

HARIDAS PARSEDIA ETC.

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v
URMILA SHAKYA AND ORS.

NOVEMBER 19, 1999

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[S.B. MAJMUDAR, A.P. MISRA AND U.C. BANERJEE, JJ.]

Service Law:

Constitution of India 1950/Madhya Pradesh Transport Department Subordinate (Class-III Executive) Service Recruitment Rules, 1971: Article

C 16 (4)/Rules 11(A), 13 (4), 20 and Schedule VI—Appointment by promotion to the post of Transport Sub-Inspector from clerical cadre—10% marks relaxation given to SC/ST candidates—However, examination happened to be among SC/ST candidates only—Appellants selected due to the benefit of 10% relaxation—Such relaxation challenged before the Tribunal—Tribunal held relaxation to be inapplicable—Writ petition before High court dismissed—
D Review also dismissed—On appeal—Held, after amendment, Rule 11(A) read with Schedule VI governed by Rule 20—Recommendations of the Committee for departmental examination provided 10% relaxation to SC/ST candidates—Legally permissible under Article 16(4)—Promotional examination amongst SC/ST candidates only is a fortuitous circumstance—Policy decision of the
E Government under Article 16(4) cannot be diluted on the basis of such an irrelevant and fortuitous circumstance.

The appellants and Respondent No.1 belonging to the Scheduled Caste category, were serving as clerks in the Transport Department in the State of Madhya Pradesh. Promotional appointments in the hierarchy were governed

F by Madhya Pradesh Transport Department Subordinate (Class-III Executive) Service Recruitment Rules, 1971. According to Schedule VI of the said Rules, 20% posts of Transport Sub-Inspectors were reserved for being filled up from the cadre of clerical services in the department. A notification dated 19-02-1978 issued by the Government of Madhya Pradesh gave 10% relaxation to SC/ST candidates in the departmental examination for recruiting candidates to the higher posts of Transport Sub-Inspectors. In 1993 an advertisement was issued for conducting departmental examination for filling up of the posts of Transport Sub-Inspectors. As the recruitment of the departmental candidates from clerical grade was confined only to SC candidates, the passing percentage was lowered to 40% from 50% in view of the policy decision of
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the State Government in the General Administration Department. After the examination, all three appellants were found to be successful as all of them secured more than 40% marks. R-1, also a departmental candidate falling under the SC category, challenged appointment of the appellants before the Administrative Tribunal on the ground that she deserved to be appointed as she secured more than 50% marks and the appellants were ineligible as they failed to secure more than 50% marks. The Tribunal held that even though R obtained more than 50% marks, she could not be appointed because of not possessing the requisite height. The Tribunal also quashed the appointment of the appellants on the ground that there was no question of 10% relaxation in the said examination as the recruitment itself was confined to the same category of candidates viz. SC/ST. Appellants' petition under Article 227 of the Constitution of India and review against the judgment in the same were dismissed by the High Court. Hence these appeals.

The Appellants contended that 10% relaxation given by the Government Notification to the SC/ST candidates was legally permissible even in case of appointments to be made from among the SC/ST candidates only. R-1 contended that relaxation of 10% passing marks as per Recruitment Rule 13(4), as amended in 1985, was confined to promotions, and not to direct recruitment of departmental candidates as per Rule 11 (A) of the said Rules, and hence the Government Resolution regarding relaxation of minimum passing marks for departmental promotees could not be applied to the facts of the present case. It was also submitted that even if Rule 13(4) was applicable, the earlier instructions issued by the State Government in 1964, in the light of Article 16(4) of the Constitution cannot be of any avail to the appellants as no such instructions were issued for relaxation of passing marks for SC/ST departmental candidates after the introduction of Rule 13(4) i.e. after 1985. Lastly it was submitted that in view of the reserved category candidates competing *inter se*, there was no question of the said 10% relaxation.

The issue involved in these appeals was regarding the applicability of 10% relaxation in qualifying marks of 50% for SC/ST candidates in case of their competing *inter se* for appointment to the reserved category posts of Transport Sub-Inspectors.

Allowing the appeals, the Court

HELD 1.1. Rule 13 (4) of the Madhya Pradesh Transport Department Subordinate (Class-III Executive) Service Recruitment Rules, 1971 deals with appointment by promotion on reserved vacancies, whereas in the present case,

- A the advertisement was for direct recruitment to the post of Transport Sub-Inspector from Ministerial Service by limited competitive examination; it is Rule 11 (A) of the Rules read with Schedule VI which would apply and not sub-rule (4) of Rule 13, as amended in 1985. However, that will make no difference to the result of these proceedings as the 1971 Rules did not contain power of relaxation provided under Rule 20. Therefore, the amended Rule 11(A) read with Schedule VI will also be governed by the provisions of Rule 20, as after amendment in 1985, Rule 11(A) became part and parcel of parent Rules of 1971.

