and thereafter only submit the online application form upto the last date of submission of online application form i.e. 15.03.2016, mentioning the details about the Caste Certificate i.e. Caste Certificate Number and date of issuance and to produce the same before JPSC for verification at the time of verification of the testimonials, the ratio as laid down by the Hon’ble Supreme court in Ram Kumar Gijroya case is not applicable in this case.*

14. Learned counsel submits that during the course of the arguments, counsel for the petitioners have submitted before this Court that *Hon’ble Kerala High Court in W.P(C) No.39210 of 2015 (A)* after considering the Gijroya Case has been pleased to allow the writ application and the petitioner in the said writ petition was granted relief on the ground that on the basis of delay submission of OBC certificate, petitioner would not be disentitled for consideration for the said post. It was also submitted that aforesaid order was also upheld by the Hon’ble Division Bench in W.A No. 655/2016 and thereafter Hon’ble Supreme Court also dismissed the S.L.P which was filed by the Union of India against the order passed by the Hon’ble Division Bench of Kerala High Court.

15. Learned counsel submits that the *submission of the Petitioner is not correct in view of the fact that Hon’ble single judge of Kerala High Court had been pleased to pass order in W.P(C) No. 39210 of 2015 (A) on 20.01.2016 whereas in Ram Kumar Gijroya case order was passed by the Hon’ble Supreme Court on 24.02.2016 and as such, the same has been decided without considering the order and Judgment passed by the Hon’ble Supreme Court. Hon’ble Division Bench of Kerala High Court decided the W.A No. 655/2016 vide order dated 21.07.2016 and at the time of passing the order since the Ram Kumar Gijroya case was in existence and as such same was considered in view of findings given by the Hon’ble single judge in Para-4 and 8 of the order dated 20.01.2016*, which is quoted below.

Para-4 “*the learned counsel for the Petitioner raises two ground of challenge against Ext-P10. First, that the OBC certificate could be produced even at the time of the Interview since there is no*

specific date of issuance of the OBC certificate prescribed in the Notification. The requirement, it is argued, was only for production of the certificate at the time of interview for document verification. The other ground is that the choices / option made by the Petitioners were unilaterally varied by the Respondents.”

Para -8 *“ learned CGSC would refer to Annexure-R3 (c) a circular issued by the Department of Personnel and Training, which mandates that OBC Certificate in prescribed format issued up to 180 days from the closing date of application alone could be accepted. First of all the internal communication issued cannot be relied on to restrict a benefits given to a person under the Notification.”*

16. Learned counsel submits that it is evident from the facts and circumstances as stated above that in the aforesaid case, no date was fixed for submission of OBC certificate in the advertisement and criteria for obtaining and producing OBC certificate in prescribed format issued upto to 180 days from closing date of application was only based on internal communication of the Government in other words the same was not the criteria mentioned in the Advertisement and as such aforesaid condition which was imposed later on was not accepted by the Hon’ble Kerala High Court. Learned counsel submits that in view of the aforesaid facts and circumstances, in instant case, the order passed by the Hon’ble Kerala High Court are not applicable rather the Order dated 18.05.2019 passed by Hon’ble Division Bench of this Hon’ble Court in W.P.(S) No. 1921 of 2018 in the case of ***Rohan Thakur –vs- State of Jharkhand and Ors*** is applicable.

17. Learned counsel further submits that in these batch of writ applications, petitioners have also claimed the benefits of reservation under S.C., S.T., B.C.-I and B.C-II Categories but have failed to produce valid caste certificates at the time of verification in Proforma as mentioned in the respective Advertisements issued by the competent Authority as mentioned in the advertisement in the prescribed format and as such benefits of Reservation were not extended to the Petitioners. At the time of verification of the documents several Petitioners have produced caste certificates issued by Circle Officer/Block Development Officer and some of the Petitioners have produced caste certificates issued in a format meant for services for the Government of India which are not valid for extending the benefits of reservation in view of the specific terms and conditions of the Advertisement and as such benefits of reservation was not extended to the Petitioners. When deficiencies were pointed out to the candidates about their caste certificates, Petitioners in order to claim benefits of reservation have submitted caste certificates issued after the last date of submission of the Online Application form, which were not considered for

extending the benefits of reservation and such instant writ applications have been filed, which are not maintainable in view of the facts and circumstances of the cases and are fit to be dismissed by this Hon'ble Court.

