

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00103/2020

DATED THIS THE 28TH DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Abhijit K. Jayakkanavar,
Son of Shri Kuberappa A Jayakkanavar,
Aged about 26 years,
Group-A, UPSC Roll No. 0314074,
Residing at No. 71, Basti Oni,
Tigadolli Post, PIN 591 115,
Kittur Taluk, Belagavi (District)
Karnataka

....Applicant

(By Advocate Shri Nagaraj S. Jain)

Vs.

1. Union of India
Through its Secretary,
Department of Personnel and Training,
Ministry of Personnel, Government of India,
Public Grievances & Pensions,
North Block, New Delhi 110 001

2. Union Public Service Commission,
Through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi 110 069

.....Respondents

(By Shri N. Amaresh, Counsel for Respondent No. 1 and
Shri M. Rajakumar, Counsel for Respondent No.2)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

We have not got any material from the UPSC other than that the decision of the Principal Bench has been challenged in the Hon'ble Delhi High Court and the Hon'ble High Court has not been pleased to stay that order. Therefore, the operation of that order cannot be doubted at this point because by efflux of time the life and livelihood of the applicant will be affected. We quote from the order of the Principal Bench:

"O R D E R
Justice L. Narasimha Reddy, Chairman :

The applicants in this batch of OAs are aspirants of Civil Services. Through Constitution (103rd) Amendment, Parliament provided for the reservation to the extent of 10% in public services, in favour of Economically Weaker Sections (EWS). The notification in this behalf was issued on 19.01.2019. The details of the entitlement to avail the benefit of the EWS reservation, were provided through Office Memorandum dated 31.01.2019.

2. The Department of Personnel & Training (DoP&T) framed the Rules for Civil Services Examination (CSE), 2019 (hereinafter referred to as the Rules), and they were published on 19.02.2019. On the same day, the Union Public Service Commission (UPSC) issued a notification, inviting applications for participation in the selection process.

3. Taking note of the fact that there were some uncertainties and complications in the context of issuing certificates, relevant for reservation in favour of EWS, a provision is made in Rule 24 of the Rules to the effect that the certificates in that behalf can be obtained up to 01.08.2019. In other words, they were required to be issued by 31.07.2019.

4. The applicants submitted their applications, which enable them to participate in the Preliminary Examination. All of them mentioned in the relevant column that they intend to claim the benefit of reservation in favour of EWS. Since they were permitted to obtain certificate up to 31.07.2019, they did not enclose the certificates.

5. The results of the Preliminary Examination were declared on 12.07.2019. In the context of participation in the Main Examination, the candidates are required to submit a Detailed Application Form (DAF-1). Last date for submission thereof is stipulated as 16.08.2019. The grievance of the applicants is that they were not able to obtain certificates up to 31.07.2019, and in certain cases, their candidature was cancelled, after issuing show cause notices, on the sole ground that they did not possess the EWS certificates, issued before 31.07.2019. They contend that once the Government itself has recognized the difficulty faced by the candidates in obtaining certificates by the time, the applications for Preliminary Examination are filed, the same amount of latitude deserves to be exhibited till the final stage of the selections. They also place reliance upon the clauses in the notification and the Rules that provide for verification of the status on various aspects, at the final stage of the selection.

6. In this background, the applicants claim relief of – (a) setting aside the orders of cancellation of their candidature; (b) declaration to the effect that proviso to Rule 24 of the Rules, insofar as it stipulates the date 01.08.2019, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India; and (c) direction to the respondents to consider their candidature till the final stage of selection.

7. The applicants contend that the benefit of reservation in favour of EWS was provided by amending the Constitution, and that the corresponding notification was issued only on 31.01.2019. It is stated that hardly within a few days, the notification for CSE 2019 was issued by the UPSC, and that many States were not aware of the proforma of the certificate or the method of issuance thereof. The applicants contend that it is a complex process wherein not only the income, but also the property held by the family of a candidate is required to be certified, and hence it naturally took time for the concerned authorities to issues the EWS certificates. They further contend that if a candidate claims the benefit of reservation under any category, he is permitted to take part in the successive Examinations and other steps, relegating the actual verification to the final stage, and there is no reason why such a facility be not extended to them.

