IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6143 OF 2023
GOPAL MOTILAL SHARMA
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS

WRIT PETITION NO. 6212 OF 2023
HARIBA RAMRAO SHINDE AND ANR.
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS

WRIT PETITION NO. 6220 OF 2023
PRADEEP SOPAN JANGALE & ORS.
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

WRIT PETITION NO. 6224 OF 2023
ASHWINI RAJENDRA PATIL AND ANR.
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

WRIT PETITION NO. 6130 OF 2023
LATA GOPINATH RATHOD
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY & ORS

WRIT PETITION NO. 6131 OF 2023
PAIKRAO PRADNYA MADHUKAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

WRIT PETITION NO. 11739 OF 2022
SATISH ANANDRAO MUNDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS GOVT. PLEADER & ORS.

Mr.Shrimant Mundhe, Mr. Shaikh M.A.Jahagirdar, Mr. K.S. Chavan, Mr. A.N. Sabnis, Ms. Priyanka R. Deshpande, Advocates for the Petitioners in the respective Petitions.
Mr.S.K. Tambe, AGP for the Respondent/State.
Mr.A.B. Kadethankar, Advocate for Respondent/Registrar, High Court, Bombay.
Mr.Mukul Kulkarni, Advocate for the Respondent-MPSC.

CORAM : RAVINDRA V. GHUGE & R.M. JOSHI, JJ.
DATED : 19.03.2024

PC :-

01. In all these matters, the Petitioners are identically situated. A common grievance in all these matters is with regards to relaxation in the age for recruitment under the Maharashtra Judicial Service Rules, 2008 pertaining to the recruitment process of the year 2022, by the MPSC.

02. The advertisement was published on 19.05.2023. The last date for tendering the application was 16.06.2023. The Petitioners before us claim to have become age barred on account of the delay caused by the MPSC in publishing the advertisement and conducting the recruitment process.

03. We have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the Petition paper

book with their assistance.

04. After the Covid Pandemic, taking into account that there was a national lock-down, exams/recruitment processes were postponed practically in every sector. The Government, therefore, came out with a resolution dated 17.12.2021 concluding that those candidates, who become age barred on account of the Pandemic and the inability of the Appropriate Authority in conducting such recruitment exams, would be granted a relaxation in the age limit.

05. On an identical footing with relation to the first exam held for appointment to the Maharashtra Judicial Service, after the Pandemic, candidates who became age barred, relied upon Government Resolution dated 17.12.2021 and for seeking benefit of age relaxation, and approached this Court. In the said Writ Petition No. 356 of 2022 filed by **Sagar Satish Patil Vs. State of Maharashtra and Others** at the Principal Seat, the Division Bench of this Court [Coram : A.S. Chandurkar and Jitendra Jain, JJ] has delivered a judgment on 19.01.2022. Barring the dates, viz. the issuance of the advertisement, the last date for filing of the application forms etc., the facts

emerging in the said proceedings at the Principal Seat, are almost identical with the facts before us. The only difference, though that would not advance the case of the Petitioners, is that the examination before us in these Writ Petitions is the second exam held after the Pandemic. The first one was pursuant to the Advertisement No. 270 of 2021 published on 23.12.2021.

06. The analysis and conclusion of the Division Bench in **Sagar Satish Patil (Supra)** is from paragraph Nos.9 to 16. We deem it appropriate to refer to the said paragraphs, here under :-

> "9. ***Analysis and conclusion*** :-
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> The Petitioner's primary case appears to be based on Government Resolution 17th December 2021 issued by Respondent No.1 to pray for age relaxation to appear for JMFC exam. In our view, the said Circular is made applicable only to recruitment under Maharashtra Civil Service Rules which contains an enabling provision for age relaxation. Insofar as the recruitment of judicial officers is concerned, the same is governed by the Maharashtra Judicial Service Rules, 2008 which does not have any enabling provision to relax the age. It is settled position that insofar as the judicial recruitment is concerned, the Rules applicable for other Government employees are not applicable, but they are governed only by the Maharashtra Judicial Service Rules, 2008. Therefore, in our view, the reliance placed by the Petitioner on the said Government Resolution to plead age relaxation while seeking recruitment in judicial service is concerned is to be rejected.
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> 10. Article 234 of the Constitution of India provides that persons other than District Judges shall be appointed by the Governor of the State in accordance with Rules made in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Article 309 of the Constitution of India provides that subject to the provision of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and post in connection with the affairs of the Union or of any State. In our view, the Petitioner is not justified in placing

