

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on September 18, 2013

Judgment Delivered on December 05, 2013

+ **W.P.(C) 6636/2011**

PRADEEP

..... Petitioner

Represented by: Mr.Sanjay Ghose and Mohd.
Farrubh, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Represented by: Ms.Sweety Manchanda, CGSC
with Ms.Shruti Aggarwal and
Mr.Kartikey Mahajan, Advocates

+ **W.P.(C) 2041/2012**

RANVEER SINGH

..... Petitioner

Represented by: Mr.Rajender Yadav, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Represented by: Mr.S.M.Arif, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The aforesaid two writ petitions involve identical issue and with

the consent of counsel for the parties, are being disposed of by this common order.

2. In the month of February, 2011, an advertisement was issued by the respondent No.2 Staff Selection Commission (SSC) inviting applications for recruitment to the post of Constables (GD) in the Central Para Military Forces (CPMF) for the year 2011-2012 by holding an open competitive examination on All India basis. Some of the relevant clauses in the advertisement are as under:

*“2. In view of the anticipated large number of applicants, scrutiny of the eligibility and other aspects will not be undertaken before the PST/PET and Written Examination and, therefore, the candidature will be accepted only provisionally. Candidates are advised to go through the requirements of educational qualification, age, physical standards, etc. and satisfy themselves that they are eligible for the posts, before applying. Copies of supporting documents will be sought only from those candidates who qualify for the medical Examination. When scrutiny is undertaken after the Written Examination, if any claim made in the application is not found substantiated, the candidature will be cancelled and the **Commission’s decision in this regard shall be final.**”*

xxxxx xxxxx xxxxx

4. (A) AGE LIMITS 18-23 years as on 01.08.2011. Candidates should not have been born earlier than 02.08.1988 and not later than 31.07.1993.

Note I: The upper age limit is relaxable for SC, ST, OBC, Ex-Servicemen and other categories of persons in accordance with the Government orders on the subject.

Note II: Candidates should note that only the Date

of Birth as recorded in the Matriculation/Secondary Examination Certificate or an equivalent certificate available on the date of submission of application will be accepted by the Commission for determining the age eligibility and no subsequent request for its change will be considered or granted.

4. (B) Category-Codes and age relaxation available to different category of eligible candidates, for claiming Age Relaxation as on the date of reckoning:

<i>Code No.</i>	<i>Category</i>	<i>Age-Relaxation permissible beyond the Upper age limit</i>
<i>01</i>	<i>SC/ST</i>	<i>5 years</i>
<i>02</i>	<i>OBC</i>	<i>3 years</i>
<i>09</i>	<i>Ex-Servicemen (Unreserved/General)</i>	<i>03 years after deduction of the military service rendered from the actual age as on the date of reckoning</i>
<i>10</i>	<i>Ex-Servicemen (OBC)</i>	<i>06 years (3 years + 3 years) after deduction of the military service rendered from the actual age as on the date of reckoning</i>

Note-II : *The period of “Call up Service” of an Ex-Serviceman in the Armed Forces shall also be treated as service rendered in the Armed Forces for purposes of age relaxation.*

Note-III : *For any serviceman of the three Armed Forces of the Union to be treated as Ex-Serviceman for the purpose of securing the benefits of reservation, he must have already acquired, at the relevant time of submitting his application for the*

Post / Service, the status of ex-serviceman and / or is in a position to establish his acquired entitlement by documentary evidence from the competent authority that he would complete specified term of engagement from the Armed Forces within the stipulated period of one year from the CLOSING DATE (i.e. 04.03.2011). ”

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Note I: The closing date i.e. 04.03.2011 for receipt of application will be treated as the date of reckoning for OBC and creamy layer status of the candidate.

Note II: Candidates are warned that they will be permanently debarred from the examination conducted by the Commission. In case they fraudulently claim SC/ST/OBC/Ex-Servicemen status.

