

IN THE HIGH COURT OF GUJARAT AT
AHMEDABAD

District:
Ahmedabad

SPECIAL CIVIL APPLICATION NO._____ OF
2019

In the matter under Article 226 of the
Constitution of India, 1950;

And

In the matter under the Gujarat State
Judicial Service Rules, 2005;

And

In the matter of:-

DILIPKUMAR MAGANBHAI SAVUKIYA

Age: 35 years, Male, Occupation: Advocate,
C/33, Rameshwar Township, Nr. Garden (Bagicha), Ratanpur,
Post: Joravarnagar-363 020, Taluka: Wadhwan,
District: Surendranagar.Petitioner

Versus

1. THE REGISTRAR
Recruitment Cell,
High Court of Gujarat, Sola, Ahmedabad.
2. THE STATE OF GUJARAT
Department of Social Justice and Empowerment,
Through the Principal Secretary,
9th Floor, Block No.5 Sachivalya, Gandhinagar.
3. Gujarat Public Service Commission
Through its Secretary
Sector 10/A, Nr. "Chh-3" circle,
"Chh-3" Road, Gandhinagar-382 010.
...Respondents

To,
The Hon'ble Chief Justice

and the companion Judges of the High Court of Gujarat.

The humble petition of the Petitioner above named;

MOST RESPECTFULLY SHOWETH THAT:-

1. The present Writ Petition under Article 226 of the Constitution of India is being filed by the Petitioner towards implementation of the economically weaker sections (EWS) Quota Scheme inserted by the Constitution (103rd Amendment) Act, 2019 which provides for the insertion of Articles 15(6) and 16(6) in the Constitution in the advertisement for recruitment of Civil Judges. The present Petitioner further seeks for the effective implementation of the economically weaker sections (EWS) Quota Scheme as guaranteed by the constitution.

2. That the facts of the case in brief are as follows:-

(2.1) The Petitioner submits that, prior filing of this Petition, the Petitioner had preferred public interest litigation vide WRIT PETITION (PIL) - No. 178 of 2019 on the present subject matter whereby the said petition was withdrawn since the present subject matter does not fall within the purview of the public interest litigation. However, the withdrawal of said public interest litigation will not affect the right of the individual candidate claiming similar relief thereby the

Petitioner has preferred this Petition. Copy of the order dated 16.10.19 in WRIT PETITION (PIL) - No. 178 of 2019 is annexed hereto and marked as **Annexure-A**.

(2.2) The Petitioner hereby seeks to challenge the advertisement for recruitment of civil judges vide advertisement No. RC/0719/2019-20 dated 26.08.19 and addendum dated 30.09.19 issued by the Respondent No.1 which is violative of Articles 15(6) and 16(6) of the Constitution of India, 1950 since the advertisement for recruitment of civil judges does not implement the economically weaker sections (EWS) Quota Scheme inserted by the Constitution (103rd Amendment) Act, 2019. Copy of the advertisement No. RC/0719/2019-20 dated 26.08.19 and addendum dated 30.09.19 is annexed hereto and marked as **Annexure-B** **Colly** to this Petition.

(2.3) The Petitioner is an advocate practicing in Surendranagar District. The Petitioner was enrolled with the State Bar Council of Gujarat on 26.07.2010 vide its enrollment no. G/1911/2010. The Petitioner was willing to apply for the aforesaid advertisement but since the advertisement did not mentioned about the 10% reservation of the EWS Quota scheme. The Petitioner submits that, the age limit as specified

for general category was 35 years but for availing the benefit of 10% reservation to the economic weaker section, 3 years relaxation is given to the candidates of general category. It is submitted that, the date of birth of the Petitioner is 15.12.1983, therefore, since in the aforesaid advertisement of recruitment does not mention/include or give benefit of 10% reservation of EWS Quota, the application of the Petitioner could not be accepted as neither there was any reference nor the option for EWS quota in the on-line recruitment form. Copy of the certificate issued by the Bar Council of Gujarat and Aadhaar Card of the Petitioner is annexed hereto and marked as **Annexure-C** Colly.

(2.4) The Petitioner hereby seeks invocation of the 103rd Amendment of the Constitution vide the Constitutional 103rd Amendment Act 2019 vide insertion of Article 15 (6) and 16 (6) of the Constitution which came into force on 12.1.2019 in the recruitment of civil judges for implementation of the economically weaker sections (EWS) Quota Scheme. Copy of the notification dated 12.01.19 issued by the Ministry of Law and Justice is annexed hereto and marked as **Annexure-D**.

