

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.....2025
(@SLP(CIVIL) NO.27139 OF 2024)

SHREYA KUMARI TIRKEY

...APPELLANT

VERSUS

THE STATE OF JHARKHAND & ORS.

...RESPONDENTS

ORDER

1. Leave granted.
2. The present appeal arises out of order dated 3rd September, 2024, passed by the High Court of Jharkhand at Ranchi in Letter Patent Appeal No. 425 of 2024, whereby the High Court dismissed the intra-Court appeal filed by the appellant and thereby upheld the order dated 10th April, 2024, passed by the learned Single Judge in Writ Petition (S) No. 773 of 2023.
3. Brief facts, essential for the disposal of the present appeal, are as follows:
 - 3.1. Respondent no. 3, Jharkhand Public Service Commission, issued Advertisement No. 01 of 2021 whereby applications were invited from eligible candidates for the Jharkhand Combined Civil Services Competitive

Examination, 2021 (for short, “Examination, 2021”) in order to fill up the posts that had fallen vacant from 2017-2020.

3.2. The appellant, being eligible and possessing the requisite qualification, applied for the aforesaid examination and in this regard, she was issued an admit card for Preliminary Examination, scheduled to be conducted on 19th September, 2021.

3.3. The appellant successfully appeared and qualified both Preliminary and Mains Examination which was held between 28th to 30th January, 2022.

3.4. Thereafter, respondent no. 3 issued e-call letter informing the appellant that she has been provisionally shortlisted for the document verification and interview for the Examination, 2021 which was scheduled to be held on 14th May, 2022 and 15th May, 2022, respectively.

3.5. Subsequently, respondent no. 3 issued another press advertisement, stating therein that verification of records of the successful candidates for the purpose of interview is fixed from 8th to 15th May, 2022 and the interview is fixed from 9th to 16th May, 2022 from 09:30 A.M. in the office of the Commission. In Clause (3) of the advertisement, it was stated that the candidates who will participate in the interview, their medical examination will be fixed for next day in Sadar Hospital, Ranchi and therefore, the candidates were requested to ensure their presence on the said dates.

3.6. Unfortunately, the appellant could not appear for the medical examination as she was under the belief that the last date for interviews and documents verification is 16th May,

2022 and therefore, the medical examination will be conducted on 17th May, 2022. On 17th May, 2022 the appellant went to the concerned office for the medical test however, as there was no test being conducted, she returned back.

3.7. It was only on 21st May, 2022 that the appellant came to know through newspaper, namely *Prabhat Khabar*, that some candidates including herself have missed the medical test. Subsequently, the appellant was informed that her candidature was rejected and she cannot be selected on the ground that she did not appear in medical examination.

3.8. Aggrieved, the appellant filed Writ Petition (S) no. 773 of 2023 before the High Court. The learned Single Judge *vide* order dated 10th April, 2024, dismissed the writ petition on the ground that by not appearing for medical examination on the very next day of her interview, i.e. 15th May, 2022, the appellant has not complied with the terms of the selection process.

3.9. The appellant assailed this order *via* an intra-Court appeal before the High Court in Letter Patent Appeal no. 425 of 2024.

4. The learned Division Bench *vide* order dated 3rd September, 2024, dismissed the intra-Court appeal filed by the appellant and upheld the order of Single Judge. The Division Bench further held that as the selection process already stands concluded including issuance of offer of the appointment therefore, the appellant cannot be granted any relief. Hence, the appellant is before us.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. We are inclined to allow this appeal and set aside the concurrent decisions of the High Court for the reasons stated hereinunder.

6.1. The learned Single Judge of the High Court while dismissing the writ petition filed by the appellant placed reliance on the decision of this Court in ***State of Tamil Nadu v. G. Hemalathaa***,¹ wherein it was held that strict adherence to the terms and conditions of the Instructions is of paramount importance. This Court further held that the High Court in exercise of powers under Article 226 of the Constitution of India cannot modify or relax the Instructions issued by the Commission.

6.2. In our considered opinion, the reliance placed by learned Single Judge on ***G. Hemalathaa*** (*supra*) is misplaced as the rules therein provided for a provision of penalty in case the applicant/candidate violates some instruction.

6.3. However, in the present case, there is no such consequence mentioned for non-appearance in the medical examination in the press advertisement issued in furtherance to provide necessary instructions to the successful candidates. Therefore, the principle as enunciated by this Court in ***G. Hemalathaa*** (*supra*) does not apply to the instant case.

6.4. On the other hand, this Court time and again has held that procedure is handmaiden of justice and it must not be

¹ (2020) 19 SCC 430.

made a tool to perpetuate injustice by employing oppressive or punitive measures. It is apposite to refer to a three-Judge decision of this Court in ***Uday Shankar Triyar v. Ram Kalewar Prasad Singh***,² wherein this Court quoted the aforesaid principle with approval. The Court also recognised some exceptions to the principle, which are being reproduced hereinbelow:

17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates.

Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court;

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.

(emphasis supplied)

7. While the decision in ***Uday Shankar Triyar*** (*supra*) dealt with the procedural law relating to filing of the civil cases, we are of the opinion that as a matter of principle enunciated therein including the exceptions, they equally apply to the administrative instructions issued by the recruiting bodies, having the force of law.