18. Mr. Sanjoy Piprawal, learned counsel submits that counter Affidavit have already been filed in most of the cases and details about the caste certificates as mentioned by Petitioners in their online application form and caste certificates as produced by them at the time of verification of the Documents have been also been detailed. In view of specific terms and conditions as mentioned in the Advertisements, the Judgements as cited by the learned Counsel for the Petitioners are not applicable in view of the fact that same will ***amount to challenge the terms and conditions of the Advertisement after appearance in the examination*** which is not permissible in the eyes of law and if the said submissions of the Petitioners will be accepted the same will also amount to change the terms and conditions of the Advertisements.
19. To discard the arguments advanced by learned Sr. Counsel appearing on behalf of the petitioners that once Petitioners are allowed to appear in the examination as a reserved category candidates there after their candidature cannot be considered in unreserved category, it has been submitted by Mr. Sanjoy Pipawal that it is ***settled law that on the ground of not possessing the requisite caste certificate by the reserved categories candidates, their candidature cannot be rejected rather they have to be considered in unreserved/General Category as held by the Hon'ble Supreme Court in case reported in 2001(6) SSC 571 M.C.D-Vs- Veena and Ors.(Para-8).***
20. Further to discard the arguments advanced by learned counsel for the petitioners in ***W.P(S) No 3876/2018 (Dr.Rishi Raj-Vs- State of Jharkhand and Ors.) that caste certificates which were issued*** after the cutoff date in favour of Kumar Arnav Swarup and Priti Kiran who belong to S.C category, were taken into consideration and thereafter they have been appointed and Petitioners in support of his aforesaid contention has also filed 3rd supplementary affidavit on 02.08.2019, it has been submitted by Mr. Sanjoy Piprawal ***that Kumar Arnav Swarup and Priti Kiran have submitted valid caste certificate issued before the last date of submission of online application form issued by competent Authority at the time of verification of their testimonials and thereafter only they were recommended for appointment which would be evident from perusal of their caste certificates which is being filed along with reply to the 3rd supplementary affidavit filed by the Petitioner.***

21. To strengthen his arguments, learned counsel appearing for the Commission has placed heavy reliance on the following Judgments:-

- (i) ***L.P.A. No. 610 of 2017 – Jharkhand Staff Selection Commission Vs. The State of Jharkhand and others.***
- (ii) ***W.P.(S) No. 1921 of 2018 - Rohan Thakur Vs. The State of Jharkhand and others.***
- (iii) ***L.P.A. No. 469 of 2015 and other analogous cases - Prem Chand Kumar Vs. The State of Jharkhand and others and other analogous cases.***
- (iv) ***L.P.A. No. 169 of 2015 – Rishi Kumar Vs. Jharkhand Public Service Commission and others.***
- (v) ***W.P.(C) No. 6149 of 2018 – Pankaj Kumar Vs. The State of Jharkhand and others.***

FINDINGS AND OBSERVATIONS OF THE COURT:

22. It appears that these matters were heard on various dates and ultimately it was heard on 02.08.2019. On earlier dates, certain questions of law were also formulated by this Court for determination:

- i. Whether there was any cut-off date mentioned in the advertisement?
- ii. Whether caste certificate was required to be submitted on or before the said cut-off date?
- iii. Whether cut-off date so fixed was the date for verification of caste certificates or last date of submission of application form?
- iv. Whether the petitioners can be treated as a reserved category candidate even though they did not produce valid caste certificate in terms of the respective advertisements?
- v. Whether the caste certificate, if submitted by the petitioners, had been issued by the competent authority in terms of the stipulation made in the advertisements?
- vi. Whether the caste certificates, if submitted, had been issued in prescribed proforma in terms of the respective advertisement and as per rule?
- vii. Whether in a situation when petitioners have qualified and obtained more marks than the last selected candidates in their respective categories, their candidature can be rejected on hyper-technical grounds in their respective category for non-submission of Caste Certificates before the cut-off date?

viii. Whether the respondents can be permitted to once allow the petitioners to appear in the examination as a reserved category candidates in respective category, can further treat them under general category on the hyper-technical grounds?

