

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 02.12.2009

+ **WP (C) 13532/2009**

MRS. SAPNA SAWHNEY SRIVASTAVA ... Petitioner

- Versus -

HIGH COURT OF DELHI & OTHERS ... Respondents

WITH

+ **WP (C) 13533/2009**

ABHISHEK KUMAR DAS ... Petitioner

- Versus -

HIGH COURT OF DELHI & OTHERS ... Respondents

AND

+ **WP (C) 13534/2009**

AYUSH KUMAR ... Petitioner

- Versus -

HIGH COURT OF DELHI & OTHERS ... Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr A. Maitri
For the Respondents : Mr Rajiv Bansal

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MS. JUSTICE VEENA BIRBAL

- | | | |
|----|--|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. | To be referred to the Reporter or not ? | Yes |

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. These petitions are directed against the proposed amendment to Rule 14 of the Delhi Judicial Service Rules, 1970 (hereinafter referred to as ‘the said Rules’). The challenge arises in the context of the public notice issued by the Delhi High Court which appeared in the newspapers on 26.10.2009 and the corrigendum issued by the Delhi High Court on 19.11.2009.

2. By virtue of the public notice dated 26.10.2009, it was notified that the Delhi Judicial Service Preliminary Examination (Objective Type) would be held on 31.01.2010. Application forms could be obtained by the prospective candidates on any working day from 03.11.2009 to 30.11.2009 and the same could be submitted upto 01.12.2009. One of the eligibility conditions to appear in the examination was that the candidate should not be more than 30 years of age as on 01.01.2011, i.e., on the first day of January following the date of commencement of the examination. Of course, in the case of Scheduled Caste and the Scheduled Tribe candidates, the upper age limit was relaxed by five years. But, we are not concerned with such candidates in the present petitions.

3. The said public notice dated 26.10.2009 came to be challenged by way of several writ petitions filed by some other persons (i.e., other than the petitioners herein). A representation had also been filed before the Delhi High Court which was considered by the Full Court on the administrative side on 13.11.2009 and it was resolved that Rule 14(c) of the said Rules be

amended to incorporate in its place Rule 14(c) as existing prior to the amendment vide notification dated 07.10.2008, so as to read as under:-

- “14. A candidate shall be eligible to appear at the examination if he is:
- | | | | |
|-----|---|----|----|
| (a) | xx | xx | xx |
| (b) | xx | xx | xx |
| (c) | not more than 32 years of age on the 1 st day of January following the date of commencement of the examination.” | | |

The Full Court also resolved that a recommendation be made to the Government of NCT of Delhi for amendment of the Rule. It was also resolved that pending the amendment of the Rule by the Government, the concerned Committee should take requisite action to give the benefit based on Rule 14(c) as resolved to be now amended, to the candidates in the on going process of Delhi Judicial Service Examination and for that purpose to take all necessary steps, including revision of schedule of examination and issuance of the corrigendum. As a result of the aforesaid resolution, the writ petitions, which had till then been filed, were all withdrawn on 17.11.2009 and on other dates, the petitioners therein being fully satisfied with the resolution of the Full Court restoring the position with regard to the maximum age limit of 32 years.

4. Thereafter, the corrigendum dated 19.11.2009 was issued by the Registrar General of the High Court of Delhi which reads as under:-

**“HIGH COURT OF DELHI: NEW DELHI
DELHI JUDICIAL SERVICE EXAMINATION – 2010
CORRIGENDUM**

19th November, 2009

Delhi Judicial Service Examination, 2010 was notified to be held on 31.01.2010 vide public appointments notice published in various newspapers on 26th October / 07th November 2009. In view

of Rule 14(c) of Delhi Judicial Service Rules, 1970 (as lastly amended on 07.10.2008), one of the eligibility conditions mentioned in the said notice was that a candidate should not be more than 30 years of age as on 01st day of January, 2011 i.e. on the first day of January following the date of commencement of the examination.

Now, the High Court has recommended to the Administrator to amend the provision contained in Rule 14(c) of Delhi Judicial Service Rules, 1970 so as to read as under :-

“14. A candidate shall be eligible to appear at the examination if he is:-

xx xx xx xx
xx xx xx xx

(c). not more than 32 years of age on the 1st day of January following the date of commencement of the examination.”

In view of the above, it has been decided that in anticipation of, subject to and pending approval by the Administrator, the candidates fulfilling the eligibility condition as per amendment to Rule 14 (c) of Delhi Judicial Service Rules, 1970 recommended by the High Court may also be allowed to apply.