1.2. The communication dated 30-01-1990, by the Government of Madhya

- C Pradesh called upon all Government Departments and all heads of departments in Madhya Pradesh to implement recommendations of the Committee constituted for the departmental examination conducted by the Home Department for the Officers/Employees of different departments of the Government. Its recommendations which were accepted by the Government of Madhya Pradesh clearly provided that the SC/ST officers be given relaxation of 10% marks as per the existing system, but this relaxation shall not be applicable to the Officers belonging to the All India Services (all departments). It is obvious that this Government communication which is within the permissible limits of Article 16(4) of the Constitution, also was legally permissible as per relaxation Rule 20 of the 1971 Rules governing the recruitment in question. It cannot be disputed that limited recruitment to the posts in question as per Rules 11(A) and 13(4) of the amended Rules 1985 required departmental candidates to appear at the examination as laid down by Schedule VI thereof. [489-E-G]

1.3. In 1978, prior to the amendment of Rules in 1985, there was a

- F government decision reflected by the notification of 19-01-1978 issued by the General Administration Department (SC/ST Cell) that in departmental examinations also apart from the general recruitment to posts in the services, the employees belonging to SC/ST candidates were to be given relaxation upto 10% of marks of the prescribed minimum marks as required to be obtained by general category candidates. It is true that the said notification directly deals with departmental examinations for in-service candidates. But this very notification reiterated the policy decision taken on 16-11-1964 by the State Government in its General Administration Department for giving 10% relaxation to the SC/ST candidates who are eligible for appointment in government service. It becomes, therefore, clear that as early as in 1964, the
- H State of Madhya Pradesh in the light of Article 16(4) of the Constitution, had

taken a policy decision to give relaxation of 10% passing marks to SC/ST candidates. Though that referred to general recruitment for appointment initially in the government service the very same scheme of relaxation was extended to departmental examinations while in-service candidates had to compete for being appointed for higher posts in service. Thus, there was a clear policy decision taken by the State of Madhya Pradesh that for direct recruitment, relaxation for passing marks by 10% for SC/ST candidates who compete for initial appointments to government service was to be made available to those in-service SC/ST candidates who appear at the departmental examination for being recruited to the higher posts as in-service candidates.

[489-H; 490-A-D]

1.4. Even though Government Resolution of 16-11-1964 was prior to the Rules of 1971, which is governing the present recruitment, the 1978 notification was issued reiterating the same government policy for direct recruitment as envisaged by the earlier government notification of 1964. It necessarily follows that the very same policy of relaxation was continued from 1978 onwards by the Madhya Pradesh State Government for governing the recruitment procedure for in-service candidates as well as for outside candidates wherein as compared to general category candidates, SC/ST candidates were to be given 10% relaxation in passing marks. [490-E-G]

1.5. A conjoint reading of amended Rule 11 (A) with Schedule VI and the government policy decision under Article 16(4) as culled out from the Government Memorandum of 1964 continued with approval by the notification of 19-02-1978 as well as the latter government communication of 30-01-1990, shows that there is no escape from the conclusion that for the recruitment in question which was held in 1993, under existing government policy, 10% relaxation of passing marks to departmental candidates belonging to SC/ST category as compared to the general category candidates could be validly made. The aforesaid policy decision of the State of Madhya Pradesh must be treated to have directly applied to the recruitment process pursuant to the advertisement of 08-04-1993 in the present case. [491-A-B]

1.6. Denial of relaxation to SC/ST candidates when competing *inter se* without any competition from the general category candidates will be *ex-facie* discriminatory and arbitrary. It would also fly in the face of established government policy of relaxation of 10% in passing marks under Article 16(4) for such reserved category candidates. It is purely a fortuitous circumstance that the examination is confined only to the SC/ST candidates for being

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- A appointed to reserved posts comprising of 36% out of available promotion posts and in which general candidates do not and cannot compete. Even when SC/ST candidates compete among themselves for the reserved category posts, they are required to pass the written examination. For them, the passing marks remain the same i.e. 40% as compared to general category candidates for whom 50% passing marks are prescribed. This is the firm policy of the Government for the benefit of SC/ST candidates. It is easy to visualise that after passing such departmental examination, all of them will be absorbed in some higher cadre of Transport Sub-Inspector along with general category candidates. The general sweep of the policy decision already taken by the State of Madhya Pradesh under Article 16(4) cannot get diluted on the basis of such an irrelevant and fortuitous circumstance. [492-H; 493-A-B; D]

1.7. It is difficult to appreciate how relaxation in respect of a person can always be confined to an individual and not to a class of persons. Recruitment Rule 20 saves the inherent power of the government to relax the rigour of the general Rules if found just and equitable. Even though the word 'any person' is mentioned in Rule 20 nothing therein contra-indicates applicability of this general power of relaxation available to the government to a class of persons when it is found just and equitable to do so.

[493-G-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6590-6592

- E of 1999.

WITH

C.A. Nos. 6593-94/1999 and C.A. Nos. 6595-97/1999.

- F From the Judgment and Order dated 20-11-97, 27.2.98 and 18.3.98 of the Madhya Pradesh High Court and Madhya Pradesh Administrative Tribunal, in W.P. No. 1810/97, M.C.C. No. 5/98 and M.A. No. 59 of 1998.

P.P. Rao, Raj Kumar Gupta, H.V.P. Sharma and A.N. Bardiyar, for the Appellants.