5. ESSENTIAL QUALIFICATIONS as on Closing Date i.e. 04.03.2011

Matriculation or X Class Pass from recognized Board/University.

xxxxx xxxxx xxxxx

The Tentative Schedule for Recruitment is:

<i>PST/PET</i>	<i>:</i>	<i>March to May, 2011</i>
<i>Written Examination</i>	<i>:</i>	<i>5th June, 2011</i>
<i>Medical Examination</i>	<i>:</i>	<i>July-August, 2011</i>
<i>Declaration of Result</i>	<i>:</i>	<i>31st October, 2011 ”</i>

3. Writ Petition No.6636/2011 is concerned with the recruitment of Constables in Border Security Force, Central Industrial Security Force, Central Reserve Police Force and SSB. The petitioner was born on April

12, 1998. As on August 01, 2011 the petitioner was about 23 years and 4 months. He appeared in the Physical Efficiency Test (PET) and Physical Standard Test (PST) in the month of April, 2011, which he had successfully undergone. He also successfully cleared the written examination held in the month of June, 2011. He was not called for medical examination presumably because the respondent No.2 realized that the petitioner was over-aged. The petitioner has filed this writ petition challenging his rejection seeking the following reliefs:

“(a) Issue an appropriate writ, order or direction declaring Clause 4 of the advertisement of the Respondent No.2 (“age limits”) (annexed as Annexure P-1) as arbitrary, illegal, unjust and violative of Articles 14, 16, 19 and 21 of the Constitution of India insofar as the respondent has fettered its discretion to permit relaxation in deserving and harsh or anomalous cases.

(aa) Declare that the separate date set for age cut off in the impugned advertisement is arbitrary, illegal, whimsical and based on total non-application of mind being contrary to government policies that are in place.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction directing, commanding and requiring the respondents to forthwith conduct the medical examination of the petitioner and to recommend the name of the petitioner for appointment to the post of “Constable (G.D.)” in one of central police organizations i.e. Central Reserve Police Force (CRPF), the Border Security Force (BSF) or Central Industrial Security Force (CISF) or Sashtra Seema Bal (SSB).

(c) Direct, in the alternative, the Respondents to pay compensation under public law to the petitioner for the loss caused to him on account of the loss of career opportunities and pain and suffering as a result of the conduct of the respondents.”

4. Writ Petition No.2041/2012 is concerned with recruitment to the post of Constable in Indo Tibetan Border Police. The petitioner was born on July 31, 1985 and was about 26 years and 1 day as on August 01, 2011. He is an OBC candidate and sought relaxation of 3 years in terms of the instructions. He also appeared in Physical Efficiency Test (PET) and Physical Standard Test (PST), written examination and medical examination successfully. Thereafter it appears that the respondent No.2 detected that the petitioner is over-aged and accordingly issued letter dated February 14, 2012 cancelling his candidature. In the writ petition he has sought the following reliefs:

“(a) Issue an appropriate direction/order of writ of certiorari to the respondents to give appointment to the petitioner.

(b) Issue an appropriate direction/order of Mandamus to respondents to make appointments to the post of Constable (GD) to the petitioner.

(c) Issue an appropriate direction/order of Mandamus to respondents to set aside office order dated 14.02.2012 issued by the respondents.

(d) Take the strict cognizance of partial, dishonest, discrimination, corrupt practices in appointment in ITBP, India.

(e) Any other appropriate writ, order or directions which this Hon'ble Court may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner.

(f) Writ Petition filed by the petitioner may kindly be allowed with costs.”

5. The respondents, on the other hand, contest the writ petitions justifying their action in rejecting the candidature of the petitioners for the sole reason that if a candidate is above age with/without relaxation he being not eligible, could not be given any appointment.

6. We have heard the learned counsel for the parties.

7. Mr.Sanjay Ghose, learned counsel appearing in Writ petition (Civil) No.6636/2011 has taken us through the relevant clauses of advertisement as reproduced above. According to him even though the cut off date for age limit has been prescribed as August 01, 2011 but for other purposes like essential qualifications, the last date for receipt of application, the date has been prescribed as March 04, 2011. According to him, if March 04, 2011 has been prescribed for the purpose of essential qualifications and for receipt of application then the cut off date could not be August 01, 2011. He has also drawn our attention to the Annexure P-2 'Rozgar Express' wherein the advertisement was also published, a English translation of which is placed at page No.35, which reveals the following against serial No.1.

'1. Age from 18 to 23 years on 04.03.2011. Age relaxation of 5 years to ST/SC, 3 years OBC and X-Serviceman and departmental employees.'

