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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14th March, 2014

+ W.P. (C) 1701/2014

GAURAV MEHTA & ANR.

..... Petitioners

Through: Mr. A. Maitri, Advocate

versus

HIGH COURT OF DELHI

..... Respondent

Through: Mr. Rajiv Bansal, Advocate with
Ms. Ray Chaudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

SANJIV KHANNA J. (ORAL)

1. The Petitioners herein in alternative seek modification or amendment of Rule 14 (c) of the Delhi Judicial Services Rules, 1970 (Rules, 1970 for short) fixing the maximum eligibility age limit for candidates to appear in the Delhi Judicial Service Examination, 2014.
2. This Court exercising power under Article 226 of the Constitution of India cannot modify or amend recruitment rules, *i.e.* Recruitment Rules of Delhi Judicial Service. This Court has power of judicial review and can examine constitutional vires of any provision including the Delhi Judicial Services Rules, 1970 while exercising the writ jurisdiction but

cannot legislate or rewrite the rule. The alternative prayer therefore made in the writ petition does not require consideration or acceptance.

3. The main prayer made in the writ petition is that Rule 14 of the Rules, 1970 is ultra vires and violates fundamental rights of the Petitioners under Article 14 and 19 of the Constitution of India as the petitioners are not eligible to appear in the Delhi Judicial Services Examination, 2014.

4. Rule 14 of the Delhi Judicial Services Rules, 1970 reads as under:-

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

a) a citizen of India;

b) a person practicing as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961; and

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

5. The Delhi Judicial Services Examination, 2014 were notified on 18.02.2014 and as per the said Notification, the eligibility criteria is as under:-

“Not more than 32 years as on 1st January, 2015 i.e. on 1st day of January following the date of commencement of the examination.”

6. The aforesaid eligibility criteria notified in the Delhi Judicial Services Examination, 2014 is as per the eligibility and requirement stipulated in Rule 14 of the Rules, 1970.
7. The contention of the Petitioners is that the last Delhi Judicial Services Examination was notified on 20.09.2011; thereafter preliminary examination was held on 18.12.2011 and the main examination was held on 9-10th June, 2012. No examinations were held in the years 2012 and 2013. Thus, the Petitioners have been denied right to appear and chance to get selected in Delhi Judicial Services. Reference is made to Rule 13 of the Rules, 1970 which provides that the competitive examination should be conducted preferably twice a year, subject to vacancy position. On queries made under the Right to Information Act, 2005, the Petitioners were informed that the Delhi Judicial Services Examination were not held in the year 2012-2013 due to paucity of court rooms and infrastructure and therefore the vacancies were not notified. This was not the fault of the Petitioners and they would be wrongly denied an opportunity to appear for selection in the Delhi Judicial Services as they would be more than 32 years of age as

on 01.01.2015. This would not have been the position in case the Delhi Judicial Services Examinations were held in the years 2012 and 2013.

8. Our attention is drawn to a quotation from a recent judgment of the High Court of Jharkhand in case of *Bhola Nath Rajak & Ors. v. State of Jharkhand & Ors.*, W.P. (S) No.7526 of 2013, decided on 16.01.2014, wherein the following observations have been made:-

“8. Admittedly no examination for filling up the post of Civil Judge (Junior Division) (Munsif) was held after 2008. In absence of regular examination for recruitment of Judicial Officers in the cadre of Civil Judge (Junior Division) (Munsif), the petitioners could not appear for the examination. In the meanwhile, the writ petitioners and similarly placed candidates have completed the maximum age of 35 years. By the reason of delay in holding the examination, the writ petitioners should not be disqualified from appearing in the examination.

9. Learned counsel for the petitioners placed reliance on the judgment rendered in the case of Sanjiv Kumar Sahay & Ors. v. State of Jharkhand & Ors. reported in 2008 (2) JLJR 543, where this Court allowed relaxation of age by modifying the cut off date fixing the maximum age of 35 years from 31.1.2008 to 31.1.2003. This Court ordered that the cut off date fixed in the impugned Advertisement No. 13/2008 be as on 31.3.2003. After referring to rules 4 and 5 and various decisions of Hon'ble Supreme Court and also Patna High Court, this Court held as under:-

“Admittedly, no examination was held for appointment on the post of Munsif for the last 7 years. Although, respondent/State were under an obligation to hold examination and to fill up vacant posts every year. Although,

there is no compulsion, on the part of the Government to make appointment even vacancies are available but at the same time if the vacancies are allowed to accumulate and bulk appointments are made at a time, there may be possibility of candidates possessing inferior merit coming in. Whereas if examinations are held periodically the chances are that the best of the available candidates should be appointed. Apart from that, those law graduates, because of inaction on the part of the respondents in holding examination every year, started practicing as lawyer in different courts and they have gained Bar experience for more than five years. If age relaxation is given to those law graduates who became over age for non-holding of examination, then there shall be every chance of good experienced candidates may be appointed on the said post”.

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11. Admittedly for recruitment to the post of Civil Judge (Junior Division) (Munsif), Jharkhand Public Service Commission issued advertisement in the year 2008 and thereafter Advertisement No. 4/2013 issued on 10.12.2013 and there is a gap of about more than 5 years between the earlier advertisement issued in the year 2008 and in the year 2013. As a consequence, the eligible candidates aspiring to appear for the Civil Judge (Junior Division) (Munsif) examination might have crossed their age between the period 2008 and 2013 and therefore, they did not have the opportunity of appearing in the examination. Having regard to the fact that there was no examination for recruitment for the post of Civil Judge (Junior Division) (Munsif), the cut off date for the recruitment of Civil Judge (Junior Division) (Munsif) of 2013 (Advertisement No. 4/2013) should be 31.1.2009 to render justice to the deprived eligible candidates due to over-age. Accordingly, the cut off date for fixing maximum age of 35 years in the impugned notification is ordered to be 31.1.2009 instead of 31.1.2013.”

