

# Harish Indoriya vs Union Of India And Anr on 18 February, 2022

**Author: Yogesh Khanna**

**Bench: Yogesh Khanna**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 3093/2022  
HARISH INDORIYA

Through : Mr.Sushant Tiwari, Advoc  
versus

UNION OF INDIA AND ANR.

Through : Mr.Amit Mahajan, CGSC  
Mr.Kritagya Kait, Ad

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 18.02.2022

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 3093/2022 & CM APPLN No.8948/2022

3. With the consent of learned counsels for parties, the matter is heard finally without calling for any response from the respondents.

4. This petition is filed by the petitioner the following prayers:-

(a) To issue a Writ, Order or Direction in the nature of Writ of Mandamus to the Respondent No.1 and Respondent No.2:-

(i) to relax the upper age limit for the EWS candidates in Civil Services Examination at least up to three years

(ii) to increase the number of available attempts for EWS candidates from six to nine, and

(iii) to exempt EWS candidates from paying examination fee,

(b) To pass such other writ(es), order(s) or direction(s) as this Court May deemed fit and proper in the interest of Justice.

5. By virtue of Article 15(6) of the Constitution, States are empowered to make a special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) and to make a special provision relating 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, in addition to existing reservations and subject to a maximum of ten per cent of the total seats in each category. Similarly, Article 16 (6) empowers the State to make 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.

6. Respondent No.1 vide office memorandum bearing No.36039/1/ 2019-Estt(Res)dated 31.01.2019 provided the persons belonging to the Economically Weaker Sections (EWS), who are not covered under the scheme of reservation for SCs, STs, and OBCs, a 10% reservation in direct recruitment in civil posts and services in the Government of India.

7. Respondent No.2 issued a notice of examination dated 19.02.2019 bearing No.04/2019-CSP for conducting Civil Services Examination, wherein every candidate appearing was permitted a maximum of six attempts however certain relaxation with regards to maximum number of attempts qua SC/ST/OBC category candidates were given. Respondent No.2 retained the same conditions for conducting civil services examination 2022 vide its Notice 05/2022-CSP dated 02.02.2022.

8. The petitioner in the present petition is seeking relaxation primarily on parity but had failed to challenge the notice dated 02.02.2022. Admittedly, vide the Office Memorandum dated 31.01.2019 and Notice dated 02.02.2019, the respondents have formed policy to provide certain relaxations to certain sections of the society. The policy is framed by the State based upon the circumstances of facts and law, a quantifiable data, including constraints based on its resources. It is settled law while exercising jurisdiction under Article 226 of the Constitution, the Court does not frame policies which primarily are left to the wisdom and domain of the Legislature/executive. The Court does not sit in appeal to amend the policies, however the same can be set aside on the ground of being unconstitutional. The Court does not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision etc. It cannot be interfered with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available.

9. In *Bir Singh vs Delhi Jal Board & Others* (2018) 10 SCC 312 the Apex Court held:-

37. Article 16(4) is an enabling provision. It enables the State to provide to backward classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of

the satisfaction of the State being verifiable, is open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.

10. Therefore, the policy decision taken qua relaxations, on attempts, on age limit and on payment of examination fee is beyond the scope of the judicial review. Moreso, the legality of the Office Memorandum dated 31.01.2019 and Notice dated 02.02.2019 is not under challenge. The Court cannot thus, issue the mandamus for framing a policy.

11. In *State of Punjab vs Ram Lubhaya Bagga* (1998) 4 SCC 117 the Court held:-

25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a Government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. so far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

12. In *Directorate of Film Festivals vs Gaurav Ashwin Jain* (2007) 4 SCC 737 the Court held:-

16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review [vide : *Asif Hameed v. State of J&K* - 1989 Supp (2) SCC 364; *Shri Sitaram Sugar Co.*

Ltd., v. Union of India - 1990 (3) SCC 223; Khoday Distilleries v. State of Karnataka - 1996 (10) SCC 304, BALCO Employees Union v. Union of India - 2002 (2) SCC

333), State of Orissa vs. Gopinath Dash - 2005 (13) SCC 495 and Akhil Bharat Goseva Sangh vs. State of Andhra Pradesh - 2006 (4) SCC 162].

13. Federation of Railway Officers Association vs Union of India (2003) 4 SCC 289 and Ugar Sugar Works Limited vs Delhi Administration (2001) 3 SCC 635 are few cases in this context.

14. In view of above, finding no merit in this petition, it is dismissed. Pending application, if any, also stands disposed of. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 18, 2022 M