- G M.N. Krishnamani, T. Raja, Vikas Bansal, Satish K. Agnihotri, Ms. Madhu Dadlani and B.S. Banthia, for the Respondents.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. Leave granted in all these Special Leave Petitions.

- H By consent of parties, the appeals were heard finally and are being disposed

of by this common judgment.

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A short but important question involved in these appeals is as to whether reduction to the extent of 10% of passing marks for Scheduled Castes and Scheduled Tribes' (hereinafter refer to as SC/STs) departmental candidates *vis a vis* 50% passing marks for general category candidates is permissible when recruitment for appointment to the higher posts in the department is confined only to SC/ST candidates who compete for posts reserved for them in the hierarchy of departmental cadres. The Madhya Pradesh Adminstrative Tribunal, Gwalior as well as the Madhya Pradesh High Court, Gwalior Bench have taken the view that such relaxation is not legally permissible when recruitment is confined only to SC/ST candidates competing for recruitment to the reserved category of posts in the higher echelons of service. The appellants before us have brought in challenge the aforesaid conclusions and the ultimate decisions rendered by the High Court in the impugned judgment.

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Background facts

Relevant facts leading to these proceedings deserve to be noted at the outset. The State of Madhya Pradesh amongst services run by it, also runs the Transport Department. The appellants, at the relevant time, were serving as clerks in the said Department. Their future chances of promotions/appointments in the hierarchy of posts in the said Department were governed by the Madhya Pradesh Transport Department Subordinate (Class III-Executive) Service Recruitment Rules, 1971 (for short 'the Rules'). It is not in dispute between the parties that clerks, like the appellants, working in the Transport Department could stake their claims for further promotion even by way of limited direct recruitment procedure for being appointed to the posts of Transport Sub-Inspector. As per Schedule VI of the Rules 20% posts of Transport Sub-Inspector are reserved for being filled up from the cadre of clerical services in the Transport Department. As per the Rules, the said 20% posts could be filled up by a limited direct recruitment confined to the candidates working in the clerical cadre, the same being the source from which such recruitment of departmental candidates could be effected as per the Rules. The Government of Madhya Pradesh had issued a notification on 19th February, 1978 giving 10% relaxation to SC/ST candidates in the departmental examination to be conducted for recruiting candidates to the higher posts of Transport Sub-Inspector. It is not in dispute between the parties that if direct recruitment of departmental candidates, like the appellants, is to be resorted to for filling up 20% posts of Transport Sub-Inspector and in that process, the appellants, who are SC candidates have to compete with

A general category candidates, being their colleagues belonging to clerical staff then, even though the Rules provide that each of the candidates had to get 50% of marks in the written examination, for SC/ST candidates 10% relaxation could be given and passing marks for them would be 40% in each of the written papers.

B The State of Madhya Pradesh, Respondent No. 2 herein, through its Secretary, Department of Transport issued an advertisement dated 8th April, 1993 for departmental examination for filling up the posts of Transport Sub-Inspectors. However, the said examination was to be confined only to fill up reserved posts meant for SC/ST candidates. As the recruitment of departmental candidates from clerical cadre was confined only to SC/ST candidates for filling up reserved vacancies meant for them, the question arose as to whether the general passing marks provided by the rules at 50% in each paper could be brought down to 40% by giving 10% relaxation for these SC/ST candidates. Respondent No. 2 took the stand that as it was the policy decision of State Government in the General Administration Department that 10% concession of passing marks could be given to SC/ST candidates thus prescribing the minimum passing marks for the departmental candidates belonging to SC/ST candidates, like the appellants, to be 40% in each paper as compared to 50% passing marks for general category candidates. On that basis the examination papers were assessed and the result was declared. Accordingly, all the three appellants were held qualified in the written test as each one of them had secured more than 40% passing marks in both the written papers. Thereafter, as per the rules, the Confidential Reports were to be examined. The performance in the department as reflected by the Confidential Reports had to be evaluated by giving maximum 100 marks. Clubbing the marks obtained by the appellants in the written test with their performance in the service reflected by the Confidential Reports, all the three appellants were found successful and eligible to be appointed as Transport Sub-Inspectors. Their appointment orders were accordingly issued on 30th June, 1993. Respondent No. 1 herein, who was also a departmental candidate belonging to SC category, challenged the appointments of the appellants on the ground that she deserves to be appointed in the reserved vacancy meant for Schedule Castes (*viz.* three in number) as she has got more than 50% marks in each of the written test papers while the appellants had not got those marks, they were ineligible to be considered for appointment *vis-a-vis* her. She, accordingly, filed Original Application No. 1147 of 1993 before the State Administrative Tribunal, Madhya Pradesh. All the three appellants were joined as party respondents along with H the State of Madhya Pradesh. In the meantime, the appellants were put on