(2.5) The Respondent No.2 issued a Resolution No.EWS/122019/45903/A dated 23.01.19 for implementation of reservation of 10% seats for the Economic Weaker Sections (hereinafter referred as EWS) candidates in appointment of civil posts and services under the State of Gujarat. That the Respondent No.2 issued another Resolution No.EWS/122019/45903/A dated 11.02.19 with regard to the income and asset certificates of Economic Weaker Sections for 10% reservation. Copy of the Resolution No.EWS/122019/45903/A dated 23.01.19 and Resolution No.EWS/122019/45903/A dated 11.02.19 issued by the Respondent No.2 is annexed hereto and marked as **Annexure-E & F.**

(2.6) The Petitioner submits that, one Dineshkumar Bhagvanbhai Bambhaniya being social activist also made a representation to the Hon'ble Deputy Chief Minister with regard to the present subject matter. It is further submitted that, pursuant to the representation made by the said Dineshkumar Bhagvanbhai Bambhaniya and by one Shri. Purvinbhai Patel to the Hon'ble Deputy Chief Minister, the Additional Private Secretary to the Hon'ble Deputy Chief Minister vide its letter dated 24.09.19 addressing to the Secretary (Law), Law and

Justice Department to consider and to take necessary action with regard to the representation made by them for implementation of EWS Quota scheme in the recruitment of civil judges. Copy of the letter dated 24.09.19 of the Additional Private Secretary to the Hon'ble Deputy Chief Minister is annexed hereto and marked as **Annexure-G**.

(2.7) The Petitioner herein also made a various representation to the Respondent No.1 dated 16.09.19, to the Hon'ble Deputy Chief Minister dated 17.09.19 and also to the President of Gujarat State Commission for unreserved classes, Government of Gujarat dated 17.09.19. It is also submitted that, in earlier recruitment of civil judges also one advocate Mr. Ashwin G. Gadhiya also made a representation to the Gujarat State Commission for unreserved classes, Government of Gujarat, pursuant to the said representation of advocate Mr. Ashwin G. Gadhiya, the President of the Gujarat State Commission for unreserved classes, Government of Gujarat vide its letter dated 28.01.19 to the Respondent No.1 requested the Respondent No.1 to place the said representation for its appropriate decision before the Hon'ble Chief Justice for implementation of the EWS Quota in recruitment process. Copy of the representation of the Petitioner No.2 along with

postal receipts and tracking details and letter dated 28.01.19 is annexed hereto and marked as Annexure- H Colly & I.

(2.8) The Petitioner submits that, in one of the notification dated 07.08.19 issued by the High Court of Punjab and Haryana for direct appointment to Haryana Superior Judicial Service- 2019 have implemented the EWS Quota Scheme in judicial recruitment. Copy of the notification dated 07.08.19 issued by the High Court of Punjab and Haryana is annexed hereto and marked as **Annexure-J**

(2.9) The Petitioner herein is aggrieved by the manner in which the equality code is being breached whereby the economically weaker sections (EWS) Quota Scheme is not being implemented as guaranteed by the Constitution (103rd Amendment) Act, 2019 for the recruitment of Civil Judges despite several representations made by the Petitioner and necessary resolutions issued by the Respondent No.2, therefore, the Petitioner herein prefer the present Writ Petition since the Respondent No.1 authority failed to implement the EWS Quota Scheme as guaranteed by the Constitution of India.

3. That the present petition has been filed on the following amongst other grounds which may be urged at the time of hearing of this application:-

GROUND

(a) The impugned advertisement for the recruitment of Civil Judges violates the Constitution Amendment of equality with regard to the implementation of the economically weaker sections (EWS) Quota Scheme and also violates the resolutions issued by the Government.

(b) That the Constitution Amendment (103rd) Act 2019 was necessitated to benefit the economically weaker sections of the society who were not covered within the existing schemes of reservation, which as per statistics, constituted a considerably large segment of the Indian population. In order to do justice across all the weaker sections of the society, it was therefore considered imperative that the Constitution be appropriately amended to enable the State to extend various benefits, including reservations in educational institutions and public employment to the economically weaker sections of the society who are not covered by any of the existing schemes of reservation to enable them equal opportunity to get access to educational institutions and also in matters of employment.

(c) That subsequent to the decision of this Hon'ble Court in Indra Sawhney vs. Union of India, 1992 Supp (3) SCC 217, the Government appointed an Expert Committee to recommend the criteria for exclusion of advanced sections of Socially and Educationally Backward classes (SEBCs), i.e. the creamy layer. The Committee in its report recommended that children of holders of constitutional posts, certain group of employees of Central Government, State Government, and Armed Forces, and agricultural land holders above a certain limit be excluded from the scheme of reservation. The Committee also recommended that persons having gross annual income of Rs. 1.00 Lakh and above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of 3 consecutive years shall be excluded from the benefit of reservation. The Government accepted the recommendation and accordingly issued an O.M. dated 08.09.1993 on the exclusion criteria. The income limit has been raised from time to time and at present is at Rs. 8.00 lakh per annum and the Wealth Tax Act is not in force at present.