9. Our attention is also drawn to the eligibility rules for States of

Rajasthan, Himachal Pradesh, Punjab and Haryana, Uttar Pradesh and State of Gujarat.

10. We have considered the contentions raised by the Petitioners but are not inclined to issue notice. It is noticeable that each State, whether it is Rajasthan, Himachal Pradesh, Uttar Pradesh and State of Gujarat have their Judicial Services Rules. In the State of Uttar Pradesh a candidate for direct recruitment should not have attained the age of 35 years on the first day of July following the year in which the Notification for holding of the examination inviting application stands published. In the State of Gujarat, the service rules provide that the candidate must not have attained the age of 35 years and must not have completed the age of 35 years as on the last date fixed or on receipt of application, (38 years in case of Scheduled Castes and Schedules Tribes candidate). In the State of Himachal Pradesh, the maximum age limit prescribed is 30 years on the last date prescribed for receipt of applications. In the State of Rajasthan, a candidate is eligible provided he has not attained the age of 35 years on the first day of January following the last date of receipt of applications. A different eligibility norm has been fixed in case of SC/ST/OBC, women candidates, etc.

11. Whenever the age limit or cut-off date is fixed under the recruitment Rules, some inconvenience or hardship is invariably caused. However, the age limit or cut off date cannot be challenged for violation of Article 14 of the Constitution of India as it adversely affects some candidates, unless it is *per se* arbitrary or illogical. Cut off dates do not offend Article 14 because there cannot be mathematical or logical formula to fix cut off date or age limit. Cut off date or age limits can be challenged if they are irrational, whimsical or capricious. (See: *Ramarao v. All India Backward Class Bank Employees Welfare Association*, (2004) 2 SCC 76).
12. Recruitment Rules by the very nature are required to fix lower and the upper age limit for eligible candidates and also fix the time or date for computing the lower and the upper age limit. It is in this context that the Supreme Court in *University Grants Commission v. Sadhana Chaudhary*, (1996) 10 SCC 536, observed as under:-

“21. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very

wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works (1975) 1 SCC 305 at p. 579 and Sushma Sharma (Dr) v. State of Rajasthan 1985 Supp SCC 45 at p. 269.).....”

13. Similarly in *State of Bihar v. Bihar Pensioners Samaj*, (2006) 5 SCC 65, it has been observed, though in a slightly different context, as under:-

“17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.”

14. Applying the said test and legal ratio to Rule 14 (c) which stipulates a candidate should not be more than 32 years of age as on the first January following the date of commencement of the examination, it has to be held that the stipulation is not violative of Article 14. The cut off date and the age fixed is not arbitrary, irrational or whimsical. Thirty two is a fairly advance age for a person to join the District Judiciary. The reason for fixing first day of January following the date of commencement of the examination as cut off point is obvious. Examinations under the Rules, 1970 are conducted in three stages and

take time.

15. The submission of the learned counsel for the Petitioners that no examinations were held in 2012-2013 and therefore the cut-off date should be modified or changed is not acceptable. This requires modification or amendment of the Rules, which power the writ Court does not exercise. It is accepted that last Delhi Judicial Services Examination were held in the year 2011 and the written examination were held on 9/10th June, 2012. As per the Petitioners, the examinations were not held in 2012-2013 for want of Court rooms and infrastructure. This factual position is not disputed. The Petitioners have no right to compel the Respondents to hold the examination, when for justifiable and good reasons they did not want to fill up the vacancies. In the present case, as per the Petitioners themselves, the Respondents for want of necessary infrastructure and Court rooms, did not hold examinations in year 2012-2013. Now, Notification has been issued in 2014. Reliance placed on the decision of the High Court of Jharkhand in *Bhola Nath Rajak (supra)* is misconceived. In the said case, it was noticed that the examination were being held after five years. In the special facts and circumstances and after referring to earlier judgment in *Sanjiv Kumar Sahay & Ors. v. State of Jharkhand*

& Ors., 2008 (2) *JLJR* 543 in which it was noticed that selections were being held after seven years, suitable directions were issued. In the present case, examinations have been held from time to time and the last examination was held pursuant Notification dated 20.09.2011. The Petitioners herein, have accepted that they had appeared in 2011 examination but unfortunately did not succeed. Now, Notification dated 18.02.2014 has been issued.

16. The learned counsel for the Respondents on behalf of the Delhi High Court who has appeared on advance notice, has drawn out attention to order dated 02.12.2009 passed in Writ Petition (Civil) No.13532/2009, titled *Mrs. Sapna Sawhney Srivastava v. High Court of Delhi & Ors.* In the said writ petition challenge was made to Rule 14 of the Rules, 1970 in the context of public notice issued on 26.10.2009 and the Corrigendum issued on 19.11.2009. Mr. A. Maitri, Advocate, counsel for the Petitioner Sapna Sawhney Srivastava had placed reliance on the judgment of *Malik Mazhar Sultan & An. V. U.P. Public Service Commission & Ors.*, 2006 (9) *SCC* 507 as well as the *Shetty Commission Report*. Mr. Maitri had also referred to the concept of “*year of recruitment*” and submitted that the vacancies sought to be filled up in the proposed examination related to earlier years and

consequently, the maximum age stipulated in Rule 14 should be reckoned keeping in mind the cut off date in the vacancy year.

Rejecting the said submission, the Division Bench held:-

“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....”

17. In view of the aforesaid position, we do not find any merit in the present writ petition; the same is accordingly dismissed.

18. Pending applications also stand disposed of.

(SANJIV KHANNA)
JUDGE

(G.P. MITTAL)
JUDGE

MARCH 14, 2014
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