8. He has also drawn our attention to the format of application form annexed by the respondents with their counter-affidavit, specifically column No.13 wherein a candidate has to show his age as on normal closing date i.e. March 04, 2011, to suggest that the respondents have determined the March 04, 2011 as the date on which the age of candidate must be seen. Moreover, the information as sought in column No.13 of the application form and Rozgar Express did create confusion with

regard to the date for age,

9. The submissions of Mr.Sanjay Ghose would also include that in the absence of any justification for prescribing August 01, 2011 as the cut off date for prescribing age limit, the same is arbitrary and liable to be quashed. He further takes support from the office memorandum dated December 14, 1979 issued by the Government of India, Ministry of Home Affairs/Ministry of Personnel and Administrative Reforms and a letter dated July 04, 1998 of the Department of Personnel and Training, Government of India to contend that if the examination is held in the first half of the year then the cut off date for determining the age limit shall be first day of January of the year in which the examination is held and if the examination is held in the later half of the year then the 1st August of the year in which the examination is held. He would state that in the case in hand since the examination was held in the first half of the year inasmuch as the PST/PET was held before May, 2011, the written examination was held on June 05, 2011 and the merit is determined after the written examination, then 1st January should be the cut off date. This submission of Mr.Sanjay Ghose is in alternative to the submission he has made that the cut off date should be March 04, 2011. Mr.Sanjay Ghose has primarily relied upon the judgments reported as (1997) 9 SCC 527 Raj Kumar & Ors. vs. Shakti Raj & Ors. and 39 (1989) DLT 330 Kanta Rani & Ors. vs. Staff Selection Commission & Ors. in support of his submissions.

10. Mr.Rajender Yadav, learned counsel appearing for the petitioner in Writ Petition (Civil) No.2041/2012 apart from adopting the submissions made by Mr.Sanjay Ghose has relied upon the judgment of Bombay High Court in the case reported as Manu/MH/2056/2010 in

Writ Petition No.5380/2010 decided on December 03, 2010 Mrs.Mayuri vs. Hon'ble High Court of Judicature at Bombay & Anr., wherein it has been held:

“In the case titled as Mrs. Mayuri W/o Harshal Deshuk vs. Hon'ble High Court of Judicature at Bombay and Anr., cited as Writ Petition No.5380 of 2010, wherein the petitioner questions the administrative decision of the High Court, rejecting the petitioner's application for the post of Judge (Family Court), on the ground that she was less than 35 years of age as on September 27, 2009, as she was short of only 13 days to complete the age of 35 years as on September 27, 2009. The Bombay High Court has held that any candidate who fulfils minimum age criteria either on date he submit applications or before last date fixed to receive applications, shall be held eligible for that particular event and thus allowed the petitioner and 2 other candidates to sit for the examination along with 750 candidates eligible candidates for the post of Judge (Family Court).

11. On the other hand, Mr.S.M.Arif, learned counsel appearing for respondents in Writ Petition (Civil) No.2041/2012 would submit that the present petitions are not maintainable that too by the petitioners who cannot challenge the advertisement after having appeared in the examination. He would further submit that the respondents are justified in prescribing the cut off date of August 01, 2011. According to him the recruitment rules clearly stipulate that the cut off date shall be the one as prescribed in the advertisement and since in the advertisement the respondents have prescribed the date as August 01, 2011, this Court should not interfere with the same. Apart from that, he would submit that the eligibility of a candidate is not checked by the Staff Selection Commission (SSC) at the initial stages. It is only after the written examination before a candidate is called for medical examination that his

eligibility is seen. In the case in hand it was noticed that both the petitioners were above age in normal course, and even after giving relaxation with regard to writ petitioner in W.P.(C) No.2041/2012, and the present petitions as such are liable to be dismissed.

12. Ms.Sweety Manchanda, learned counsel appearing for the respondent in Writ Petition (Civil) No.6636/2011 made similar submissions as were made by Mr.S.M.Arif. She justified the fixing of the cut off date and relied upon the scheme issued by the Ministry of Home Affairs on January 11, 2011, wherein it was decided to fix the cut off date for age as August 01st of every year. According to her, it is pursuant to this scheme that it was decided henceforth all the recruitment to be made for constables in the Central Para Military Forces, the cut off date shall be August 1st of every year.