23. From the materials available on record, it appears that *in the Advertisements specific criteria have been mentioned to the effect that reserved categories candidates will have to obtain valid caste certificates first in terms of respective Advertisements in prescribed Proforma issued by competent officer in terms of advertisement and thereafter only they will submit their online application* and in online application forms candidates were also required to mention details of their caste certificates and its issuance date and aforesaid caste certificates were required to be produced by the candidates before the Commission at the time of verification of the documents and if candidates failed to produce valid caste certificates in terms of the Advertisements, then their candidature will be considered only under unreserved category and no benefits of reservation will be extended. Petitioners after going through the terms and conditions of the respective Advertisements have submitted their online application forms and in order to claim benefits of reservation have mentioned their caste certificate number and issuance date in their online application forms. *On the basis of the declaration as made by the Petitioners, respective Commissions treated their candidatures in reserved category and accordingly they were allowed to appear in the Examination.* Petitioners on being declared successful in the Examination, were directed to appear before the Commission for verification of their testimonials as mentioned by them in their online application form and in terms of the Advertisement. On the date of verification and during the course of verification of the testimonials, it was found that Petitioners have no valid caste certificate in terms of the Advertisement and it was also found that petitioners have made false declaration in their online application form about possessing valid caste certificate in terms of the Advertisement issued before the last date of the submission of the online application form or in terms of the advertisement. Thereafter Petitioners have produced caste certificates issued after last date of submission of the online application form, which was not considered by the respective Commissions and candidature of the Petitioners were considered in unreserved category and Petitioners have secured less marks than the last recommended candidate in unreserved category and some are over age in unreserved category and as such they have not been recommended for appointment.

24. Instant writ applications have been filed by the Petitioners on the ground that in view of the Judgment passed in the case of *Ram Kumar Gijroya*, the Commission is bound to accept the caste certificate issued after the last date of submission of the online application form. **This prayer of the Petitioners is not acceptable on the ground that Petitioners were well aware about the terms and condition of the Advertisements and there after only they have submitted their online application form before the Commission for consideration of their candidature.** The Petitioners were well aware that they are not possessing the valid caste certificates in terms of the Advertisement upto the last date of submission of online application form, in spite of that they mentioned wrong information about caste certificate number and date in their online application form. When it has been detected by the Commission that Petitioners are not possessing the valid caste certificate as mentioned by them in their online application form and they have made wrong declaration in their online application form and as such benefits of reservation cannot be extended to them, thereafter Petitioners have filed *instant writ applications and as such the same are not maintainable and fit to be dismissed for the following facts and reasons.*

- (i) After appearance in the examination, terms and condition of the Advertisement cannot be challenged by the unsuccessful candidates.
- (ii) Selection process has to be completed strictly in terms of the Advertisement.
- (iii) After starting the selection process the terms and condition of the advertisement cannot be changed.
- (iv) That if the prayer of the Petitioners is allowed, the same will amount to change of terms and conditions of the Advertisement, which is not permissible in the eyes of law.
- (v) If submission of the Petitioners as made during course of hearing to the effect that even if there is criteria mentioned in the Advertisement about submission of the caste certificate issued in Proforma by an officer not below the rank of Sub Divisional Officer before the last date of the submission of the Online application form is not mandatory in view of the judgments of the Hon'ble Supreme Court is accepted, the same will amount to challenging the terms and conditions of the advertisement after appearance in the examination and same will also amount to change the terms and conditions of the Advertisement which is not permissible in the eyes of Law.