probation for two years. The Tribunal, after hearing the parties, ultimately came to the conclusion that so far as Respondent No. 1 - Original Appellant was concerned, even though she has got more than 50% passing marks in each of the written test papers, she could not be appointed on the advertised post for the simple reason that she did not possess the requisite height which was one of the basic requirements for appointment to that post. Having so held, the Tribunal considered the further question whether the appointments of respondents (present appellants) were valid or not. On considering relevant Rules, the Tribunal took the view that when the appointments of candidates appearing at the departmental examinations were subject to passing of the said written test by each of the candidates with minimum 50% marks in each of the papers, the question of relaxing the general passing marks for SC/ST candidates by 10% from the general passing marks i.e. up to 40% passing marks, could not arise for the appellants as the recruitment itself was confined to the same category of candidates *viz.* SC/ST candidates who compete for the posts reserved for them as per the advertisement and, therefore, the question of relaxation or dilution from the general passing marks need not be considered for them as they had to compete along with SC/ST candidates and not general category candidates. The State authorities were required to only consider those SC/ST departmental candidates who had obtained 50% and more passing marks in each of the papers and once that was done, all the three appellants got out of the contest for appointment as each one of them had failed to get 50% and more marks in each of the concerned written tests. Accordingly, even though Respondent No.1 - Original Applicant herself, did not get any relief for being appointed to the post of the Transport Sub-Inspector as she was found physically ineligible for such appointment because of shortage of height, the petition was partly allowed by quashing the appointments of all the three appellants. That resulted in Writ Petition No. 1810 of 1997 being filed before the Madhya Pradesh High Court by all the three appellants under Article 227 of the Constitution of India. The High Court found no substance in the Writ Petition and, therefore, dismissed the same. The Review Petition filed against the judgment of the High Court was also dismissed. That is how the appellants, having obtained leave of this Court have preferred these appeals.

Rival Contentions

Shri P.P. Rao, learned senior counsel for the Appellants contended that as per the relevant Rules, even though the recruitment in question was confined only to SC/ST departmental candidates competing for the reserved

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- A posts meant for them as Transport Sub-Inspectors, as per the general policy decision taken by the State of Madhya Pradesh since 1963 all throughout for recruitment in the Government Service, the prescribed passing marks could be relaxed to the extent of 10% for the written test for SC/ST candidates. That it was totally an irrelevant consideration as to whether for recruitment to the
- B posts in question the general category candidates and the SC/ST candidates appeared at the same examination or the recruitment was confined only to SC/ST candidates competing for reserved posts meant for them. That the Circulars dated 16.11.1964 and 19.2.1978 issued by the State of Madhya Pradesh sought to give benefit of relaxation of 10% marks from the prescribed general standard of 50% passing marks to enable the SC/ST candidates to get appointed to the
- C posts reserved for them. That this relaxation was legally permissible as per Article 16 (4) of the Constitution of India. That the reasoning adopted by the High Court, agreeing with the similar reasoning of the Tribunal, clearly violated the guarantee flowing from the policy decision taken by the State of Madhya Pradesh as per Article 16 (4) of the Constitution. It was further submitted that the relaxation of passing marks up to 10% as per the existing policy decision
- D under Article 16(4) of the Constitution, could not be denied on the plea that the recruitment was confined to only SC/ST candidates wherein general category candidates did not compete. That it makes no difference whether the posts reserved for SC/ST candidates are to be filled through a separate test held for them or through a common test held for recruitment to the posts
- E wherein general and reserved category candidates compete at a time. Even when a separate recruitment for such posts is held for reserved category candidates only, the handicap of SC/ST candidates will not vanish and they cannot be expected to be successful in the test, without lowering the passing standard prescribed for general category candidates who do not suffer from handicaps as compared to their SC/ST colleagues. That if this relaxation is not permitted, the posts reserved for these categories will go unfilled and after such unfilled carry forward posts continue to remain unfilled for the given permissible period of recruitment, these reserved posts would get unreserved and would be available to general category candidates and that this would frustrate the policy decision taken by the State under Article 16 (4) for
- F enabling the SC/ST candidates to be appointed in the posts reserved for them. It was alternatively contended by Shri P.P. Rao, learned senior counsel, that Respondent No. 1 who has filed the Original Petition before the Tribunal herself was ineligible to be appointed to the post in question as she did not fulfil the minimum requirement of height prescribed under the Rules for such appointment. Consequently, her Original Petition was liable to be dismissed
- H on that ground alone and it was not, therefore, necessary for the Tribunal to

go into the wider question whether the appointments of appellants were also A legal or not.

Shri Krishnamani, learned senior counsel for Respondent No. 1 - Original Applicant before the Tribunal, on the other hand submitted that, so far as Respondent No. 1's eligibility for appointment is concerned, she herself had filed a separate Writ Petition before the High Court against the decision of the Tribunal holding her to be ineligible for appointment due to shortage of height and in the said petition the High Court had directed the State authorities to consider the question of relaxation of Rules regarding the requisite height for female candidates and that ultimately the State Government, in exercise of its powers under Article 309, modified the Rules and prescribed lesser height for female candidates. In the light of the amended Rules, Respondent No. 1 has already filed a representation before the State authorities for reconsidering her case for appointment and hence this Court may not hold that Respondent No. 1 was ineligible to be appointed in the light of the then existing Rules, as that would affect the decision of the State on her representation. C