(d) That it is pertinent to state that a Commission for Economically Backward Classes was constituted, headed by Chairman Maj. Gen. (Retd.) S.R. Sinho, to suggest the criteria for identification for economically backward classes (EBC) as well as to recommend welfare measures and quantum of reservation in education and Government employment to the extent as appropriate.

(e) That in its report dated 2.07.2010, the Commission recommended that all BPL (Below Poverty Line) families among general category as notified from time to time and also all families whose annual family income from all sources is below the taxable limit (as may be revised from time to time) should be identified as EBCs. Furthermore, keeping in view the differentiation adopted by the Hon'ble Supreme Court in *Indra Sawhney* between the “weaker sections of the people” and “backward classes of citizens”, resolved that indicators that were used for identification of socio-economic backward classes cannot be used for identification of economically backward classes, mainly because, at first place, classes are not homogenous, and secondly, they do not have a common criteria like that of castes, on the basis of which, economic backwardness can be

evolved. In its Report, the Sinho Commission had, on the basis of NSSO (National Sample Survey Office) Estimates, concluded that BPL% was not just high among STs, SCs and OBCs but were also high amongst the General category, being 18.2%. The NSSO (2004-05) and NFHS (National Family Health Survey) (1998-99) data suggest that there is a need to make provisions similar to the backward classes for the economically weaker sections.

(f) That further, the Sinho Commission in its Report had observed that given the existing legal premise that Backward Classes cannot be identified on the basis of economic criteria for the purpose of reservation in employment and admission in educational institutions, the States were unable to identify Economically Backward Classes for extending benefits of reservation till necessary Constitutional Amendment were made or the Hon'ble Supreme Court directs raising the ceiling for reservation beyond 50%.

(g) That in light of the aforesated background, it was deemed necessary that a constitutional amendment be brought in to promote social equality by providing opportunities in higher education and employment to those who have been excluded by virtue of their economic status.

(h) Article 46 of the Constitution provides for the welfare of the weaker sections and reservation for Backward classes. Article 46 reads as:

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

(i) It is relevant to state that India has a population of about 135 crore people, of which a considerably large section comprises the lower middle class and those living below poverty line. The State has a duty as per the directive of Article 46 of the Constitution to promote the educational and economic interests of the weaker sections of the people.

(j) Accordingly, in terms of the recommendations made, the Ministry of Social Justice and Empowerment introduced a bill, namely the Constitution (One Hundred and Twenty Fourth Amendment) Bill, 2019. The said Bill was passed by the Lok Sabha on 08.01.2019 and by the Rajya Sabha on 09.01.2019. The President gave his assent on 12.01.2019, where after it was notified by the Ministry of Law and Justice.

(k) The Statement of objects and reasons appended to the Constitution (One Hundred and Twenty Fourth) Amendment Bill, 2019 is reproduced as under:

1. *At present, the economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of article 15 and clause (4) of article 16 are generally unavailable to them unless they meet the specific criteria of social and educational backwardness.*
2. *The directive principles of State policy contained in article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*
3. *Vide the Constitution (Ninety-third Amendment) Act, 2005, clause (5) was inserted in article 15 of the Constitution which enables the State to make special provision for the*

advancement of any socially and educationally backward classes of citizens, or for the Scheduled Castes or the Scheduled Tribes, in relation to their admission in higher educational institutions. Similarly, clause (4) of article 16 of the Constitution enables the State to make special provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

4. However, economically weaker sections of citizens were not eligible for the benefit of reservation. With a view to fulfil the mandate of article 46, and to ensure that economically weaker sections of citizens to get a fair chance of receiving higher education and participation in employment in the services of the State, it has been decided to amend the Constitution of India.

5. Accordingly, the Constitution (One Hundred and Twenty-fourth Amendment) Bill, 2019 provides for reservation for the economically weaker sections of society in higher educational institutions, including private institutions whether aided or unaided by the State other than the minority educational institutions referred to in article 30 of

the constitution and also provides for reservation for them in posts in initial appointment in services under the State.

6. *The Bill seeks to achieve the above objects.*

(l) It is submitted that the newly inserted provisions of Article 15(6) and Article 16(6) are enabling provisions for advancement of the economically weaker sections and are in fact, in conformity with the principle of Reservation and Affirmative action, which are the touchstones of protection of equality of citizens and also the basis under Article 15(1), Article 15(2), Article 16(1) and 16(2).