- (vi) The submission of the Petitioners to the effect that once the petitioners have been allowed to appear in the Examination as a reserved category candidate there after their candidature cannot be considered in unreserved category, the aforesaid submission of the Petitioners is also not correct and cannot be accepted in view of the law laid down by the Hon'ble Supreme Court that candidature of the reserved category candidate on the ground of having no valid caste certificate cannot be rejected rather their candidature has to be considered in unreserved category.
- (vii) Ratio as laid down by the Hon'ble Supreme Court in Ram Kumar Gijroya case is not applicable in these cases in view of the fact that in ***Ram Kumar Gijroya*** case, the submission of OBC certificate was introduced at the time of publication of the result where as in the present case the specific criteria has been mentioned in the Advertisement that reserved categories candidates will have to obtained the caste certificate first and there after only they will submit their online application form mentioning therein the caste certificate number and date of issue and caste certificate must be issued before the last date of submission of online application form i.e.15.03.2016 in proforma mentioned in the Advertisement issued by an officer not below the rank of Sub Divisional Officer.
- (viii) The order dated 21.01.2016 as passed by the Hon'ble Kerala High Court in W.P(C) 39210/2015 (A) and order dated 12.07.2017 passed by Hon'ble Kerala High writ appeal No. 655 of 2016 are not applicable in view of the fact that facts of the aforesaid case is different which would be evident from perusal of Para-4 of the Order dated 21.01.2016 passed in W.P(C) 39210/2015 (A) which is quoted below:-

“the learned counsel for the Petitioner raises two ground of challenge against Ext-P10. First, that the OBC certificate could be produced even at the time of the Interview since there is no specific date of issuance of the OBC certificate prescribed in the Notification. The requirement, it is argued, was only for production of the certificate at the time of interview for document verification. The other ground is that the choices / option made by the Petitioners were unilaterally varied by the Respondents.”

In Para -8 it has further been held that

“learned CGSC would refer to Annexure-R3 (c) a circular issued by the Department of Personnel and Training, which mandates that OBC Certificate in prescribed format issued up to 180 days from the closing date of application alone could be accepted. First of all the internal communication issued cannot be relied on to restrict a benefits given to a person under the Notification.”

- (ix) In the facts and circumstances of the instant cases, the Order dated 18.05.2019 passed by Hon'ble Division Bench of this Hon'ble Court in **W.P(S)1921/2018 Rohan Thakur -vs- State of Jharkhand and Ors** is applicable in which the ratio laid down by the Hon'ble Supreme Court in **Ram Kumar Gijroya Case** and order dated 12.10.2018 passed in **L.P.A No. 610/2017 Anil Tanti** case have been considered in terms of Advertisement of aforesaid cases.
- (x) The law laid down by Hon'ble Supreme Court in **Ram Kumar Gijroya Case** is not applicable in the instant case. In the said case of **Ram Kumar Gijroya**, requirement of submission of O.B.C. certificate was not mentioned in the Advertisement and requirement of the submitting of the O.B.C certificate before the cut-off date of the application was introduced by the respondents, which would be evident from perusal of Para-08 and 14 of the order of the Hon'ble Supreme Court.

Para-8 and 14 of the judgment are being quoted herein below:-

“8. the requirement of submitting the O.B.C certificate before the cut-off date of the application was introduced by the respondent D.S.S.S.B only while declaring the result on 15.12.2008 holding that appellant was not eligible for selection to the post of Staff Nurse as the O.B.C certificate was received after the cut-off date”.

“14. the learned single judge of the High Court has rightly held that the Petitioners therein were entitled to submit the O.B.C certificate before the provisional selection list was published to claim the benefits of reservation of O.B.C category.”

25. It further appears that in the instant selection processes, the specific criteria has been mentioned in the respective advertisements for obtaining the caste certificate before the last date of submission of online application forms and details of the caste certificates were required to be mentioned in the online application forms and as such the **Ram Kumar Gijroya case**, is not applicable in this case.