8. Reliance is placed upon the judgments of the Delhi High Court in (1) *Ms. Pushpa v Government of NCT of Delhi* [2009 SCC OnLine Del 281 – CM No.17504/2008 in WP(C) No.9112/2008, decided on 11.02.2009]; (2) *Ravinder Kumar v Union of India & another* [2017 SCC OnLine Del 8873 – WP(C) No.5364/2014, decided on 31.05.2017]; (3) *Hari Singh v Staff Selection Commission & another* [WP(C) No.11928/2009, decided on 06.04.2010]; and the judgment of

the Hon'ble Supreme Court in Ram Kumar Gijroya v Delhi Subordinate Services Selection Board & another [(2016) 4 SCC 754].

9. *In the counter affidavit filed by the respondents in the respective OAs, the relevant facts and figures are furnished. It is stated that almost at every stage, the mechanism was available for issuance of certificates much before 31.07.2019, and the plea of the applicants to the contrary, is not correct. It is stated that the Government itself provided the facility of submitting the EWS certificates issued up to 31.07.2019, which is a concession of almost four and half months.*

10. *The respondents state that the DAF-1 filed on completion of the Preliminary Examination were verified, and wherever the candidates who claimed the status of EWS, did not file the certificate issued up to 31.07.2019, a show cause notice was issued, and his/her candidature was cancelled. They contend that any interference at this stage would lead to several complications and delay.*

11. *The respondents further contend that the stipulation of the dates in the scheme of the Examination has its own significance, and the Tribunal cannot interfere in sensitive matters of that nature. Reliance is placed upon the judgments of the Hon'ble Supreme Court in – (1) Hirandra Kumar v High Court of Judicature at Allahabad & others [2019 (2) SCALE 752]; (2) Ashok Kumar Sonkar v Union of India [2007] 4 SCC 54; (3) Rakesh Bakshi & others v State of Jammu and Kashmir & others [2019] 3 SCC 511; (4) Zonal Manager, Bank of India, Kochi & others v Aarya K. Babu & others [(2009) 8 SCC 587]; (5) Madras Institute of Development Studies & another v Sivasubramaniyan & others [(2016) 1 SCC 454]; (6) Municipal Corporation of Delhi v Surender Singh & others [(2019) 8 SCC 67]; (7) Union of India v Anu Kumari & another [Civil Appeal No.3877/2019, decided on 11.04.2019]; (8) Praveen Sharma v Secretary, UPSC [WP(C) No.4568/2008, Decided on 16.12.2008 – Delhi High Court]; (9) Satish Kumar v UPSC [WP(C) No.8319/2014, decided on 28.11.2014 – Delhi High Court]; (10) Secretary, M/o Personnel, Public Grievances and Pensions v Tanu Kashyap & others [WP(C) No.16191/2006 decided on 05.10.2007 – Delhi High Court]; (11) Dr. Shamim v UPSC [OA No.1301/2019, decided on 21.10.2019 – CAT, Delhi]; (12) Jyoti Hankey v UPSC [WP(C) No.2342/2012, decided on 12.10.2019 – Delhi High Court]; (13) Ram Kumar Gijroya v Delhi Subordinate Services Selection Board & others [(2016) 4 SCC 754]; and (14) Union of India v Unicorn Industries [(2019) 10 SCC 575].*

12. *Arguments on behalf of the applicants are advanced by Shri Salman Khurshid, Shri Sanjay Hegde, Shri Satyam Reddy, learned Senior Advocates; and other learned counsel. They contend that the*

EWS is a special kind of reservation introduced by amending the Constitution of India, and naturally, the method of implementation thereof is fraught with several uncertainties. They submit that the relevant notification, consequent upon the Amendment to the Constitution was issued only on 31.01.2019, and the notification for CSE 2019 was issued hardly within three weeks, i.e., 19.02.2019. It is stated that the Government itself added proviso to Rule 24 of the Rules enabling the submission of the EWS certificates at a later stage, but such a benefit is virtually taken away by stipulating the date 01.08.2019, which has no relevance at all.