13. We have considered the submissions made by the learned counsel for the parties.

Plea of Maintainability

14. We have seen the judgment in the case of **Raj Kumar & Ors.** (supra). Even though the same is not applicable in the facts of the present case, but that would not effect the maintainability of the petitions. In that case the primary argument which was dis-allowed was that a candidate who has taken a chance and appeared in the interview and remained unsuccessful, cannot turn around and challenge either the constitution of the Selection Board or the method of selection as being illegal. Negating such a plea the Supreme Court has held as under:

“Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification

and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal vs. State of J&K and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

15. Here the petitioners are challenging the cut off date. The aspect of cut off date is different from procedure of the selection. Selection presupposes a candidate is eligible to apply, which is not the case here. It is a settled law that cut off date can be challenged if the same is arbitrary, capricious and discriminatory. This objection of Mr.Arif is liable to be rejected.

16. In so far as the submission of Mr.Sanjay Ghose wherein he placed reliance on the O.M dated December 04, 1979, is concerned, the same are reproduced as under:

“OFFICE MEMORANDUM

*Subject: Crucial date for determining age limits etc.
for competitive examination held by the
UPSC/SSC*

As the Ministry of Defence etc. are aware, in terms of this Department's O.No.2/66/71-Estt-D dated 10.09.1975, the crucial date for determining the age limits for appointment to posts filled otherwise than through competitive examination is the closing date for receipt of applications from candidates in India (other than Andaman and Nicobar Islands and Lakshadweep). In respect of posts, the appointment to which are made through the Employment Exchanges, the crucial date for determining the age limit will in each case be the last date upto which the Employment Exchanges are asked to submit the names.

2. The question as to the crucial date that should be prescribed for competitive examination held for recruitment by the UPSC/SSC etc. has been carefully considered in consultation with the UPSC and it has been decided that the crucial date should be:

- (i) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and*
- (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.*

3. All Ministries are requested to take action to amend the relevant Recruitment Rules or regulations, in consultation with the UPSC wherever necessary.

*Sd/-
(J.K. Sharma)
Deputy Secretary to the Government of India*

17. Before us, reliance is also placed on Letter dated July 14, 1988 which reads as follows:

“Copy of letter No.AB.14017/70/87-Estt. (RR) dated the 14th July, 1988 from Sh. M.V. Kesavan, Director (E), Government of India, Ministry of Personnel, P.G. & Pensions, Department of Personnel & Training, New Delhi.

OFFICE MEMORANDUM

Subject: Crucial date for determining age limits for competitive examinations conducted in parts by the UPSC/SSC.

1. As the Ministry of Defence etc., are aware, according to the instructions contained in para 2 of this Department's O.M. No.42013/1/79-Estt (D) dated 4th December, 1979, the crucial date for determining the age limits for competitive examination held for recruitment by UPSC/SSC etc. in the first half of the year is the first day of January of the year in which the examination is held, and if the examination is held in the second half of the year, the crucial date will be the first day of August of the year in which the examination is held.

2. Same doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the Preliminary examination of the Civil Services Examination is normally held in the first half of the year and the Main examination is held in the second half of the year. In this case the position has been clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January,

similarly, if both part of an examination fall in the second half of the year, the crucial date for determining the age limits would be the 1st of August. The position in this regard is clarified in the following illustrations:-

<i>Name of Examination</i>	<i>Date on which first part of Exam. held</i>	<i>Date on which second part of Exam. Held</i>	<i>Date for determining the age limits (Minimum and Maximum)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
<i>Exam A</i>	<i>1-3-88</i>	<i>22-8-88</i>	<i>As on 1-8-88</i>
<i>Exam B</i>	<i>1-9-88</i>	<i>1-3-89</i>	<i>As on 1-1-89</i>
<i>Exam C</i>	<i>1-3-88</i>	<i>1-5-88</i>	<i>As on 1-1-88</i>

3. It may sometimes so happen that due to exigencies of circumstances an examination, which is normally held during the first half of the year, is shifted to the second half. In such a case, the date for determining the age limits would still be the 1st of January. The exact position should be clearly indicated in the rules for the respective examinations, which are notified for the purpose.”