Shri Krishnamani, learned senior counsel on merits submitted that relaxation of 10% passing marks as per Rule 13 (4), as amended in 1985, was confined to promotions, and not to direct recruitment of departmental candidates as per Rule 11(A) of the Rules, and hence the Government Resolution regarding relaxation of minimum passing marks for departmental promotees could not be applied to the facts of the present case. It was alternatively contended by Shri Krishnamani that even if Rule 13 (4) is applied to the facts of the present case, even then the earlier instructions issued by the State Government in 1964 in the light of Article 16 (4) cannot be of any avail to the appellants as no such separate instructions were issued for relaxation of passing marks for SC/ST departmental candidates after Rule 13(4) was brought on the Statute Book in 1985. It was lastly contended that, even on merits, the appellants were not justified in contending that when the recruitment of departmental candidates was confined only to SC/ST candidates clerks, any relaxation of general passing marks from 50% to 40% in each written paper was justified as all the competing candidates belong to the same category i.e. reserved category, being SC/ST, and that there was no question of giving them additional weightage or concession. Such question would have arisen only if recruitment was confined not only to SC/ST candidates but also to general category candidate clerks; that in the same examination if all of them had competed, the question of relaxation of marks for reserved category candidates would have assumed importance. Thus the Government H

A Resolution, in the light of Article 16 (4) has to be read down and has rightly been read down by the High Court as well as by the Tribunal to apply only when recruitment is held in general wherein general category candidates as well as reserved category candidates compete together by writing the same written test papers. It was, therefore, submitted that the decision of the High Court calls for no interference.

B Learned counsel for the State of Madhya Pradesh, in his turn submitted that though it is true that before the Tribunal, the stand of the State of Madhya Pradesh in counter was to the effect that 10% relaxation in passing marks could validly be resorted to by the State authorities in the present recruitment as per the advertisement in question, as the appellant's Writ

C Petition was summarily rejected and as the State authorities had not challenged the Tribunal's decision in the High Court, the stand of the State government now before this Court is that the decisions rendered by the Tribunal and the High Court are treated as binding on the State authorities. Therefore, now the State Government cannot urge that even though recruitment is confined only

D to SC/ST candidates, relaxation up to 10% marks from general passing marks would be permissible. In short, learned counsel for the State of Madhya Pradesh contended that the decision of the High Court calls for no interference. He also tried to submit, though faintly, that after the decision of the High

E Court, the State authorities had already issued a Government Order that the benefit of concession otherwise available to SC/ST candidates can be made effective by assessing their written test papers more liberally and even by putting more liberal questions, though from the same syllabus. In our view, this last contention which is based on the impugned decision of the High Court does not require further scrutiny as the main decision itself is being considered by us on its own merits.

F In the light of the aforesaid rival contentions, the following points arise for our consideration :

Points for consideration

G (1) Whether any relaxation from general passing marks of 50% for each of the written test papers is permissible for SC/ST candidates when they compete inter se for being appointed to the reserved category posts of Transport Sub-Inspectors and when in such examination the general category candidates are not competing;

H (2) If the answer to the first point is in negative, whether the Original Petition filed by Respondent No. 1 was liable to be

dismissed as Respondent No. 1 was not found eligible to be appointed to the aforesaid post and in that eventuality whether it was open to the Tribunal or to the High Court to consider the further question whether appellants' appointments were vitiated in law ?

We shall deal with the aforesaid points seriatim.

Point No. 1

The relevant Recruitment Rules of 1971 are promulgated by the Governor of Madhya Pradesh in exercise of his powers conferred by Article 309 of the Constitution of India. It is not in dispute between the contesting parties that these rules apply to them as they belong to the Madhya Pradesh Transport Department (Class III-Executive) Services which is governed by the said Rules. As we are concerned with the recruitment to the posts of Transport Sub-Inspectors, the relevant Rule is Rule 6 sub-Rule (c) which provides that Transport Sub-Inspectors can be recruited, up to 15% from the Police Department, 10% from Assistant Transport Sub-Inspectors and 75% by direct recruitment. Rule 20 of the Rules empowers the State Government to relax the Rules so as to deal with any person to whom these Rules apply in such a manner as may appear to it to be just and equitable. It is not in dispute between the parties that the aforesaid Rules of 1971 were got amended in 1985. The aforesaid Rule 6 was substituted by a new Rule 6 which provides that appointment could be made by direct recruitment as has been prescribed in column 4 of Schedule II. For our present purpose, Rule 11 (A) of the amended Rules of 1985 is relevant. It reads as under :

"11 (A) Direct Recruitment on the post of Transport Sub-Inspector from Ministerial service by limited competitive Examination;..."

Rules 11(A)(1)&(2), which are relevant, read as under :

"1. For Recruitment on the post of Transport Sub-Inspector from the Ministerial Service in the Office of Transport Commissioner and his sub-ordinate offices, the appointing authority shall hold a limited competitive examination every year as per the Scheme mentioned in Schedule VI on such dates as are prescribed by him.

2. Out of the above reserved vacancies for direct recruitment 16% and 20% posts shall respectively be reserved for the candidates of the Scheduled Castes and Scheduled Tribes.

