

Court No. - 34

Case :- WRIT - A No. - 17408 of 2023

Petitioner :- Yadvendra And 20 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Satyendra Chandra Tripathi, Sr.
Advocate

Counsel for Respondent :- C.S.C., M.N. Singh

Hon'ble Ajit Kumar, J.

1. Heard Sri R.K. Ojha, learned Senior Advocate assisted by Sri Satyendra Chandra Tripathi, learned counsel for the petitioners and Sri Akhilesh Singh, learned Advocate holding brief of Sri M.N. Singh, learned counsel for the UP Public Service Commission and learned Additional Chief Standing Counsel, Sri P.K. Srivastava, for the State-respondents.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has questioned clause 10 of the advertisement issued by the UP Public Service Commission (hereinafter referred as 'the Commission') on 19.09.2023 being advertisement no.A-5/E-1/2023 inviting applications for the post of Additional Private Secretary in the Secretariat Services, a Government establishment.

3. The contention advanced by the learned counsel for the petitioners is that these posts that have come to be advertised relate to different years when the vacancies occurred. For this purpose he has drawn the attention of the Court towards the circular published by the State Government on 08.09.2022 under the Right to Information Act, 2005 in which details of occurrence of vacancies in total 493 have been given. It is submitted that these vacancies

which ought to have been advertised by the UP Public Service Commission as per the calendar published on 14.09.2022 but no such advertisement was issued. Petitioners who have approached this Court, according to the learned Senior Advocate, were eligible for the post in question both in terms of qualification and age but now since the advertisement has come to be issued only in the year 2015 they have gone overaged. Clause 10 of the advertisement very categorically provides that for the age limit between 21 years to 40 years as on 1st July 2023. It is submitted that since the vacancies have occurred in the relevant year and the vacancies came to be determined under the Rule 14 of the UP Secretariat Personal Assistant Services Rules, 2001 (in short, 'Service Rules, 2001') and were forwarded to the Commission, all those who were eligible on the date of occurrence or the determination of the vacancies should be taken to be eligible and, therefore, on this count the age limit prescribed by the Commission is *de horse* the rules and is liable to be quashed and all those candidates who were eligible on the date of occurrence of vacancy should be permitted to participate in the examination.

4. Learned counsel for the petitioner has relied upon the decisions of the Supreme Court in the case of ***High Court of Delhi vs. Devina Sharma; 2022 (4) SCC 643*** and in ***State of UP & ors vs. Sangam Nath Pandey & ors; 2011 (2) SCC 105***.

5. *Per contra*, it is argued by learned Advocate appearing for the Commission that the age limit that has been prescribed under the advertisement is in consonance with Rule 10 of the Service Rules, 2001 and , therefore, cannot be held to be bad. According to him, the calendar year for the purposes of prescribing age for the candidates to apply against the advertisement is the year of

advertisement and not the year of occurrence or determination of vacancy. He further submits that it is the State Government which is empowered for any age relaxation under UP Public Services (Relaxation of the Age Limits for Recruitment) Rules, 1992 and, therefore, it is for the State Government to take a decision. Learned Additional Chief Standing Counsel further submits that instead of challenging clause 10 of the advertisement that prescribes for age limit and which is in consonance with Rule 10 of the Service Rules, 2001, petitioner ought to have approached this Court either challenging Rule 10 or should have made a prayer for disposal of pending representation. However, he does not dispute that matter is pending before the State Government/Governor that can be examined on its own merit by the authority. As per clause 10 of advertisement concerned, it is not suffering from any error of law.