26. It is further relevant to mention here that the Division Bench of this Court in **L.P.A No 610/2017 and L.P.A No.618/2017, Jharkhand Staff Selection Commission -Vs- State of Jharkhand and Ors.** after considering the several judgment of this Hon'ble court and other Hon'ble High Courts has been pleased to held that *“a coordinate bench in the case of Prem Chnad Kumar (Supra) distinguished between default or delay in furnishing caste certificate and residential certificates and decided the case against the applicant on default on the latter count. The coordinate Bench opined that no leniency could be shown by the Court if the cut -off date is crossed and it was upto the employing body to relax any qualification norm”*. The Hon'ble division Bench in Para-21 of the judgment

has further been pleased to hold that “*the Full Bench decision of the Hon’ble Allahabad High Court in the case of Gaurav Sharma (Supra) examined the question as to whether candidature of the OBC candidate is liable to be rejected on the ground of the caste certificate having been submitted after the last date from submission of applications. In these two proceeding, that is not the question.*

27. The Hon’ble Division Bench of this Court in L.P.A 610/2017 and L.P.A 618/2017 has been pleased to hold that *where there is no cut-off date fixed for submission of caste certificate in that case Ram Kumar Gijroya case is applicable and where there is specific date i.e cut –off date mentioned in the Advertisement for submission of caste certificate, the ratio of Ram Kumar Gijroya case will not be applicable*. It is not out of place to mention here that judgment and Order dated 12.10.2018 passed in L.P.A No.618/2017 and L.P.A 610 of 2017 were challenged by the Jharkhand Staff Selection Commission before the Hon’ble Supreme Court and the Hon’ble Supreme Court has been pleased to dismiss the same with the observation “*however, the question of Law is kept open*”. After passing the order by the *Hon’ble Supreme Court in SLP No. 32332/2018*, the Hon’ble Division Bench of this Hon’ble Court in W.P(S) No. 1921/2018 Rohan Thakur –Vs- State and Ors. again considered the ratio laid down by the Hon’ble Supreme Court in Ram Kumar Gijroya case as well as Order passed by this Hon’ble Court in L.P.A No.610 /2017 i.e. Anil Tanti case and Hon’ble Division after hearing has been pleased to dismiss the aforesaid case with an observation vide Para- 3, 4, 5,6 and 7 that *in view of the specific stipulation made in the Advertisement about obtaining the caste certificate before last date of submission of Application form, the ratio laid down in Ram Kumar Gijroya case and Anil Tanti case are not applicable*.

28. Further, the Hon’ble Division Bench of this Court in *L.P.A No. 469 /2015 Prem chand Kumar Vs. State of Jharkhand And Ors. vide its Order dated 21.06.2018* has been pleased to hold that in view of the specific criteria mentioned in the Advertisement about submission of the caste and residential certificate along with application form upto the last date of submission of application form for extending the benefit of reservation, the prayer of the Petitioner can’t be allowed for submission of aforesaid Certificate after the last date of submission of application form in the light of judgment passed by the Hon’ble Supreme Court in Ram Kumar Gijroya case and further been pleased to hold “*much has been argued by the learned counsel for the appellant by relying upon the decision rendered by the Hon’ble Supreme Court reported in (2016 (4) SCC 754), in which it has permitted to supply the documents after the cut of date. Perhaps, it is only the exception to*

catena of the decisions. We have to look carefully at the facts of that case. In the facts of that reported case, explicitly the condition was imposed to supply a particular type of Certificate, after the result was declared. The format was given after the result was declared (as per Para-8 of the said judgment). It is a distinguishable feature. In the facts of the present case, looking to clause 12 of the public Advertisement which is at Annexure-1 to the memo of this Letters Patent Appeal, Residential Certificate as well as Caste Certificate issued by an Officer not below the Rank of Sub-divisional Officer was to attached with the application form. This appellant (original Petitioner) has submitted the Caste Certificate correctly, whereas, Residential Certificate was not supplied as per the requirement. This fact make the present case different from the facts of the aforesaid reported decision and further been pleased to dismissed the L.P.A. in terms of order dated 21.06.2018.