A When we turn to Schedule VI of the amended Rules, we find that for limited recruitment to the post of Transport Sub-Inspector from Ministerial Service of Transport Department, a departmental examination for selection for appointment under this scheme has to be made from the Ministerial Service candidates : (1) on the basis of the marks obtained in the examination held under the scheme by the successful candidates, and (2) on the basis of

B assessment of character rolls of the concerned employees for the last five years. Clause 4 of Schedule VI deals with the examination and lays down that "every year or on such intervals on such dates and places which are fixed by the appointing authority, written examination shall be held". Sub-para (2) of Clause 4 provides that "in the written examination there shall be two

C question papers of 50 marks of two and a half hours duration. For being successful in the examination the candidate shall have to secure minimum 50% marks in each question paper separately." The syllabus provided for each of the question papers has to be answered by the departmental candidate competing, whether he belongs to SC/ST category or general category.

D As per appendix-1 to the Schedule, common syllabus for both the question papers is also provided. Now it becomes at once clear that when recruitment Rule 11(A) is read with Schedule VI, it becomes clear that the general passing marks in each of the two question papers are 50%. The short question is whether all the departmental candidates belonging to Ministerial Service, whether they are of general category or reserved category, have to get minimum passing marks of 50% in each written test paper whether they appear at the departmental examination consisting of two question papers based on the same subjects and comprising of the same syllabus. For general category candidates, obviously minimum passing marks are 50% in each of the papers. The question is whether for SC/ST candidates any reduction or

E relaxation up to 10% is permissible or not? So far as this question is concerned, Mr. P.P. Rao vehemently contended that as per sub-rule 4 of Rule 13, as amended in 1985, for promotion on reserved vacancies, the procedure shall be as prescribed by the instructions issued by the General Administration Department of the government. Now it becomes at once clear that the said sub-rule 4 of Rule 13 deals with appointment by promotion on reserved

G vacancies, whereas in the present case, the advertisement was for direct recruitment to the post of Transport Sub-Inspector from Ministerial Service by limited competitive examination. It is Rule 11 (A) read with Schedule VI which would apply and not Sub-rule 4 of Rule 13, as amended in 1985. However, that will make no difference to the result of these proceedings, as

H we have already noted earlier, the appointment Rules of 1971 did contain

relaxation power under Rule 20. Therefore, the amended Rule 11(A) read with Schedule VI will also be governed by the provisions of Rule 20, as after amendment in 1985, Rule 11(A) became part and parcel of parent Rules of 1971. We have, therefore, to see whether the State of Madhya Pradesh, in its discretion and within permissible limits of Article 16, had taken any policy decision to give general relaxation of passing marks to SC/ST candidates appearing at the departmental examinations. The answer to this question is furnished by the communication dated 30th January, 1990 by the Government of Madhya Pradesh regarding implementation of the recommendations of the Committee constituted for the departmental examination conducted by the Home Department for the Officers/Employees of different Departments of the Government. It reads as follows :

"Departmental examination cell of the Home General Department constituted a committee in the Chairmanship of Dr. Ishwar Das, Additional Principal Secretary and Managing Director Administrative Academy for considering the difficulties faced in conduction of the departmental examinations for the employees of various departments and for giving recommendations for their successful conduction. Copy of the report of the Committee is enclosed. In this report the recommendations made by the Committee have been approved by the Government."

The said communication called upon all Government Departments and all heads of departments in Madhya Pradesh to implement recommendations of the Committee constituted for the departmental examination conducted by the Home Department for the Officer/Employees of different departments of the Government. The Committee was chaired by Dr. Ishwar Das, an Additional Principal Secretary. Its recommendations which were accepted by the Government of Madhya Pradesh clearly provided that the officers of the SC/ST be given relaxation of 10% marks as per the existing system, but this relaxation shall not be applicable on the officers belonging to the All India Services (All Departments).

It is obvious that this Government communication which is within the permissible limits of Article 16(4) of the Constitution, also was legally permissible as per relaxation Rule 20 of the Rules of 1971 governing the recruitment in question. It cannot be disputed that limited recruitment to the posts in question as per Rules 11(A) and 13(4) of the amended Rules of 1985 required departmental candidates to appear at the examination as laid down by Schedule VI thereof. As seen earlier, apart from the aforesaid government