13. Learned counsel contend that a close look at the entire scheme of the selection reveals that whatever be the nature of claim of reservation by the candidates, the actual verification of the status is undertaken only at the final stage, and that the insistence that an EWS certificate must be the one, issued before 01.08.2019, is arbitrary and illegal, and in fact does not serve any meaningful purpose at all. It is stated that no harm as such would be caused in case a candidate who claims the benefit of EWS is permitted to take part in the Main Examination, and other steps, subject to his satisfying the authorities at the final stage about his possessing a valid EWS certificate.

14. Arguments on behalf of the Union of India are advanced by Shri R. Balasubramanian, Senior Advocate, and by Shri Naresh Kaushik, learned counsel, on behalf of the UPSC. They contend that the Rules for the CSE 2019 were framed and notified almost simultaneously with the notification of CSE 2019, and a detailed calendar thereof was issued. They submit that the Government itself took note of the fact that the mechanism for issuance of EWS certificates was not immediately in place, and a proviso was added to Rule 24, extending the relevant date up to 01.08.2019, though the certificates were otherwise required to be placed as on the last date of submission of the applications. By placing reliance upon the various judgments rendered by the Hon'ble Supreme Court, the learned counsel submit that each date stipulated in the selection process, that too for an Examination like the CSE, has its own significance, and the Tribunal cannot interfere in such matters.

15. Reservations based upon the social status of the candidates are provided in public employment, sometimes by issuing notifications by availing the facility under Articles 15 and 16 of the Constitution, and sometimes by amending the Constitution itself. In addition to that, the reservation in favour of SC/ST candidates is available under Article 335 of the Constitution. Reservations are also provided on the basis of physical status, i.e., in favour of physically handicapped candidates.

16. Reservation in favour of economically weaker sections, irrespective of their social status, is almost a new phenomenon. Parliament amended Article 16 (4) of the Constitution through its 103rd Amendment in January, 2019. The notification in this behalf was issued on 12.01.2019. This was followed by a detailed notification dated 31.01.2019 by the DoP&T. The relevant notifications read as under:

Notification dated 12.01.2019

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:

1. (1) *This Act may be called the Constitution (One Hundred and Third Amendment) Act, 2019.*

(2) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

2. *In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:—*

(6) *Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—*

(a) *any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and*

(b) *any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.*

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified

by the State from time to time on the basis of family income and other indicators of economic disadvantage.’.

3. In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.

Notification dated 31.01.2019

OFFICE MEMORANDUM

Subject: Reservation for Economically Weaker Sections (EWSs) in direct recruitment in civil posts and services in the Government of India.

In continuation of this Department's Office Memorandum of even number dated 19.01.2019, the following instructions are issued in consultation 'with' Ministry of Social Justice and Empowerment and Department of Legal Affairs regarding reservation for EWSs not covered under the reservation scheme for SCs/STs/OBCs in respect of direct recruitment in civil posts and services in' the Government of India.

2. QUANTUM OF RESERVATION

The persons belonging to EWSs who, are not covered under the scheme of reservation for SCs, STs and OBCs shall get 10% reservation in direct recruitment in civil posts and services in the Government of India.

3. EXEMPTION FROM RESERVATION:

3.1 “Scientific and Technical” posts which satisfy all the following conditions can be exempted from the purview of the reservation orders by the Ministries/ Departments:

(i) The posts should be in grades above the lowest grade in Group A of the service concerned.

(ii) They should be classified as “scientific or technical” in terms of Cabinet Secretariat [OM No. 85/11/CF-61(1) dated

28.12.1961], according to which scientific and technical posts for which qualifications in the natural sciences or exact sciences or applied sciences or in technology are prescribed and, the incumbents of which have to use that knowledge in the discharge of their duties.

(iii) The posts should be 'for conducting research' or 'for organizing, guiding and directing research'.