29. Further, the Hon'ble Division Bench in view of the specific stipulation made in the Advertisement No.04/2013 has been pleased to hold in L.P.A No. 169/2015 (Rishi Kumar Vs. J.P.S.C and Ors) vide Order dated 1.09.2015 that “this Appellant could not produce the caste certificate of B.C- II on or before 10.01.2014 in the format which is prescribed by the J.P.S.C as mentioned in the Advertisement no error has been committed by the learned Single Judge. This appellant cannot get benefits of any reservation for the seat of the B.C –II category and therefore he is considered as General category candidate by the J.P.S.C. We, therefore, see no reason to interfere with the decision rendered by the learned single judge in W.P.(C) 842/2015. (*This Order relates to submission of OBC caste certificate meant for Government of India services which has been held not valid for extending the benefits of reservation in state because in Jharkhand State there are two category i.e. B.C-I and B.C-II*)

30. In the case of *Pankaj kumar-Vs- State and Ors.* in *W.P.(C) No. 6149/2018.*, *vide order dated 29.01.2019*, it has been held that

“Benefits of reservation to a member of B.C-I category is to be extended in favour of such candidate who is not coming under creamy- layer but the caste certificate is simplicitor as a caste certificate showing the petitioner a member of the B.C-I category but whether he is entitled to get benefits of reservation in the initial recruitment would be depend when a certificate to that effect would be issued by the competent authority taking into consideration the income but the same is not available in the caste certificate as annexed as annexure-6”

And after considering the facts and circumstances of the case and specific terms and condition of the Advertisement the Hon'ble single judge has been pleased

to dismiss the same in terms of the order dated 29.01.2019.

31. Further, *in W.P(C) No. 6267 of 2018 (Deepak Kumar Das –Vs- J.S.S.C and Anr.)*, after considering the facts and circumstances of the case as well as specific criteria mentioned in the advertisement, vide order dated 28.02.2019, it has been held in Para-13 of the order that

“if the caste certificate, submitted with the application form by the Petitioner would be found to be proper i.e. the condition stipulated to be fulfill, but since the Petitioner has got the caste certificate on 29.07.2017, therefore he cannot be treated to be at par with the other candidates in absence of the caste certificate, not obtained on or prior to 26.07.2017”.

While dismissing the writ application, it has further been observed in Para-14 of the order that

“it is not in dispute that if a condition is mentioned in the advertisement, it is to be strictly adhered to. Reference in the regard will be made to the judgment rendered in the case of Bedanga Talukdar –Vs- Saifudaullah Khan And Ors reported in 2011(12) SCC 85”.

32. This Court in *W.P(S)No. 5665/2013 Surja Kujur -Vs- State Of Jharkhand And Ors.*, in terms of order dated 05.11.2018, has been pleased to hold vide para-7 of the judgment that *Ram Kumar Gijroya's case is not applicable in view of the specific terms and condition of the Advertisement*. Further, in *L.P.A No. 517/2016 [Jamshed Kazi –Vs- J.P.S.C and Ors]* in terms of order dated 09.07.2018, it has been held by the Hon'ble Division Bench that *caste certificate issued by circle officer is not valid for extending the benefits of reservation*

33. In *W.P. (S)No. 6122/2017 Rahul Kumar –Vs- State and Ors* in terms of order dated 4-7-2018, this Court has been pleased to hold that *caste certificate issued after the cut-off date is not valid and OBC caste certificate is also not valid for extending the benefits of reservation to BC-I and BC-II categories candidates.*

34. In view of facts and circumstances mentioned hereinabove, I find that instant writ applications are also not maintainable and fit be dismissed in view of the fact that *Petitioners were well aware about the terms and condition of the advertisement and thereafter only they submitted their online application forms but at the time of verification of documents, they failed to produce proper caste certificate in Proforma as mentioned in the advertisement* for extending the benefits of reservation and *when Petitioners were treated as a unreserved category, they filed instant writ applications for relaxation of the terms of the Advertisement* which is not maintainable in view of the facts and in view of the settled law that after appearance in the examination, the terms and condition of the advertisement cannot be challenged by the unsuccessful candidate. In this connection, reference

may be made to the Judgment reported in (2011) 1 SCC 150 [Para 24 to 28] and (2007) 8 SCC 100 [Para 18] and **recent Full Bench Judgment of the Hon'ble Supreme Court reported in (2017) 4 SCC 357 (Para 12 to 21).**

35. The instant writ applications are also not maintainable and fit to be dismissed in view of the settled law that terms of the advertisement cannot be changed after starting the selection process as has been held by **Hon'ble Supreme court as reported in (2015) 8 SCC 484 [para-8 to 10] and 2005 (3) JLJR 100 SC [Para -14].**

