



**ILS LAW COLLEGE, PUNE  
CENTRE FOR PUBLIC LAW**

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**7<sup>TH</sup> ILS NATIONAL ALTERNATE JUDGMENT WRITING COMPETITION  
2019-2020**

**CASE NOTE**

**Nirav Kumar Dilipbhai Makwana**

**v.**

**Gujarat Public Service Commission and Ors.**

**General Summary**

The judgment arose from a Special Leave Petition (Civil) filed before the Supreme Court of India by the Appellant. The coram of judges comprised S. Abdul Nazeer and Indira Banerjee JJ. The judgment was delivered on 04<sup>th</sup> July 2019.

The appeal related to an impugned order of the Gujarat High Court which observed that all candidates belonging to the reserved category if avail the benefit of age relaxation are not entitled to be considered in general category in relation to the job posts offered by Gujarat Public Service Commission (“GPSC”). The principle issue that the appeal addressed was whether age relaxation granted to the candidates belonging to SC/ST and SEBC category was an incident of reservation under Article 16(4) of the Constitution. The court answered the question in the affirmative and thereby dismissed the Appeal.

**Facts**

1. Gujarat (GPSC) issued an advertisement for 47 posts as Assistant Conservator of Forests (Class- II) and 120 posts of Range Forest Officer (RFO’s) (Class-II). Total 84 posts were to be filled in from unreserved category. Out of the said 84 posts, 48 posts were reserved for socially and economically backward classes (SEBC). A preliminary test and main

written examination was conducted. The Appellant stood at Serial No. 138 in the list of selected candidates.

2. The Appellant contested before the Single Judge of the High Court that while preparing the merit list, GPSC had ignored the judgement laid down in *Jitendra Kumar Singh v. State of U.P.* [(2010) 3 SCC 119]. The Single Judge allowed the application of the Appellant by his order dated 11.06.2015.
3. Aggrieved by order of the Single Judge, GPSC filed a Letters Patent Appeal praying for setting aside the order passed by the Single Judge. The Division Bench of the High Court allowed the appeal and set aside the order of the Learned Single Judge.
4. The legality and correctness of the said order of the division bench was challenged before the Supreme Court of India.

### **Reliefs Sought**

1. Set aside the order of the Division Bench of the High Court; and
2. Hold that age relaxation granted to candidate belonging to SC/ST and SEBC category is not an incident of reservation under Article 16(4) of the Constitution.

### **Arguments Advanced**

#### **I. Appellants:**

- i) The relaxation in age granted to the candidates at the initial stage only to enable a candidate belonging to the reserved category without granting any preferential advantage in matter of selection cannot be treated as an incident of reservation under Article 16(4) of the Constitution.
- ii) Circulars dated 29.01.2000 and 23.07.2004 issued by GPSC clearly show concession in age in matter of selection to a post which cannot be treated as incident of reservation. Therefore, relaxation in age at the initial qualifying stage would not fall foul of the circulars.
- iii) Rule 4 of ACF/RFO Competitive Examination Rules, 2008 read with the Schedule, stipulates that preliminary test is merely to declare a candidate qualified for appearing in the written examination. Therefore, relaxation at the stage of preliminary test would not amount to grant of benefit of reservation for selection. A parallel was drawn between the *Jitendra Kumar Singh (supra)* and the facts of the case to show the applicability of the said judgement.

#### **II. Respondents:**

- i) Candidate that has availed of an age relaxation in the selection process as a result of belonging to a reserved category cannot seek to be accommodated in general category seats.
- ii) Jitendra Kumar Singh (*supra*) is not applicable to the present facts of the case as the decision in this judgement was rendered in context of a policy adopted by the State of U.P.
- iii) The relaxation in age granted at the initial stage is necessarily an incident of reservation under Article 16(4) of the Constitution. (para 11)

### **The Judgement**

1. It was evident from the Circulars dated 29.01.2000 and 23.07.2004 issued by the State Government that a candidate who has availed of age of relaxation in the selection process as a result of belonging to a reserved category cannot, seek to be accommodated in or migrated to the general category seats.
2. Article 16(4) of the Constitution is an enabling provision empowering the State to make any reservation in posts in favour of any backward class. It is purely at the discretion of the State Government to formulate a policy for concession or relaxation in favour of the backward classes. The State Government had framed policy for the grant of reservation in favour of SC/ST by the aforesaid circulars, where it clarified that when a relaxed standard is applied in selection of a candidate of SEBC category in the age limit, experience etc, then the candidate of such category selected in the said manner shall have to be considered only against his/her reserved post. Such candidates would be deemed as unavailable for consideration against unreserved posts.
3. Jitendra Kumar Singh (*supra*) is not applicable it is based on statutory interpretations of U.P. Public Services Act, 1994 and the Instructions dated 25.03.1994 which are completely different from the statutory scheme under consideration appeal.
4. The distinction sought to be drawn between the preliminary and final examination is misconceived. It was evident from the advertisement that a person availing age relaxation at the initial stage will necessarily avail the same relaxation even at the final stage. The Court is of the view that the age relaxation granted to the candidates belonging to SC/ST and SEBC category in the instant case is an incident of reservation under Article 16(4) of the Constitution.

### **Order**

The appeal was dismissed. The court held that the age relaxation granted to candidate belonging to SC/ST and SEBC category is incident of reservation under Article 16(4) of the Constitution.

**TABLE OF CASES**

<b>Sr. No.</b>	<b>Title</b>	<b>Citation Ref</b>
1.	Jitendra Kumar Singh and Anr. v. State of U.P. and Ors.	Distinguished
2.	Ajithkumar P. and Ors. v. Remin K.R. and Ors.	Distinguished
3.	Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors.	Distinguished

<b>Sr. No.</b>	<b>Title</b>	<b>Citation Ref</b>
1.	Deepa E.V. v. Union of India (UOI) and Ors.	Affirmed
2.	Gaurav Pradhan and Ors. v. State of Rajasthan and Ors.	Affirmed