3.2 Orders of the Minister concerned should be obtained before exempting any posts satisfying the above condition from the purview of the scheme of reservation.

4 CRITERIA OF INCOME & ASSETS:

4.1 Persons who are not covered under the scheme of reservation for SCs, STs and OBCs and whose family has gross annual income below Rs 8.00 lakh (Rupees eight lakh only) are to be identified as EWSs for benefit of reservation. Income shall also include income from all sources i.e. salary, agriculture, business, profession, etc. for the financial year prior to the year of application.

Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income:-

- i. 5 acres of agricultural land and above;
- ii. Residential flat of 1000 sq ft. and above;
- iii. Residential plot of 100 sq. yards and above in notified municipalities;
- iv. Residential, plot of 200 sq. yards and above in areas other than the notified municipalities.

4.2. The property held by a "Family" in different locations or different places/cities would be clubbed while applying the land or property holding test to determine EWS status.

4.3 The term "Family" for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years.

5. INCOME AND ASSET CERTIFICATE ISSUING AUTHORITY AND VERIFICATION OF CERTIFICATE:

5.1 The benefit of reservation under EWS can be availed upon production of an Income and Asset Certificate issued by a Competent Authority. The Income and Asset Certificate issued 'by any one of the following authorities in the prescribed format as given in Annexure-I shall only be accepted as proof of candidate's claim as 'belonging to EWS: -

(i) District Magistrate/Additional District Magistrate/Collector/ Deputy Commissioner/ Additional Deputy Commissioner/1st Class Stipendary Magistrate/Sub-Divisional Magistrate/ TalukaMagistrate/ Executive Magistrate/Extra Assistant Commissioner

(ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate

(iii) Revenue Officer not below the rank of Tehsildar and

(iv) Sub-Divisional Officer or the area where the candidate and/or his family normally resides.

5.2 The Officer who issues the certificate would do the same after carefully verifying all relevant documents following due process as prescribed by the respective State/UT.

5.3 The crucial date for submitting income and asset certificate by the candidate may be treated as the closing date for receipt of application for the post, except in cases where crucial date is fixed otherwise.”

(Remaining part of the notification omitted as not necessary for the purpose of these cases).

17. For almost every CSE, the DoP&T frames Rules, typical to the concerned Examination. The Rules for the CSE 2019 were notified on 19.02.2019. On the same day, the UPSC issued notification proposing to hold the Examination. Rule 2 deals with the method of submission of applications, and it reads as under:

“2. (1) For the Main Examination, a Candidate shall be required to submit online Detailed Application Form-I (DAF-I) along with scanned documents/certificates in support of date of birth, category [viz. SC/ST/OBC (without OBC Annexure)/EWS [Economically Weaker Section] (without EWS Annexure)/PwBD/Ex-Serviceman) and educational qualification with required Examination Fee.

(2) A candidate shall be required to mandatorily indicate order of preferences only for those services participating in the Civil Services Examination for the year, for which he is interested to be allocated to, in the on-line Detailed Application Form-II (DAF-II), before the commencement of Personality Test (Interviews) of the examination. With this Form, a candidate will also be required to upload documents/certificates for higher education, achievements in different fields, service experience, OBC Annexure (for OBC category only), EWS Annexure (for EWS category only), etc.

(3) In case of recommendation of his name by UPSC for service allocation, the candidate shall be considered for allocation to one of those services by the Government for which he shall indicate his preference subject to fulfillment of other conditions. No change in preferences of services once indicated by a candidate would be permitted.

(4) A candidate who wishes to be considered for Indian Administrative Service or Indian Police Service shall be required to indicate in his on-line Detailed Application Form-II his order of preferences for various Zones and Cadres for which he would like to be considered for allotment in case he is appointed to the Indian Administrative Service or Indian Police Service and no change in preference of Zone and Cadre once indicated by a candidate would be permitted.

Note 1: The candidates are advised to be very careful while indicating preferences for various services or posts. In this connection, attention is also invited to clause (i) of rule 19.

Note 2: The candidates are advised to visit Department of Personnel and Training website www.dopt.gov.in for information or details about service allocation, Cadre allotment and service profile.