6. Having heard learned counsel for the respective parties and perused the record, I find that only controversy is as to whether clause 10 of the advertisement is in consonance with language prescribed for under Rule 10 and whether it can be held to be *de hors* the Service Rules. Clause 10 of the advertisement is reproduced as under:

"10. (i) Age Limit: Candidates must have attained the age of 21 years and must not have crossed the age of 40 years on July 1, 2023 i.e. they must have not been born earlier than 2nd Jul6, 1983 and not later than Jul6 1, 2002. For PH candidates, the maximum age limit is 55 years i.e. they must have not been born before 02 Jul6, 1968. (ii) Relaxation in Upper Age Limit: (a) Upper age limit shall be greater by five years for candidates belonging to Scheduled castes of UP Scheduled Tribes of UP and Other Backwards Classes of UP Skilled Players of UP of Classified Games, State Government Employees of UP including Teachers/Staff of the Basic Shiksha Parishad of UP and teachers/staff of the Government Aided Madhyamik Vidyalas of UP i.e. they must have not been born before 2nd July, 198. (b) Upper age limit shall be greater by fifteen years for persons with disabilities (PH) of UP. (c) Period of service rendered in Army for the Emergency Commissioned Officers Short Service Commissioned Officers/Ex- Army Personnels UP."

7. From the perusal of clause 10 of the advertisement, a candidate is required to have age between 21 years to 40 years as on 01.07.2023. So, it is quite reflected that for the purposes of age determination, the cut-off is referable to the calendar year in which the advertisement has been issued.

8. Now I proceed to examine Rule 10 of the Services Rules, 2001 which reads as under:

10. Age: A candidate for direct recruitment must have attained the age of 18 years and must not have attained the age of more than 35 years on the first day of July of the calendar year in which vacancies for direct recruitment are advertised:

Provided that the upper age-limit in the case of candidates belonging to the Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time shall be greater by such number of years as may be specified.

9. From a bare reading of the aforesaid provision, it is quite clear that a candidate is required to possess age between 21 years to 40 years as on the first day of July of the calendar year in which vacancies for direct recruitment are advertised. So, the calendar year that is required to be taken into consideration is a calendar year of the vacancies advertised and not of the occurrence or determination of vacancy. Thus, I do not find any merit in the argument of learned Senior Advocate that clause 10 is *de horse* the rules prescribed for under the relevant Rules.

10. It is quite another thing that vacancies were determined in relevant year 2018 and intimated to the Public Service Commission but the Commission has not advertised the same even though placed the same vacancy in the calendar year, but that would not suffice the need of Rule 10. Rule 10 very specifically refers to a calendar year as the year of advertisement and not of the occurrence or determination of the vacancies. Admittedly,

Commission has advertised the vacancies for the first time in its advertisement dated 19.09.2023, therefore, July 2023 calendar year would be taken from 01.07.2023 only.

11. Coming to other argument of the learned Additional Chief Standing Counsel that petitioners' claim can only be considered by the Governor or by State Government under Rule 25 of Service Rules, 2001, from a perusal of the provision prescribed therein, it is clear that the relaxation can only be granted by the State Government, if there is some difficulty in a given case.

12. According to learned Additional Chief Standing Counsel, the instructions are that in view of the relevant service rules relaxation cannot be granted.

13. Although I have held as above that petitioners do not have any case on merits as far as challenge to the advertisement is concerned, but it appears to be quite sound reasoning at the same stage that if the vacancies were advertised in the relevant year 2017 as determined, petitioners would have got a chance to appear. The Commission for no justifiable reason despite placing the vacancies in the calendar, did not issue advertisement. This has definitely resulted in causing prejudice to those candidates who could have applied, had the vacancies been advertised in the year 2018 and would have a fair chance to have career in government service. It is, therefore, in the circumstances desirable for the State Government to pass some orders upon the pending representation of the petitioner *qua* their age relaxation as it is a case of public employment and the government is to act as a model employer. Petitioners cannot be saddled with any liability for not advertising the vacancy by the Commission despite the vacancies being

determined by the State Government.

14. Accordingly, to the extent of disposal of the pending representation of the petitioner made on 23.08.2023 prior to the last date of filing of application under the advertisement in question, copy whereof has been brought on record as Annexure-8 to the writ petition, it is hereby provided that the State Government shall look into the same and pass appropriate orders in accordance with law within thirty days from the date of presentation of certified copy pf this order.

15. For other relief petition is dismissed and consigned to records.

Order Date :- 13.10.2023

P Kesari