(m) It is submitted that, the appointing authority for the recruitment for the cadre of civil judges shall be the Government of Gujarat as per the rule 4 of the Gujarat State Judicial Service Rules, 2005 and the recruitment method would be on the basis of competitive examination conducted by the High Court as per rule 7 Gujarat State Judicial Service Rules, 2005. Further as per rule 23 of the Gujarat State Judicial Service Rules, 2005, relates to the application of the other rules from time to time under any law, therefore, since the appointing authority for the present recruitment is Government of Gujarat then the relevant notification with

regard to the EWS quota scheme will be applicable to the present recruitment process since only the method of recruitment is conducted by the High Court.

(n) That in the recruitment of the civil judges if the economically weaker sections (EWS) Quota Scheme as guaranteed by the Constitution (103rd Amendment) Act, 2019 is not implemented then the eligible candidates belonging to the economically weaker sections will be deprived of their fundamental rights as it is essential that the socially and economically weaker section gets access to these facilities in employment as mandated in the Constitution otherwise the entire operation of the statue will become ineffective.

(o) That, as has been stated hereinabove, several Committees have been set up wherein quantifiable data has been collected highlighting the need for having reservation for the economically weaker sections of the society. Accordingly, the Constitutional amendments were necessitated for providing opportunities in higher education and employment to those who have been excluded by virtue of their economic status.

4. The Petitioner has not filed any other appeal or application either before this Court or before the Hon'ble Supreme Court

of India or before any other Courts on the same subject matter of this petition.

5. The Petitioner has no other alternative efficacious remedy but to approach this Hon'ble Court by way of this petition.

6. The Petitioner prays that this Hon'ble Court may be pleased to:-

(a) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction ordering and/or directing the Respondent No.1 & 2 to implement the economically weaker sections (EWS) Quota Scheme inserted by the Constitution (103rd Amendment) Act, 2019 in view of Articles 15(6) and 16(6) of the Constitution of India and in consonance with the Resolution No.EWS/122019/45903/A dated 23.01.19 and Resolution No.EWS/122019/45903/A dated 11.02.19 or any other resolution issued by the Respondent No.2 from time to time in the advertisement for recruitment of Civil Judges;

(b) Your Lordships may be pleased to issue a Writ of Mandamus, a Writ in the nature of Mandamus and/or any other appropriate writ, order and direction to quash and set aside the advertisement for recruitment of Civil Judges vide advertisement No. RC/0719/2019-20 dated 26.08.19 and addendum dated 30.09.19 issued by the Respondent No.1 and further be pleased to direct the Respondent No.1 to issue fresh advertisement for recruitment of Civil Judges including the economically weaker sections (EWS) Quota Scheme inserted by the Constitution (103rd Amendment) Act, 2019 in view of

Articles 15(6) and 16(6) of the Constitution of India and in consonance with the Resolution No.EWS/122019/45903/A dated 23.01.19 and Resolution No.EWS/122019/45903/A dated 11.02.19 or any other resolution issued by the Respondent No.2 from time to time;

(c) Pending admission, hearing and final disposal of this Petition, Your Lordships may be pleased to stay the implementation, execution and operation of the recruitment process of Civil Judges vide advertisement No. RC/0719/2019-20 dated 26.08.19 and addendum dated 30.09.19 issued by the Respondent No.1;

(d) Ad-Interim relief in terms of paragraph (c);

(e) Your Lordships may be pleased to grant any other relief or reliefs' as this Hon'ble Court may deem just, fit and expedient be granted in favour of the Petitioner;

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL AS IN DUTY BOUND SHALL FOREVER PRAY.

Place:

DRAWN & FILED BY

Date:

Advocates for the Petitioner

[VISHAL J. DAVE], [NIPUN SINGHVI] & [HIRAL U. MEHTA]

IN THE HIGH COURT OF GUJARAT AT
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…Petitioner

Versus
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…Respondents

AFFIDAVIT

I, DILIPKUMAR MAGANBHAI SAVUKIYA, Age: Adult, Male, Occupation: Advocate, C/33, Rameshwar Township, Nr. Garden (Bagicha), Ratanpur, Post: Joravarnagar-363 020, Taluka: Wadhwani, District: Surendranagar, the Petitioner herein to hereby state of solemn affirmation that what has been stated here-in- above in para. Nos. 1 to 5 is true to my knowledge and I believe the same to be true and correct. Para 06 is the prayer clause.

SOLEMNLY AFFIRMED ON THIS ____ DAY OF NOVEMBER, 2019
AT _____.

D E P O N E N T

Identified & explained in Vernacular language
to the deponent by me.

Advocate