² (2006) 1 SCC 75.

8. In the present case, after the results were announced, respondent no. 3 issued a press advertisement providing necessary information and dates for conducting interview and document verification of the successful candidates. The information with respect to the medical examination was also mentioned therein. While candidates are expected to act diligently in matters of public employment, however, entire onus cannot be casted on them for omissions on their part which can be condoned.
9. The said advertisement does not mention the consequence for non-appearance, intentional or otherwise, in the medical examination. The advertisement also did not provide for an opportunity of hearing in case the candidates were unable to appear in the medical examination which may be possible in case an exigency arises.
10. Secondly, the Instructions issued by respondent no. 3 *vide* Press Advertisement mentioned that the medical examination of the candidates who have participated in the interview is fixed for next day. In this regard, the candidates were requested to ensure their presence in the Sadar Hospital in Ranchi. Since the very beginning the case of the appellant is that she was under the impression that “next day” meant the day following the last day on which the interviews were scheduled, i.e. 17th May, 2022. It was only when she had appeared that she was informed that the medical examination process stands concluded on the previous day.

11. In our view, the meaning of the words “medical examination of the candidates participated in interview is fixed for next day” does give rise to a genuine doubt as to what is the day on which the candidate is expected to appear for medical examination.
12. The appellant has qualified Preliminary and Mains Examination and thereafter, successfully appeared in the office of respondent no. 3 for both interview and verification of her records. It was only in the third stage, where she was required to appear for medical examination where she failed to appear. Should therefore, the appellant’s candidature be solely rejected on this criteria that she failed to appear for medical examination, considering she has qualified all the parameters to check her suitability and merit?
13. As a model employer, the State and its instrumentalities are expected to act in compliance with the equality principles as enshrined in the Constitution of India. However, laws that do appear to be providing for equality and are non-discriminatory in nature, do have a potential to be discriminatory. This Court in the case of **Nitisha v. Union of India**,³ has recognised and adopted in our equality jurisprudence the principle of prohibition of indirect discrimination. The Court held that even neutral, innocent or good faith measures and policies adopted with no discriminatory intent whatsoever, will be caught if their impact on persons having a particular characteristic is

³ (2021) 15 SCC 125.

greater than their impact on other persons and thus, this is the whole point of prohibition of indirect discrimination.

14. While the observations in **Nitisha** (*supra*) were made in context of gender-equality, we have no hesitation to analogise the concept of prohibition of indirect discrimination to achieve the equality in respect of other parameters, such as religion, race, caste, sex, descent, place of birth and residence. It is possible that a policy that appears to be *prima facie* neutral but when it is micro-analysed in terms of its impact on various castes, it might affect individuals belonging to the historically marginalised caste greatly than others. Thus, the State is constitutionally bound to prevent such cases that result in indirect discrimination.

15. In the present case, the Instructions issued by respondent no. 3 *prima facie* does seem to be non-discriminate and must be followed in its letter and spirit but we cannot turn our heads to ignore the thread of ambiguity that runs through it. This is in addition to absence of any mechanism providing redressal in case a candidate fails to appear in medical examination.

16. The appellant belongs to a marginalized community, being member of Scheduled Tribe, has already proven her merit by qualifying the Preliminary Examination, Mains Examination and thereafter successfully appeared before the Interview Board and got her documents verified on time as per the schedule prescribed by respondent no. 3. It is her case since the very beginning that she was under the

impression that the medical examination was scheduled on the following day after the interviews of all the candidates is conducted, i.e. 17th May, 2022, while as per the Press Advertisement she was required to be present on 16th May, 2022, which was the day following her interview day. We thus, have no hesitation to hold that non-appearance for medical examination without there being a proper clarity of which day the candidate is expected to appear is discriminatory *qua* the present appellant.

17. Medical examination is conducted to only assess the physical fitness of a candidate and their suitability for the job, and is not an assessment on merit of the candidate. We therefore, fail to understand why would the appellant intentionally omit to appear for medical examination and thus, be punished so disproportionately as has been done in this case. Even if it is accepted that the appellant was negligent in not being available for medical examination as per prescribed schedule, the appellant deserves to be dealt leniently. To uphold the constitutional promise by uplifting individuals belonging to marginalized community such procedural hurdles must not be resorted to cause further hardship and injustice. The goal is upliftment and not finding out ways to reject them at the very threshold.

18. Thus, from our discussion in the foregoing paragraphs, we are inclined to give the appellant this one-time relaxation to appear for medical examination. We direct respondent no. 3 to take steps to conduct the medical examination of the appellant.

19. In case the appellant successfully qualifies the medical examination conducted in terms of Para (18) and satisfies the parameters as per the extant rules, as applicable at the time of initial recruitment, we further direct the respondents to create a supernumerary post for appointment of the appellant. The appellant would be entitled to continuity of service from the date the last selected candidate joined pursuant to the selections held against the Advertisement No.01 of 2021. Appellant would be placed at the bottom of the said select list with all consequential benefits of seniority, increments etc. but no financial benefits would be extended for the said period.
20. The order of the High Court dated 3rd September, 2024, is therefore, set aside. Consequently, the appeal is allowed in terms of the aforesaid direction.
21. Pending application(s), if any, is disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

**NEW DELHI;
SEPTEMBER 04, 2025**