**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2053 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIRZAR S. DESAI****Sd./-**

=====

Approved for Reporting	Yes	No
	✓	

=====

BHAVINI NAGENDRASINH CHAUHAN**Versus****HIGH COURT OF GUJARAT & ANR.**

=====

Appearance:**MR MALAVSINGH N CHAUHAN(10279) for the Petitioner(s) No. 1****LAW OFFICER BRANCH(420) for the Respondent(s) No. 1,2****MR. KM ANTANI(6547) for the Respondent(s) No. 1,2**

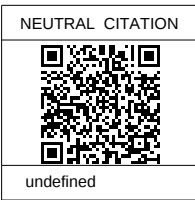
=====

CORAM: HONOURABLE MR. JUSTICE NIRZAR S. DESAI**Date : 28/02/2025****ORAL JUDGMENT**

1. With the consent of the learned Advocates for the parties, this matter is taken-up for final hearing and disposal, today.

1.1 Hence, **RULE**. Learned Advocate, Mr. Antani, waives service for the Respondents.

2. By way of this petition, the petitioner has prayed for the following reliefs;



“a) Your Lordships may kindly be pleased to Admit and allow this petition;

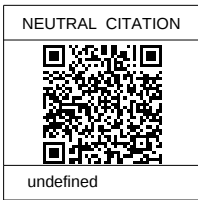
b) Your Lordships may kindly be pleased to issue direction directing to the respondents to allow the candidate who has not crossed upper age limit criteria of 35 years during the process of online application.

c) Your Lordships may kindly be pleased to issue directions directing to the respondents to allow the present petitioner to apply and submit online application form on or before 22.02.2025.

d) Pending, admission and final hearing of this petition Your Lordships may kindly be pleased to accept the physical (hard copy) of application form of the petitioner on or before 22.02.2025 and allow her to appear in the prelim examination which is going to be held on 23.03.2025 (Sunday).

e) Your Lordships may kindly be pleased to pass such other and further relief /s as may be deemed fit and appropriate in view of the facts and circumstances of the case may be granted. ”

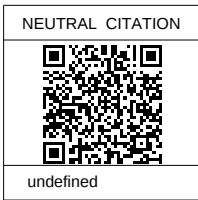
3. Taking into consideration the reliefs sought for in this



petition and as reproduced herein above, the short question, which arises for the consideration of this Court, is whether, the petitioner is eligible to claim age relaxation for participating in the process of recruitment for the post of civil judge, pursuant to the issuance of Advertisement No. RC/0719/2024-2025 or not, since, as per Clause-3 of the aforesaid advertisement, the petitioner does not complete the upper age limit on the first day of filling-up online application form for recruitment to the post of Civil Judge, i.e. on 01.03.2025, however, on the last date of submission of online application form for recruitment to the post of Civil Judge, the petitioner crosses the upper age limit, i.e. 35 years.

3.1 Clause-3 of the advertisement in question, further, provides that on the last date of submission of online application form for recruitment to the post of Civil Judge, a candidate belonging to general category must not have crossed 35 years of age, whereas, in case of the candidates belonging to the Scheduled Castes, Scheduled Tribes, Socially & Educationally Backward Classes or the persons with Benchmark Disability (PwBD) or Economically Weaker Sections, they must not have crossed age of 38 years.

3.2 In the case on hand, according to learned Advocate, Mr. Chauhan, the petitioner, who belongs to General Category, does not cross the upper age limit, i.e. 35 years, on the first day of filling-up of online application form for recruitment to the post of Civil Judge, however, on the last date of submission of online application form for recruitment to the post of Civil

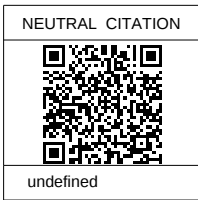


Judge, as per Advertisement No. RC/0719/2024-2025, she crosses 35 years of age or upper age limit and thereby, the petitioner is held to be not entitled to fill-up the online form for participating in the recruitment for the post of Civil Judge.

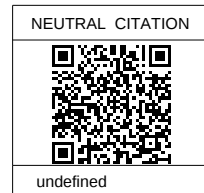
Hence, the present petition.