Note 3: The candidates who wish to indicate IAS/IPS as their Service preference are advised to indicate all the Zones and Cadres in the order of preference in their on-line Detailed Application Form-II as per the extant Cadre Allocation Policy applicable for the Civil Services Examination, 2019.”

18. The procedure indicated above becomes relevant, after the initial application is submitted, and a candidate is qualified in the Preliminary Examination. The steps to be taken by candidates claiming the benefit of reservation are indicated in Rule 24. It reads as under:

“24. Candidates seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBD/Exservicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits, and these certificates should be dated earlier than the due date (closing date) of the application of Civil Services (Preliminary) Examination, 2019.

Provided further that EWS Candidates shall submit their “Income and Asset Certificate” (certificate of eligibility) at the time of submission of online Detailed Application Form (DAF-I). “The Income and Asset Certificate” must be dated earlier than 1st August, 2019. Since reservation for EWS category candidates has been notified recently, therefore this extension for submission of certificate for EWS category candidates is a one time relaxation applicable for CSE 2019 only.”

Rule 25 becomes relevant in the context of the date fixed for determining OBC status, and it reads as under:

“25. The closing date fixed for the receipt of the application will be treated as the date for determining the OBC status (including that of creamy layer) of the candidates.”

Rule 24 indicates that a candidate is required to be in possession of the requisite certificates in the prescribed format, and the certificates should be dated “earlier than the due date”. It is further clarified that the “due date” is the “closing date of the application of CS (P) Examination, 2019”. This year, the closing date for submission of the CS (P) Examination is 19.03.2019. The candidates are required to be in possession of the certificates, which were issued earlier to 19.03.2019. Obviously because the EWS reservation is introduced for the first time, a proviso is added to Rule 24 enabling the candidates to possess the “Income and Asset Certificate” which is issued earlier than 01.08.2019.

19. If one takes into account, the last part of Rule 24 and Rule 25, the closing date for submission of the applications is treated as relevant, in the context of the dates of the certificates. Stipulation of any date in between does not have any reasonable purpose or immediate nexus with the objective sought to be achieved.

20. The relaxation or facility provided by the respondents for the candidates claiming the benefit of EWS is two-fold. The first is that the certificate is required to be filed along with DAF-1, which is submitted

on completion of the Preliminary Examination, but not along with the application of the CS (Preliminary) Examination 2019. The second is the date which is subsequent to 19.03.2019. 01.08.2019 appears to have been chosen, taking into account, the approximate timing at which the DAF-1 is to be submitted. This year, the date of submission of DAF-1 is prescribed as 16.08.2019.

21. Extensive arguments are advanced on behalf of the applicants to impress this Tribunal that the actual scrutiny of the applications takes place only at the final stage of selection, and there is no point in insisting on submission of the certificate issued up to a particular date. They seek to draw support from Note 6 contained in the notification issued by the UPSC. It reads as under:

“NOTE 6: Candidates are not required to submit along with their applications any certificate in support of their claims regarding Age, Educational Qualifications, Scheduled Castes/Scheduled Tribes/Other Backward Classes/Economically Weaker Sections and Persons with Benchmark Disability etc. which will be verified at the time of the Main examination only. The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the Examination. Their admission at all the stages of examination for which they are admitted by the Commission viz. Preliminary Examination, Main (Written) Examination and Interview Test will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If on verification at any time before or after the Preliminary Examination, Main (written) Examination and Interview Test, it is found that they do not fulfill any of the eligibility conditions; their candidature for the examination will be cancelled by the Commission....”

22. There is a purpose for relegating the scrutiny to such a stage. It will be impossible for the UPSC to scrutinize lakhs of applications that are received for the CSE in all respects. While candidates are permitted to take the Preliminary Examination with hardly any verification, the scrutiny up to a degree is undertaken before the candidates are permitted to take part in the Main Examination. The reason is that the candidates can be permitted to appear in the examination only up to a certain proportion vis-a-vis the available vacancies. The scrutiny of a still higher degree is undertaken at the final stage, and candidates are even subjected to medical test. Therefore, it is difficult to accept the contention that a candidate can be permitted to take part in the selection process, without any verification of the certificates or claims, at various stages.