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- A communication of 1990, even in 1978 prior to the amendment of Rules in 1985, there was a government decision reflected by the notification of 19th February, 1978 issued by the General Administration Department (SC/ST cell) that in departmental examinations also apart from the general recruitment to posts in the services the employees belonging to SC/ST candidates were to be given relaxation up to 10% of marks of the prescribed minimum marks as required to be obtained by general category candidates. It is, of course, true that the said notification directly deals with departmental examination for in-service candidates. But this very notification reiterated the policy decision taken on 16.11.1964 by the State Government in its General Administration Department for giving 10% relaxation to the SC/ST candidates who are eligible for appointment in government service. It becomes, therefore, clear that as early as in 1964 the State of Madhya Pradesh, in the light of Article 16(4), had taken a policy decision to give relaxation of 10% passing marks to SC/ST candidates. Though that referred to general recruitment for appointment initially in the government service the very same scheme of relaxation was extended to departmental examinations while in-service candidates had to compete for being appointed to higher posts in service. Thus, there was a clear policy decision taken by the State of Madhya Pradesh that for direct recruitment, relaxation of passing marks by 10% for SC/ST candidates who compete for initial appointments to government service was to be made available and was also to be made available to those in-service SC/ST candidates who appear at the departmental examination for being recruited to the higher posts as in-service candidates. This was a clear-cut government policy legally permissible under Article 16(4) of the Constitution for giving 10% relaxation of passing marks to such reserved category candidates as compared to general category candidates. It is, of course, true that Government Resolution of 16.11.1964 was prior to the recruitment Rules of 1971, which is governing the present recruitment, but once in 1978 the aforesaid government notification was issued reiterating the same government policy for direct recruitment as envisaged by the earlier government notification of 1964, it necessarily follows that the very same policy of relaxation was continued from 1978 onwards by the Madhya Pradesh State Government for governing the recruitment procedure for in-service candidates as well as for outside candidates wherein as compared to general category candidates, SC/ST candidates were to be given 10% relaxation in passing marks. Mr. Krishnamani, learned senior counsel for Respondent No. 1 was right when he contended that the Government Notification of 1978 was prior to the amendment of the recruitment Rules in 1985 under which, Rule 11(A) was brought on the statute Book. But even if it is so, after 1985, as we have seen above, in 1990 the very same policy

decision was continued by the State of Madhya Pradesh by issuing A government communication dated 30.1.1990. It must, therefore, be held on a conjoint reading of amended recruitment Rule 11(A) with, Schedule VI and the government policy decision under Article 16(4) as culled out from the Government Memorandum of 1964 continued with approval by the Government notification of 19.2.1978 as well as the latter government communication of 30.1.1990, that there is no escape from the conclusion that for recruitment in question, which was held in 1993, under existing government policy, 10% relaxation of passing marks to departmental candidates belonging to SC/ST category as compared to the general category candidates could be validly made. The aforesaid policy decision of the State of Madhya Pradesh must be treated to have directly, applied to the recruitment process pursuant to the advertisement of 8th April, 1993 in the present case. B C

Mr. P.P. Rao, Learned senior counsel, therefore, was justified in submitting that there was in force a validly operating policy decision as per Article 16(4), ' taken by the State of Madhya Pradesh for granting 10% relaxation in passing marks and that relaxation policy decision did apply on the facts of the present case as well. Under the scheme of the relevant Rules, as seen earlier, though Shri Rao is not found to be justified in relying on Rule 13(4) which deals with promotion and not direct recruitment, still the aforesaid policy does apply to direct limited recruitment resorted to under Rule 11(A). D

We may now deal with the main objections raised by Shri Krishnamani to the aforesaid submission of Shri Rao, He firstly submitted that because Rule 13(4) did not apply to the facts of the present case, only Schedule VI of 1985 Rules read with Rule 11(A) applies and Schedule VI nowhere provides for any relaxation of 10% passing marks out of 50% passing marks for all departmental categories whether belonging to general category or reserved category. It is not possible for us to agree with the aforesaid contention for the simple reason that Schedule VI of the amended Rules, read with Rule 11 (A), has to be read in the light of Rule 20 under which the State was entitled to relax the Rules in appropriate cases and that is exactly what was done by the State of Madhya Pradesh by issuing the Government Memorandum dated 30.1.1990 as well as the Government Notification dated 19.2.1978 referred to above. The second objection of Shri Krishnamani was to the effect that even if in the alternative, Rule 13(4) is applied, 1964 Resolution of the government cannot be pressed in service as there was no government decision regarding such relaxation after 1985 amended Rules came into force). This submission of his cannot survive for the simple reason that the State of Madhya Pradesh reiterated very much the policy of relaxation of passing marks for SC/ST H

A candidates as per the Government Memorandum dated 30.1.1990 as seen earlier, and this decision of the government was squarely covered by Article 16(4) read with relaxation Rule 20 of the parent Rules of 1971. The second objection of Shri Krishnamani, therefore, also does not survive.

B Shri Krishnamani lastly submitted, placing reliance on the impugned judgement, that this was a limited recruitment confined only to SC/ST candidates and there was, therefore, no occasion to give any relaxation to all the SC/ST candidates similarly situated, that they had not to compete with general category candidates in the present recruitment confined only for reserved category posts. This submission of Shri Krishnamani though *prima facie* attractive does not bear further scrutiny on closer examination. The reason is obvious. As per the amended recruitment Rules of 1985, Rule 11(A)(2) clearly provides that, out of the vacancies reserved for Ministerial Service officers for being appointed to the post of Transport Sub-Inspectors, 16% vacancies would be reserved for Scheduled Caste and 20% for Scheduled Tribe candidates. It, therefore, becomes obvious that for direct recruitment by limited competitive examination to be undertaken by Ministerial Service candidates, total 36% posts would be reserved for SC/ST candidates. Meaning thereby, 64% of the posts would be available to the general category candidates. All these candidates belonging to Ministerial Service, whether being general category or SC/ST category, will have to appear at the departmental examination based on the same subjects and confined to the same syllabus. It is easy to visualise that if such posts are to be filled up by limited direct recruitment from ministerial staff and the examination is held for filling up all 100% promotion posts comprised of the reserved as well as general category posts at a time, then SC/ST candidates would be entitled to 10% reduction of passing marks. On this aspect, there is no dispute between the parties.