This Corrigendum is issued inviting applications from the candidates fulfilling the above modified eligibility condition (as recommended). Accordingly, candidates who would be not more than 32 years of age as on 01st January, 2011 i.e. on the first day of January following the date of commencement of the examination may also apply. For removal of doubts, it is made clear that other eligibility conditions remain unchanged.

The revised schedule of examination will be as under:-

Last date of sale of application forms	19.12.2009 upto 4.00 P.M.
Last date for receipt of application forms	21.12.2009 upto 4.00 P.M.
Date of Preliminary Examination (Objective type)	14.02.2010 (Sunday)

The candidates, who have applied in response to the notice earlier issued, need not apply again.

Sd/-
(RAKESH KAPOOR)
REGISTRAR GENERAL”

The effect of the Full Court resolution and the subsequent corrigendum is that in place of the age of 30 years, which had been notified on 26.10.2009, the upper age limit of 32 years was restored.

5. Now, the present spate of petitions has been filed by those persons who had not initially challenged the public notice of 26.10.2009, but are aggrieved by the corrigendum. The petitioners in these cases are nearing the maximum age of 32 years and are persons who would definitely cross the age of 32 years by 01.01.2011, which is the cut-off date.

6. Mr Maitri, the learned counsel for the petitioners, submitted that the 'Shetty Commission' had clearly recommended that all States and High Courts should fix 35 years as the maximum age limit for eligibility for service to the cadre of Civil Judges (Junior Division), with relaxation by three years for Scheduled Caste and Scheduled Tribe candidates. He referred to paragraph 8.44 of the Shetty Commission Report. Mr Maitri then referred to the decision of the Supreme Court in the case of **All India Judges' Association and Others v. Union of India and Others: 2002 (4) SCC 247** and particularly to paragraph 37 thereof in which it is recorded that, "*subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted*". Thus, according to Mr Maitri, since there was no modification to the recommendation of fixing the maximum age limit of 35 years prescribed in the said decision of the Supreme Court and in view of the fact that the Supreme Court had accepted the Shetty Commission's recommendations, the age limit for appearing in the Delhi Judicial Service Examination should be relaxed to 35

years and should not be limited to a maximum of 32 years as is stipulated under the corrigendum of 19.11.2009 and as is contemplated under the proposed amendment to Rule 14(c) of the said Rules.

7. Mr Maitri also placed reliance on the Supreme Court decision in the case of Malik Mazhar Sultan and Another v. U.P. Public Service Commission and Others: 2006 (9) SCC 507. In particular, he referred to paragraphs 22 to 26 thereof which read as under:-

“22. 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 of cases in the courts.

23. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if 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 Regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given 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.

24. Now, to the present case, the only dispute is in respect of the age requirement. The resolution of the dispute would

depend upon implementation of Rule 10 of the Rules. According to the main part of Rule 10, the minimum and maximum age requirement has to be as on 1st July next following the year in which the notification for holding the examination by PSC inviting applications is published. That publication inviting applications is dated 22/28-11-2003. The next following year is “2004”. Therefore, on the plain reading of the main part of Rule 10, the age requirement is to be seen as on 1-7-2004.

25. The “year of recruitment” has been held by High Court as 1-7-2002 to 30-6-2003 after rightly coming to the conclusion that subsequent second and third requisitions were in continuation of the first requisition dated 23-11-2002. The process of recruitment was initiated by the appointing authority on 23-11-2002. The year of recruitment has thus been rightly determined as 1-7-2002 to 30-6-2003, having regard to Rule 4(m).

26. Now, let us examine the second proviso to Rule 10. It stipulates that where 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. The benefit of proviso comes into operation if examination in any year of recruitment is not held so as to give relief to those candidates who would have been otherwise eligible in age but for not holding of the examination. There are two different categories dealt with under Rule 10 for the purpose of eligibility from age viewpoint. One - under main part of Rule 10 and two - under second proviso of Rule 10. Under first part, the determining factor for age is date of advertisement. Under second part, determining factor for age is as on year of recruitment. The age requirement under main part of Rule 10 is on the requisite date following the year in which Notification for holding examination inviting application is published. The expression “Notification” in the context means issue of advertisement inviting applications. Under the first part, therefore, the relevant date for determining age would be 1-7-2004, the advertisement having been issued on 22/28-11-2003. The proviso, however, makes eligible, from the viewpoint of age, even those candidates to appear in the next following examination, who were eligible in age if examination was held in year of recruitment. That is the reason that under second proviso for determining age, the relevant fact is not the publication of notification as in main part of Rule 10, but is age of a candidate to appear at the examination in any year of recruitment in which examination was not held. The candidate shall be deemed to be eligible in age to appear in the next following examination. The

year of recruitment has been held to be 1-7-2002 to 30-6-2003. The examination in year of recruitment was not held. The examination was held in March, 2004. In such a situation, candidates would be entitled to benefit of age requirement in terms of second proviso.”