23. Reliance is placed upon the Judgments of the Delhi High Court in *Ms. Pushpa v Government of NCT of Delhi*; *Ravinder Kumar v*

Union of India & another; and Hari Singh v Staff Selection Commission & another, and the judgment of the Hon'ble Supreme Court in Ram Kumar Gijroya. The common feature in those judgments is that the candidates claimed the reservation of OBC or of similar nature, and they did not possess the certificates issued, as on the last date of submission of the applications. It was held that once a candidate belongs to a particular category, the date of certification hardly matters, and if he possesses it by the date of actual scrutiny, his candidature can be considered. After referring to the judgment of the Hon'ble Supreme Court in Indra Sawhney v Union of India [1992 Supp (3) SCC 217], and its own judgment in Tej Pal Singh & others v Government of NCT of Delhi [120 (2005) DLT 117], the High Court of Delhi in Ms. Pushpa's case held as under:

"10. Keeping this in mind and considering that the petitioner applied for the OBC certificate to the concerned office of SDM much before January 2008, when the advertisement was made by DSSSB and since the certificate was made available to the petitioner on 13/5/2008, the petitioner cannot be made to suffer for the lapse on the part of the SDM office. But at the same time it is made clear that in all such cases caste certificate should reach the Board prior to their making provisional selection as while making provisional selection, the Board verifies & satisfies itself with authenticity of documents and eligibility as per the recruitment rules. Herein, the petitioner had sent the documents vide letter dated 3/7/2008, prior to publication of the provisional results on 25/7/2008."

"12. Mr. Anjum Javed counsel for the respondents urged that the relief in the said judgment is meant only for the 'SC' & 'ST' category and not for 'OBC' category and therefore, the respondents have rightly not considered the application of the petitioner against the 'OBC' category. I do not find any merit in the submission of the counsel for the respondent. The petitioner cannot be denied the right to be considered for appointment to the said post under the 'OBC' category once there is no dispute that she belongs to OBC Category. Admittedly, there was no lapse on the part of the petitioner who had applied to obtain the said certificate in the OBC Category much prior to the date of the advertisement and she cannot be made to suffer simply on account of the fact that the authorities have taken considerable time in making available the OBC certificate. 13 . In view of the above discussion and considering the ratio of Tejpal Singh's judgment (supra), I extend the benefit of OBC category to the petitioner. The respondents are directed accordingly to consider the application of the petitioner against the OBC category within a

period of one month and accordingly announce the result taking in view the relaxation available to the OBC candidates.”

In Ravinder Kumar’s case, the Delhi High Court in para 13 observed as under:

“13. The petitioner, in the present case, submitted the OBC certificate dated 21.05.2002 along with the application form. This certificate was not in the prescribed format. The second OBC certificate dated 13.07.2010 was furnished at the time of the interview, before the preparation of the final merit list and was as per the prescribed format. Identical undertakings have been adversely commented upon in Manjusha Banchhore (supra) and rejected on the ground of force and coercion. When a candidate is informed that unless an undertaking is furnished, he/she would be treated as disqualified, the same amounts to leaving the candidate with no choice or option. It would be unjust and unfair to pin down the petitioner for the said reason, for consent to such an undertaking would not be free, having been obtained under the threat of disqualification. Hence, the same, cannot be said to have any legal and binding effect to negate the legal claim and right. Entitlement for consideration for appointment under the reserved categories is by virtue of the said status being by birth, and when the status and certificate is not in dispute, relief should be granted as held in Anu Devi & Anr.(supra). The certificate issued by the competent authority, to this extent, is thus only an affirmation and declaration of the status already in existence.”

Same view was taken by the High Court in Hari Singh’s case.