36. The writ applications are also not maintainable and fit to be dismissed by this Court in view of the settled law ***that selection process has to be completed strictly in terms of the criteria mentioned in the Advertisement as held by the Hon'ble Supreme Court in the case of Bedanga Talukdar -Vs- Saifudaullah Khan and Ors*** reported in (2011) 12 SCC page 85. Paragraph-29 and 32 of the Judgment rendered in the case of ***Bedanga Talukdar Vs. Saifudaullah Khan and others*** reported in (2011) 12 SCC 85, reads as under:

“29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”

.... . . .

32. *In the fact of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity*

card submitted after the selection process was over, with the publication of the select list.”

37. The Hon’ble Supreme Court again in case reported in **2019 (3) SCC 672** in the case of **High Court of Hyderabad –Vs- P. Murali Mohan Reddy and Ors** has been pleased to retreat *in Para 15* that **appointment are to be made in terms of the stipulation contained in the Advertisement**. Hon’ble Supreme Court in judgement reported in **1996(3) SCC 320 (J. Ashok Kumar –Vs- A.P and Ors.)** has been pleased to hold that **“Selection having already over and selected candidates having been appointed, relief refused.”**

38. Hon’ble Supreme Court in judgement reported in **2001(6) SCC 571 (M.C.D –Vs- Veena and Ors.)** has been pleased to hold that **“that candidature of a reserved category candidate cannot be rejected on the ground of not possessing the valid caste certificate rather his candidature has to be considered in unreserved category .”** The order passed by **Hon’ble Kerala High Court in W.P(C) No.39210/2015 (A) and Order date 22.07.2017 passed by Hon’ble Division Bench in Writ appeal No. 655/2016** are not applicable in this case in view of the facts and circumstances of the case.

39. The Hon’ble Apex Court in the case of **Municipal Corporation of Delhi Vs. Surender Singh & Others**, reported in **2019(7) Supreme 306**, has specifically held at paragraph-9 thereof that **Courts have observed that even if the criteria fixed is defective, the Courts are ordinarily not required to interfere as long as the same standard/ yardstick has been applied to all the candidates and did not prejudice any particular candidate.** It is further relevant to quote para-19 of the said Judgment, which reads as under:-

“19. On noticing the manner of consideration made by the Division Bench, we are of the view that the Division Bench has exceeded the jurisdiction while exercising the power of judicial review in the matter of selection process by evolving its own criteria and substituting the same with the criteria adopted by recruiting agency. We are of the said view for the reason that the position of law is well established that the recruiting agency cannot be compelled to fill up all available posts even if the persons of the desired merit are not available. This Court in the case of Ashwani Kumar Singh vs. U.P. Public Service Commission & Ors. (2003) 11 SCC 584 : (2003) 4 Supreme 573 relied upon by the learned counsel for the appellant had considered these aspects and held that it is not a rule of universal application that whenever vacancies exist persons who are in the merit list per force have to be appointed. It is held therein that if the employer fixes the cutoff position the same is not to be tinkered with unless it is totally irrational or tainted with malafides. It was further stated therein that the employer in its wisdom may consider the particular range of selection to be appropriate. The decision of

the employer to appoint a particular number of candidates cannot be interfered with unless it is irrational or malafide.”

Further, in paragraph-23 of the said Judgment, the Hon’ble Court has held as under:

“23. Any undue sympathy shown to the private respondents herein so as to direct their selection despite not possessing the desired merit would amount to interference with the right of the employer to have suitable candidates and would also cause injustice to the other candidates who had participated in the process and had secured a better percentage of marks than the private respondents herein but lower than the cutoff percentage and had accepted the legal position with regard to the employer’s right in selection process. In such event providing the benefit to the private respondents herein by applying the principles laid in the case of U.P. Jal Nigam (Supra) as done by the Division Bench, would not be justified.”