4. Learned Advocate, Mr. Chauhan, appearing for the petitioner submitted that as per Advertisement No. RC/0719/2024-2025, itself, the same is in consonance with the guidelines issued by the Hon'ble Apex Court in the case of '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in (2008) 17 SCC 703, and as per the provisions prescribed under the Gujarat State Judicial Services Rules, 2005 (in brief, 'Rules of 2005'), as amended from time-to-time.

4.1 By relying on the decision of the Hon'ble Apex Court in the case of '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in AIR ONLINE 2007 SC 34 and more particularly, the observations made at Paragraphs-7, which is reproduced hereunder, it was submitted that there was no recruitment undertaken during the year 2023-2024, though, the vacancies were available and therefore, the petitioner did not get a chance to participate and thus, there being violation of the guidelines issued by the Apex Court in the case of '**Malik Mazhar Sultan & Another**' (Supra) , this petition may be allowed and the petitioner may be permitted to participate in the recruitment process.



"7. The Rules postulate the timely determination of vacancies and timely appointments. The non-filling of vacancies for long not only results in the avoidable litigation but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for long time, deprives the people of the services of the Judicial Officers. This is one of the reasons of huge pendency determine of and cases in the courts. It is absolutely necessary to evolve a mechanism to speedily to be taken fill vacancies of Judges at all levels. For this purpose, timely steps are required for determination of vacancies, issue of advertisement, conducting interviews declaration of examinations. the final results and issue of orders of other steps. If appointments. For all these and any, it is necessary to provide for fixed time schedule so that system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the governing medical Regulations admissions sets out a time schedule for every step to be strictly every year. The exception can be provided for where adhered to sufficient number of vacancies do not occur in a given year. in a year. The adherence to strict time schedule can ensure timely filling of vacancies. All state Governments, Union Territories

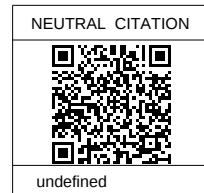


and / or High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All State Governments, Union Territories and High Courts are directed to file within three months details of the time schedule so fixed and date from which time schedule so fixed would be operational. "

4.2 It was, further, submitted that once the Hon'ble Apex Court has issued the guidelines, the same shall have to be strictly adhered to by the High Court and in that case, whatever benefits, that may flow in favour of a candidate must be granted to the concerned candidate by suitably interpreting the rules in favour of a candidate.

Except, the above neither any other submission was made nor any other authority was sought to be pressed into service on behalf of the petitioner.

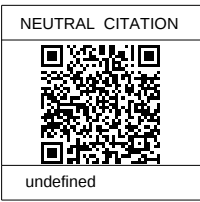
5. *Per contra*, learned Advocate, Mr. Antani, appearing for the Respondents submitted that what is reported in '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in (2008) 17 SCC 703, is an order dated 04.01.2007 passed in Civil Appeal Nos. 1867 of 2006 with Civil Appeal Nos. 1868-72 of 2006, which is different from the copy of the decision produced by the learned Advocate, Mr. Chauhan, which is from a different general, i.e. '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in AIRONLINE 2007 SC 34,



which is in respect of the order dated 04.01.2007, passed in case number, i.e. Appeal (Civil) No. 1867 of 2006.

5.1 It was, further, submitted that the advertisement in question, itself, speaks about the decision of the Hon'ble Apex Court in the case of ***Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others***', reported in (2008) 17 SCC 703 and therefore, whatever is published in the decision relied on by learned Advocate, Mr. Chauhan, i.e. '***Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others***', reported in AIRONLINE 2007 SC 34, cannot be taken into consideration in this case.

5.2 Learned Advocate, Mr. Antani, submitted that in the decision relied on by learned Advocate, Mr. Chauhan, i.e. '***Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others***', reported in AIRONLINE 2007 SC 34, more particularly Paragraph-6 thereof, there is a mention of Rule 10 of the relevant rules, wherein, second proviso provided for relaxation in age, which is not the case in the matter on hand, where, there is no rule or provision in the Rules of 2005, which provides for relaxation in age. It was, therefore, submitted that in absence of there being any provision for age relaxation, Rules of 2005 shall have to be read as it is and therefore, this petition is required to be dismissed, since, it is the prerogative of the recruiting body to determine the qualification, which is to be possessed by a candidate, for participating in the process of recruitment for the post of civil judge.