In Ram Kumar Gijroya’s case, the Hon’ble Supreme Court took note of the judgment of Delhi High Court in Tej Pal Singh and Pushpa’s cases, and observed as under:

“In our considered view, the decision rendered in the case of Pushpa (supra) 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 the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST 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 39A 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 the 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 the cases of Indra Sawhney and Valsamma Paul (*supra*). Therefore, the impugned judgment and order 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 W.P. (C) No. 382 of 2009 is hereby restored.”

The applicants claim similar treatment.

24. A semblance of distinction needs to be maintained between the reservations based on the social status, on the one hand, and the economic status, on the other hand. While the former is static in nature, the latter is dynamic. To be precise, a candidate belonging to a particular social category, continues to be so, even with the passage of time, whereas the economic status keeps on changing, and is required to be certified for the relevant period. A person who is certified to be EWS for a particular year, may cease to be so in the next year; and conversely, a candidate who was otherwise ineligible to claim the benefit of EWS in a particular year, may become eligible in the subsequent year. While the law that provides for reservation in favour of a particular category, is ‘constitutive’ in its nature, the certificate issued to a candidate enabling him to claim reservation is ‘cognitive’ in its purport. Though, a candidate may actually belong to a social or economic category, he comes to be recognized only on being issued a certificate. Therefore, the date of issuance has its own significance.

25. Whatever may have been the circumstances under which the Hon’ble Supreme Court or the High Court held that the claim of a SC, ST or OBC candidate can be accepted even if a certificate in that behalf is issued long after the last date for submission of the application, we are of the view that the stipulation made by the UPSC that a certificate claiming the benefit of reservation must be the one obtained before the date of submission of the relevant application, cannot be ignored. Once the EWS certificate is permitted to be submitted along with DAF-1, the stipulation of 01.08.2019 as the relevant date, would virtually become self-contradictory and redundant. Rule 24 of the Rules has already been taken note of. In addition to that, the notification issued by the UPSC contains clause 10, which reads as under:

“10. Candidates seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBD/Ex-servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits, and these certificates should be dated earlier than the due date (closing date) of the application of Civil Services (Preliminary) Examination, 2019. Provided further that EWS Candidates can submit their Income and Asset Certificate (certificate of eligibility) at the time of submission of online Detailed Application Form (DAF-I). The Income and Asset Certificate must be dated earlier than 1st August, 2019. Since reservation for EWS category candidates has been notified recently, therefore this extension for submission of certificate for EWS category candidates is a one time relaxation applicable for CSE 2019 only.”

26. The first sentence of the proviso to clause 10 makes the things clear and categorical. EWS certificate can be filed along with DAF-1. The next sentence, however, virtually negates and waters down the very facility created under the first sentence.

27. The Hon'ble Supreme Court in Hirandra Kumar's case took note of quite a large number of judgments on the same subject, particularly the judgment in Council of Scientific and Industrial Research v Ramesh Chandra Agarwal [(2009) 3 SCC 35], wherein it was held as under:

“29. “State” is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2-5-1997 was the date fixed as the cut-off date in terms of the Scheme. The reason assigned therefore was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.

30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The Court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible

that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date.”

Their Lordships observed as under:

“....We are advertent to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.”

We are not referring to in detail the observations made by the Hon'ble Supreme Court in various other judgments, only to avoid repetition of what is already clear and glaring.

28. We are not at all making any effort to meddle with the scheme of the Examination or the calendar thereof. But for the fact that the Government as well as the UPSC have recognized that the reservation in favour of EWS was introduced in the recent past, and have created the facility of submission of the certificates in relation thereto, at a comparatively later stage, we would not have gone into the aspect in detail at all. Once the submission of certificates claiming benefit of reservation is linked to the last date of submission of the application, at whatever stage, stipulation of an intermediary date, especially for EWS certificate, has no meaningful purpose to serve. On the other hand, permitting the certificates obtained up to the last date of submission of the concerned applications would ensure uniformity, consistency and fairness.