40. It has categorically been held by various Court that in no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer. In the case of *Maharashtra Public Service Commission v. Sandeep Shriram Warade*, (2019) 6 SCC 362, in para-9 of the said Judgment, the Court has been pleased to hold as under in:

9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

41. In the case of *Rakesh Bakshi Vs. State of J & K*, reported in (2019) 3 SCC 511, it has been held that the *eligibility of the candidate must be decided with reference to the qualification possessed as on the cut-off date and the qualification acquired later in point of time cannot make a candidate eligible.*

42. The question as to whether a person consciously takes part in the process of selection can turn around and question the method of selection, is no longer res integra and has been decided in the case of *Madras Institute of*

Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454. After having taken part in the process of selection knowing fully well the criteria fixed by the Commission, the petitioners are not entitled to challenge the criteria or process of selection. The petitioners have invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioners clearly disentitles them from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petitions.

43. As already discussed hereinabove with respect to the decision rendered by ***Hon'ble Kerala High Court in W.P(C) No.39210 of 2015 (A)***, the said Judgment of Hon'ble single judge of Kerala High Court was passed on 20.01.2016 whereas in Ram Kumar Gijroya case, the order was passed by the Hon'ble Supreme Court on 24.02.2016 and as such, the same has been decided without considering the order and Judgment passed by the Hon'ble Supreme Court. In view of the aforesaid facts and circumstances, in instant case, the order dated 21.01.2016 as passed by the Hon'ble Kerala High Court in W.P(C) 39210/2015 (A) and order dated 12.07.2017 passed by Hon'ble Division Bench of Hon'ble Kerala High Court in writ appeal No. 655 of 2016, are not at all applicable and as such, in view of the specific terms and conditions mentioned in the Advertisement, Order dated 18.05.2019 passed by Hon'ble Division Bench of this Hon'ble Court in W.P.(S) No. 1921 of 2018 in the case of ***Rohan Thakur –vs- State of Jharkhand and Ors*** is applicable in which the ratio laid down by the Hon'ble Supreme Court in ***Ram Kumar Gijroya Case*** and order dated 12.10.2018 passed in ***L.P.A No. 610 of 2017*** [Anil Tanti case], have been considered in terms of Advertisement of aforesaid cases. In view of the aforesaid facts and circumstances, instant writ applications are not maintainable and as such same are fit to be dismissed.

44. In the case of ***State of Tamil Nadu and others Vs. G Hemalathaa and Another***, reported in ***2019 SCC Online (SC) 1113***, the Hon'ble Apex Court has been pleased to observe that the Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The Apex Court stated that the High Court in exercise of powers under Article 226 of the Constitution cannot modify/ relax the Instructions issued by the Commission. Further, the Hon'ble Apex Court said that –

“It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.”

In the case of **Union of India Vs. S. Vinod Kumar & Ors.**, reported in **2007(8) SCC 100**, in paragraph-18, it has been held that:

"It is well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

45. In view of the facts and circumstances stated above and in view of the settled principles of law, this Court is of the considered view that prayer as made by the petitioners in the aforesaid cases, cannot be accepted in view of the fact that the same will amount to violation of provisions of Articles 14 and 16 of the Constitution of India in view of the fact that other candidates who could not submit their online application forms due to non-availability of the requisite Caste Certificates, as per the terms and conditions of the advertisement, up to the last date of submission of online application forms, will be discriminated, as equal opportunity has to be given to all the candidates. It is not case of the petitioners that any candidate securing lesser marks than the petitioners, have been selected under unreserved category. Since petitioners failed to fulfill requisite conditions stipulated in the advertisement and could not submit valid caste certificate issued by competent authority within stipulated period, their candidatures under respective reserved categories have rightly been rejected. There is no case that any person having lesser marks than the petitioners have been declared successful under unreserved category ignoring the petitioners. Petitioners have been considered under unreserved category and no person below the rank of petitioners have been considered under unreserved category. No ground for any interference is made out.

46. As a sequitur of the aforesaid rules, guidelines, legal proposition and judicial pronouncements, no case for any interference is made out and hence all the writ petitions stand dismissed.

47. As a sequel thereof, all the Interlocutory Applications also stand disposed of.

48. No order as to costs.

(Dr. S.N. Pathak, J.)

High Court of Jharkhand,
Ranchi
Dated: December 20, 2019