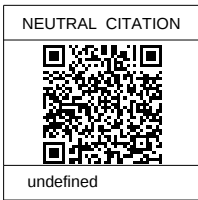
6. Considering the fact that this matter was taken-up for hearing in the Second Session today, i.e. on 28.02.2025, and the dictation was commenced at around 03:30 p.m., due to paucity of time, the learned Advocates for the parties made their submissions in brief and this Court examined this matter in light of the same.

6.1 Heard, learned Advocates for the parties and perused the material on record and I find that Clause-3 of the advertisement in question deals with the age limit, which reads thus;

"3. Age Limit:

As on the last date fixed for submission of Online Application, a candidate belonging to General Category must not have crossed the age of 35 years and others i.e. in case of candidates belonging to Scheduled Castes, Scheduled Tribes, Socially & Educationally Backward Classes or the persons with Benchmark Disability (PwBD) or Economically Weaker Sections, must not have completed 38 years of age.

The employees working in the Courts or other Allied Departments shall be allowed on a uniform basis, relaxation of a maximum period of 05 years or to the extent of equal number of years for which service has



been put in by him / her , whichever is less, in the upper age limit.

However, in any case, the Upper Age Limit for such Candidate under any Category shall not exceed 40 years, as on the last date of submitting the 'Online Application'."

6.2 The aforesaid clause, as reproduced herein above, is required to be read in the light of Rule 7(2)(c) of the Rules of 2005, which reads as under;

"7. Civil Judges:

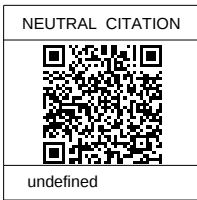
(2) ...

(c) must not have attained the age of thirty five years and must not have completed as on the last date fixed for receipt of applications thirty eight years of age in the case of candidates belonging to Scheduled Caste and Scheduled Tribe."

6.3 The hon'ble Apex Court in the case of '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in (2008) 17 SCC 703, considered Rule 10 of the PSC Rules, which reads as under;

" ...

The age requirement is contained in Rule 10 which reads as under:

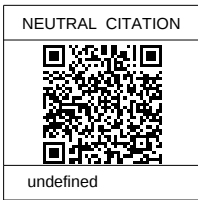


10. Age/026. A candidate for direct recruitment to the service must have attained the age of 22 years and must not have attained the age of more than 35 years on the first day of July next following the year in which the notification for holding the examination by the Commission inviting Applications, is published.

Provide that the upper age limit shall be higher by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time.

Provided further that where a candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, he shall be deemed to be eligible in age to appear in the next following examination. Provided also that the maximum number of chances a candidate is permitted to take will be four."

6.4 A comparison of the Rules of 2005 with PSC Rules, which was the subject matter of consideration before the Hon'ble Apex Court, would indicate that, Second Proviso to PSC Rules provided for age relaxation for recruitment to the post of Civil Judge (JD), however, there is no such provision available under Rules of 2005, which would provide further age relaxation, than, what is provided under Clause-3 of the advertisement in



question. Therefore, the plea of the petitioner to permit her to participate in the recruitment process by granting her relaxation in age cannot be acceded to.

6.5 Insofar as, the second submission made by learned Advocate, Mr. Chauhan, that the advertisement in question itself refers to the decision of the Hon'ble Apex Court in the case of '**Malik Mazhar Sultan & Another Vs. U.P. Public Service Commission & Others**', reported in (2008) 17 SCC 703 is concerned, as the petitioner has not challenged Rules of 2005, this argument cannot be acceded.

7. Resultantly, this petition fails and the same is **dismissed**. Rule is discharged. No order as to costs.

UMESH/-

Sd./-
(NIRZAR S. DESAI,J)