(underlining added)

8. Mr Maitri, relying upon the said decision, laid great stress on the concept of “year of recruitment” and stated that the vacancies that are sought to be filled up in the proposed examination to be held in February 2010 are those of 2009 and, therefore, the year 2009 should be taken as the year of recruitment. Consequently, it is his submission that the maximum age of 32 years should be reckoned keeping in mind the cut-off date as 01.01.2010 and not 01.01.2011.

9. We have considered the submissions made by Mr Maitri as also the submissions made by Mr Bansal on behalf of the Delhi High Court, who has appeared on advance notice. We feel that the contentions raised by Mr Maitri are not tenable. Before we examine the reasons for the same, we may make it clear that in the cases which involve the fixation of cut-off dates, there would always be the persons who would feel that they have been short-shrifted. That is implicit in the very nature of fixation of a cut-off date. However, that, by itself, would not mean that the fixation of the cut-off date is *per se* arbitrary or unreasonable and ought to be set aside.

10. In the present case, what has happened is that the maximum age limit of 32 years, which was hitherto operating, had been reduced to 30 years by an amendment which had been approved and notified by the Government of NCT of Delhi. By virtue of the said amendment to Rule 14(c), the

maximum age limit had been reduced from 32 years to 30 years. Consequent upon the amendment to the said Rule, the said public notice dated 26.10.2009 was issued which notified the eligibility condition of the maximum age limit of 30 years as on 01.01.2011 (being the year next from the date of commencement of the examination). Since this amendment caused a certain degree of hardship to those persons who were in the 'twilight' zone of 30-32 years, the Full Court reconsidered the same and came up with the resolution mentioned above. The said resolution, essentially, restores the position prior to the amendment whereby the maximum age limit had been fixed at 32 years for entry to the Delhi Judicial Service.

11. Returning now to the contentions raised by Mr Maitri, we find that the Shetty Commission recommendations in paragraph 8.44 of the said report merely fixes the maximum age beyond which there should be no recruitment in the cadre of Civil Judges (Junior Division). In fact, the Shetty Commission report indicates that it was concerned more about the age limit being too high rather than being too low. This is clearly discernible from paragraph 8.43 of the said report which reads as under:-

“8.43 Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of twenty five years of service.”

12. The age limit of 35 years was a maximum beyond which no recruitment ought to be made in the cadre of Civil Judges (Junior Division). It did not mean that the High Courts could not fix a maximum age limit less

than 35 years. Consequently, the acceptance by the Supreme Court of the Shetty Commission report, as indicated in the case of *All India Judges' Association (supra)*, does not enure to the benefit of the petitioners. The recommendation was that whenever the States and the High Courts fix the maximum age limit for the eligibility for selection to the cadre of Civil Judges (Junior Division), they should not exceed the limit of 35 years. There was no prescription in the said recommendation that the age limit could not be less than 35 years. Therefore, this contention raised by Mr Maitri is not tenable.

13. Insofar as his submission based on the decision of the Supreme Court in *Malik Mazhar Sultan (supra)* is concerned, we feel that the said decision would have no applicability to the facts of the present case. This is clear from paragraph 24 of the said judgment itself, which had been extracted above, wherein it is clearly mentioned that the only dispute in the case before the Supreme Court was in respect of the age requirement and that the resolution of the dispute would depend upon the implementation of Rule 10 of the U.P. Judicial Service Rules 2001. We may note that all the observations which are being relied upon by Mr Maitri have been made by the Supreme Court in the context of Rule 10 of the said U.P. Judicial Service Rules 2001. To make matters clear, the said Rule 10 is reproduced hereinbelow:-

“10. Age – 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.

Provided 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.”

14. The rule under consideration in the present petitions is entirely different to the said Rule 10 of the U.P. Judicial Service Rules 2001. The second proviso of the said Rule 10 refers to ‘year of recruitment’. However, in the proposed Rule 14 of the said Rules applicable in the present cases, there is no mention of the ‘year of recruitment’. The observations sought to be relied upon by Mr Maitri are in the context of the said Rule 10 of the U.P. Judicial Service Rules, 2001, which are entirely different to the provisions of the proposed Rule 14 of the Delhi Judicial Service Rules 1970.

15. For all these reasons, we are unable to agree with the submissions made by Mr Maitri on behalf of the petitioners. Consequently, the writ petitions are dismissed.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

December 02, 2009

dutt