29. Things would have been different altogether had it been a case where the date 01.08.2019 stipulated in the later part of the proviso to Rule 24 of the Rules, or clause 10 of the notification issued by the UPSC, had a rational nexus with any logical objective to be achieved. In spite of our best efforts to verify from the learned counsel for the respondents, we are not able to get any definite answer as to the relevance of that date. Segregation of the certificates referable to EWS from the rest of the certificates was on account of the requisite machinery being not in place, by the time the notification was issued by the UPSC. The next date for submission of the same was invariably, the one stipulated for DAF-1, and accordingly it was identified. It is not as if the candidates could have filed EWS certificates separately and independent of the DAF-1. Once the only method for filing them is by enclosing with DAF-1, there is no reason why a certificate issued up to that date cannot be taken into account.

30. *The statistics placed before us do disclose that while in some States, the facility and mechanism was made ready within a few months from the date of issuance of the notification in this behalf, i.e., 31.01.2019, other States lagged behind. This is not a case in which one social group was added to the existing category of reservation. In such cases, the machinery which is already in place, can handle the situation. What is introduced is an altogether new category of reservation. The verification is also somewhat complicated. Not only the income but also the assets of the candidates and their parents are to be verified. For this purpose, the certifying authority has to depend upon the ground staff. The process is bound to take some time. Therefore, we are of the view that it would be proper, reasonable and just to treat the EWS certificates issued up to the last date of submission of DAF-1, i.e., 16.08.2019, as valid.*

31. *Though extensive arguments are advanced to convince us to take a view that the EWS certificates issued up to the final stage of the selection, i.e., personal interview, can be taken into account, we are not inclined to agree. The reason is that such a concession would disturb the entire process which is in vogue for the past several decades.*

32. *For the foregoing reasons, we partly allow these OAs, directing that the UPSC shall treat the EWS certificates issued up to 16.08.2019 as valid, and accept the claims of such candidates. Necessary steps in this behalf shall be taken for the purpose of declaration of the results. We further direct that the relief in this batch of OAs is restricted only to such candidates who have taken part in the final Examination, and not those who did not take part in it.*

33. *All the pending MAs also stand disposed.*

There shall be no order as to costs.

Sd/-
(A. K. Bishnoi)
Member (A)

Sd/-
(Justice L. Narasimha Reddy)
Chairman”

2. We are in respectful agreement with it and we hold that, since the applicant has given the necessary documentation before the cut off date of 16.08.2019, he is also eligible to be in this category of EWS and appropriate orders must be passed by the UPSC in accordance with this declaration. At

this point of time, learned counsel for the UPSC requests that let this new selection also be subject to the result of the Writ Petition now pending before the Hon'ble High Court of Delhi. This is a reasonable submission. We agree to it. Let it be so.

3. The OA is allowed. Annexure-A12 is quashed. Consequences must be extended to the applicant within the next one month. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00103/2020

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| Annexure A1 | Copy of the notification dated 19.02.2019 |
| Annexure A2 | Copy of the preview application of the applicant dated 04.03.2019 |
| Annexure A3 | Copy of the e-Admit Card of the applicant |
| Annexure A4 | Copy of the relevant extract of preliminary exam result dated 12.07.2019 |
| Annexure A5 | Copy of the notification for main examination dated 01.08.2019 |
| Annexure A6 | Copy of the DAF-I of the applicant for the main examination |
| Annexure A7 | Copy of the EWS certificate of the application dated 09.08.2019 |
| Annexure A8 | Copy of the undertaking submitted by the applicant |
| Annexure A9 | Copy of the Income certificate issued by Tahsildar, Kittur dated 28.09.2017 |
| Annexure A10 | Copy of the request mail dated 15.08.2019 by the applicant |
| Annexure A11 | Copy of the main examination e-Admit card of the applicant |
| Annexure A12 | Copy of the intimation dated 27.11.2019 issued by R2 |
| Annexure A13 | Copy of the order dated 13.01.2020 passed by CAT, PB in OA No. 3332/2019 and other connected matters |
| Annexure A14 | Copy of the main examination result sheet dated 14.01.2020 |
| Annexure A15 | Copy of the representation dated 17.01.2020, 23.01.2020 & 25.01.2020 by the applicant |

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