F Meaning thereby, to appear at the same time at the same examination, the general category candidates had to obtain 50% passing marks in each paper while the SC/ST candidates will be declared pass, if they obtain 40% or more marks in each of the papers in the very same examination. But this relaxation of marks, as contended will not be available to SC/ST candidates if at the departmental examination based on same subject and same syllabus, they have no competition from general category candidates and the examination is confined only to the reserved category candidates. It is difficult to countenance this contention. Such a denial of relaxation will be ex-facie discriminatory and arbitrary. It would also fly in the face of established government policy of relaxation of 10% passing marks under Article 16(4) for such reserved category candidates. It is purely a fortuitous circumstance that

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the examination is confined only to the SC/ST candidates for being appointed to reserved posts comprising of 36% out of total available promotion posts and whereat general category candidates do not and cannot compete. Even when SC/ST candidates compete among themselves for the reserved category posts they are required to pass the written examination. For them the passing marks remain the same i.e. 40% as compared to general category candidates for whom 50% passing marks are prescribed. This is the firm policy of the Government for the benefit of SC/ST candidates. It is easy to visualise that after passing such departmental examination, all of them will be absorbed in some higher cadre of Transport Sub-Inspector along with general category candidates. Secondly, in our view it is patently erroneous to hold that the decision of the Government for relaxation of passing marks for SC/ST departmental candidates at the departmental examination can be applicable only when in such examination, the departmental candidates belonging to general category also compete with the SC/ST candidates and not otherwise. Holding general examinations for all types of candidates at a time or separate examinations for only SC/ST candidates for being appointed to the reserved posts on the one hand and for general category candidates on the other wherein SC/ST candidates can also compete for unreserved posts, is totally irrelevant for judging the efficacy of the relaxation policy. The general sweep of the policy decision already taken by the State of Madhya Pradesh under Article 16(4) cannot get diluted on the basis of such an irrelevant and fortuitous circumstance. Consequently, even the third objection raised by Shri Krishnamani against the appellants' contention cannot be sustained.

Before parting with this point, we may briefly deal with the written submissions filed on 6th November, 1999 by learned counsel for Respondent No. 1. Most of the contentions raised therein have already been considered in the earlier part of this judgment. The applicability of Clause 11(A) in the light of the government policy regarding relaxation of 10% marks for SC/ST candidates, as discussed earlier, is found to be available to the appellants on the facts of the present case, written submissions regarding Rule 20 of the Rules, though not high-lighted in the same form in which it is presented in the written submissions, at the time of oral arguments requires to be considered. It is difficult to appreciate how relaxation in respect of a person can always be confined to an individual and not to a class of persons. Rule 20 saves the inherent power of the Government to relax the rigour of the general Rules if found just and equitable. Even though the word 'any person' is mentioned in Rule 20 nothing therein contra-indicates applicability of this general power of relaxation available to the government to a class of persons when it is

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- A found just and equitable to do so. The next contention in the written submissions that General Administrative Order issued in the Home Department cannot, *per se* apply to such Rules under Article 309 also cannot be sustained for the simple reason that once under Article 309 Rules relaxation power is available to the government, the exercise of that power can be either by a General Administrative order or by special administrative order. Consequently, none of the contentions canvassed in the written submissions can be sustained.

In the result, the first point is decided against the respondents and in favour of all the appellants.

Point No. 2

- C In view of our decision on Point No.1, It is not necessary for us to consider Point No.2, as Respondent No. 1 would admittedly get excluded by the appellants, once relaxation of general passing marks by 10% up to 40% is found permissible in connection with the recruitment in question, even assuming that she is entitled to take the benefit of relaxation of height (for female candidates) by the subsequent amendment to the recruitment Rules.

- D In the result these appeals succeed and are allowed. The impugned judgments of the High Court as well as of the Tribunal are set aside, so far as they are against the appellants. The appointment orders issued by the State of Madhya Pradesh to all the appellants are held to be perfectly legal and valid and fully operative. The State of Madhya Pradesh is directed to give effects to these appointment orders and fix the seniority of the appellants in the higher cadre of Transport Sub-Inspectors, pursuant to their aforesaid appointment orders. The State of Madhya Pradesh is also directed to make available to the appellants all consequential benefits, including monetary benefits flowing from the said order of appointment as Transport Sub-Inspectors. In case any of the appellants are reverted in the meantime pursuant to the impugned order of the Tribunal, they will be entitled to be restored to the posts of Transport Sub-inspectors in the light of the initial appointment orders and also be entitled to all other reliefs, including permissible monetary benefits and difference of salary and other emoluments legally permissible to the appellants. All these benefits will have to be worked out by the respondent-State accordingly and made available to them as expeditiously as possible.

In the facts and circumstances of the case, there will be an order as to costs.

H R.C.K.

Appeals allowed.