18. The aforesaid O.M/letter are specific where competitive examinations are conducted by UPSC/SSC in a particular year. The purport of the O.M/letter is where the examination i.e. preliminary and main examination are held in the first half of the year, then the age should be seen as on January 01st of that year. Similarly, if the examination is held in the later part of the year then the 1st of August would be the date to determine the age.

19. During the submissions, reliance was also placed on Office Memorandum dated April 30, 2010 issued by the Ministry of Personnel and Public Grievances & Pensions by which the DoP&T notified Modern Recruitment Rules for Group ‘C’ post in Pay Band-1 with Grade

Pay of ₹1800. The Annexure-1 to the said O.M which is a proforma of the Modern Recruitment Rule, at the serial No.7 stipulates the age limit for direct recruitment. Under the heading note, it is stated that the crucial date for determining age limit shall be the closing date for receipt of application from candidates.

20. During the course of submissions, we have called upon the respondents to show the file in which decision was taken to fix the cut off date as August 01st. The respondents have placed before us the file wherein decision has been taken for modified scheme for common recruitment of constables in Central Para Military Forces, which resulted in the issuance of the scheme on January 11, 2011. We find that there is no justification given with respect to the fixing of the date as August 01st.

21. The position of law in this regard is very clear. In a case reported as ***AIR 1967 SC 1301 D.R.Nim vs. Union of India & Ors.*** the Supreme Court has held that the cut off date can be regarded as arbitrary by the Court if the same is one about which it can be said that it has been ‘picked out from a hat’.

22. In its opinion reported as ***(2008) 14 SCC 702 Government of A.P vs. N.Subbarayudu*** the Supreme Court while dealing with the issue of cut off date has held as under:

“7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

8. *In fact several decisions of this Court have gone to the extent of saying that the choice of a cut off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter affidavit filed by the Government, (unless it is shown to be totally capricious or whimsical), vide State of Bihar vs. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal (vide SCC para 5), Ramrao v All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary etc. It follows, therefore, that even if no reason has been given in the counter affidavit of the Government or the executive authority as to why a particular cut off date has been chosen, the Court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.*

9. *As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P v. P. Laxmi Devi the Court must maintain judicial restraint in matters relating to the legislative or executive domain.”*

(Emphasis supplied)

23. In the judgment reported as **(2011) 3 SCC 238 National Council for Teacher Education & Ors. vs. Shri Shyam Shiksha Prashikshan Sansthan & Ors.**, the Supreme Court after referring to its various judgments has held as under:

“In State of Bihar v. Ramjee Prasad: (1990) 3 SCC 368, this Court reversed the judgment of the Patna High Court which had struck down the cut-off date fixed for receipt of the application. After advertng to the judgments in Union of India v. Parameswaran Match Works and U.P Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varanasi v. State of U.P, the Court observed: (Ramjee Prasad case, SCC pp. 373-74, para 8)

“8. In the present case as pointed out earlier

the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as 31-1-1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The Respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as 31-1-1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the Respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from 31-1-1988 to 30-6-1988 is no reason for dubbing the earlier date

as arbitrary or irrational.” (emphasis supplied)

The same view was reiterated in Sushma Sharma (Dr.) v. State of Rajasthan, UGC v. Sadhana Chaudhary, Ramrao v. All India Backward Class Bank Employees Welfare Assn. and State of Punjab v. Amar Nath Goyal.

If challenge to the cut-off dates specified in Clauses (4) and (5) of Regulation 5 is examined in the light of the propositions laid down in the above noted judgments, it is not possible to find any fault with the decision of the Council to prescribe 31st October of the year preceding the academic session for which recognition is sought as the last date for submission of application to the Regional Committee and 15th May of the succeeding year as the date for communication of the decision about grant of recognition or refusal thereof.”

(Underlining by us)

24. The Supreme Court in its another opinion reported as **(2011) 8 SCC 269 Orissa Power Transmission Corporation Ltd. vs. Khageswar Sundaray** has held as under:

“We are of the considered opinion that the view taken by the High Court that in the absence of any reason given by the decision of the OSEB in its meeting held on 12.05.1973 to fix the cut-off date of 30.06.1971 for becoming a graduate or passing the Accounts Examinations for an employee to be entitled to the two advance increments, its decision was arbitrary and discriminatory is not sustainable in law. The OSEB as the employer was fully with its powers to decide the cut-off date for the employee to become a graduate or passing the Accounts Examinations to be eligible to the two advance increments in the revised scales of pay and the decision of the OSEB could not be held to be arbitrary only because the reason for decision was not stated in the proceedings of the meeting of the OSEB in which the decision was taken.

This Court in State of Bihar and Ors. v. Ramjee Prasad held: (SCC pp.373-74, para 8)

“8. -----the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark.”

In a recent case in National Council for Teacher Education v. Shri Shyam Shiksha Prashikshan Sansthan this Court after referring to various earlier authorities on the point in Sushma Sharma (Dr.) v. State of Rajasthan, UGC v. Sadhana Chaudhary, Ramrao v. All India Backward Class Bank Employees Welfare Association and State of Punjab v. Amar Nath Goyal has reiterated this position of law and has held the cut-off dates specified in Clauses (4) and (5) of Regulation 5 of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 to be valid.”

25. We would also like to refer to the observations of the Supreme Court in the case reported as **(1997) 6 SCC 614 Dr.Ami Lal Bhat vs. State of Rajasthan**. In this case the question arose was with regard to the fixation of cut off date with respect to age of candidates. Most of the relevant service rules provided that cut off date for deciding the minimum age prescribed for a candidate for appointment will be 1st day of January. It was the case of the effected candidates that such a cut off date which was uniformly fixed under all the service rules in the State was arbitrary and unreasonable. The Supreme Court emphasised that fixing of cut off date can be said to be arbitrary, if it is highly capricious and whimsical. Further the Supreme Court observed as under:

“It was, however, strenuously urged before us that the only acceptable cut off date is the last date for receipt of

applications under a given advertisement. Undoubtedly, this can be a possible cut off date. But there is no basis for urging that this is the only reasonable cut off date. Even such a date is liable to question in given circumstances. In the first place, making a cut off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependant on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fail on the wrong side of such a cut off date may well contend that the cut off date is unfair, since the advertisement could have been issued earlier: Or in the alternative that the cut off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is by this court has said in the case of Union of India v. Parameshwaran Match Works, (1975) 1 SCC 305 and later cases that the cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut off date can be the last date for receiving applications, appears to be without any basis. In our view the cut off date which is fixed in the present case with reference to the beginning of the Calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.”

26. In so far as the judgment of Kanta Rani's case (supra) as relied upon by Mr.Sanjay Ghose is concerned, we find that this Court in the said judgment had not gone into the question of arbitrariness of the cut off date for the reason that in an earlier litigation before the Supreme Court, the Supreme Court had left the question, as to whether High Court could interfere with the advertisement fixing the date of eligibility, as open. In fact, this Court observed that it is the Supreme Court, which alone can decide whether the High Court could interfere with the

advertisement fixing the date of eligibility.

This Court in the facts of that case had granted relief to the petitioners.

27. In so far as the judgment of the Bombay High Court in the case of Mayuri's (supra) relied upon by Mr.Rajender Yadav is concerned, the same would not be applicable in view of the judgment of the Supreme Court reported as (2007) 4 SCC 54, wherein the Supreme Court held that in the absence of any cut off date specified in the advertisement or in the rules, the last date for filing the application must be considered as a cut off date. In fact we do not see any relevance of the judgment in Mayuri's case (supra) in the facts of this case.

28. In view of the legal position narrated above, we are of the view that the cut off date of August 01st fixed by the respondents for determining the age cannot be interfered with as fixing of the cut off date is primarily for the executive to determine and Court should not normally interfere unless the fixation of such a cut off date is blatantly discriminatory and arbitrary. Nothing has been shown to us that the fixing of the cut off date as August 01st is discriminatory and arbitrary.

29. In so far as the submission of Mr.Sanjay Ghose that the information sought for in column No.13 of the application form and the advertisement in the Rozgar Express wherein it was mentioned "age from 18 to 23 on 04.03.2011" has created confusion is untenable. Since we have upheld the cut off date of August 01, it is clear that the petitioners were over-aged and were not eligible to even apply for the post in question.

30. We find no merit in the writ petitions. The same are accordingly dismissed.

31. No costs.

C.M No.13401/2011 in W.P.(C) 6636/2011

C.M No.4431/2012 in W.P.(C) 2041/2012

Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

(GITA MITTAL)
JUDGE

December 05, 2013
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