reliance on Article 309 to contend that Government Resolution dated 17th December 2021 ought to be made applicable to judicial services. Article 309 of the Constitution of India expressly provides that same is subject to the provisions of the Constitution. Therefore, it is Article 234 which governs the appointments of persons other than District Judges and same would be in accordance with the Rules framed after consultation with the State Public Service Commission and the High Court exercising jurisdiction in relation to such State. Pursuant to Article 234 of the Constitution of India, the Maharashtra Judicial Service Rules, 2008 has been framed. As per Rule 3(A)(c) age on the date of publication of advertisement in the case of advocates with 3 years practice should not be more than 35 years. Proviso to said Rule, relaxes age limit in respect of candidates belonging to the communities recognized as backward by the Government for the purpose of recruitment. The said proviso is not applicable to the Petitioner's case since the Petitioner does not belong to the communities recognized as backward by the Government for the purpose of recruitment. The Petitioner has applied under the open category. In the Maharashtra Judicial Service Rules, 2008 there is no provision or Rule to relax the age for recruitment. Therefore, the Petitioner is not justified in seeking age relaxation since same would be contrary to the Judicial Service Rules. We now propose to deal with the precedents cited before us by the parties.

11. In the case of State of Bihar & Anr. Vs. Bal Mukund Sah (supra), the issue before the Supreme Court was whether provision of Bihar Reservation of Vacancies in Post and Services Act, 1991 would be applicable to the subordinate judiciary and whether Section 4 of the said Act in its application to the subordinate judiciary would be ultra vires Articles 233 and 234 of the Constitution of India. The Supreme Court answered the said question in paragraph Nos.28 and 29 and observed that Article 309 is of a general nature dealing with regulation of recruitment and condition of service of persons serving in the Union or a State and the said Article is expressly made subject to other provisions of the Constitution. The Supreme Court further observed that recruitment and appointment to the post of Presiding Officers of the Courts subordinates to the High Courts would be governed only by Articles 233 and 234 of the Constitution of India. The Rules framed under Article 234 is after consultation with the High Court and Article 233 lays thrust on the High Court exercising control over the candidates who ultimately get selected as Judges of the lower judiciary. The Supreme Court observed that consultation of the Government with the High Court under Article 234 of the Constitution of India is entirely of a different type as compared to his consultation with the Public Service Commission about procedural aspect of the selection. The Supreme Court observed that Articles 233 and 234 of the Constitution of India represent a well knit and complete scheme regulating the appointments at the apex level of the District Judiciary. The Supreme Court thereafter held that section 4 of the Bihar Act as unconstitutional. In

our view, the said decision squarely applies to the Petitioner's case insofar as the contention of the Petitioner to seek benefit of the Circular and Article 309 is concerned. Applying the ratio of the said decision, the Petitioner is not justified in seeking age relaxation by relying on Article 309 of the Constitution of India. In paragraph No.45 of the said decision, the Supreme Court after analyzing Article 309, 235, 233 and 234 observed that there is a clear intention of the Constitution makers that so far as question of recruitment and appointment to vacancies in the cadre of District Judges and subordinate judiciary is concerned neither legislature nor the Governor dehors any consultation with the High Court can have any independent say. It is further held that Article 234 ousts the legislative power for making suitable enactment on the topic covered by it. At the end it concluded that Articles 233 and 234 have their full-sway not being inhabited by any outside independent interference to be made by the Governor under proviso to Article 309 or by the State legislature in the that connection. In our view, ratio of this decision squarely applies to negate the contention of the Petitioner to make the GR applicable to his case.

12. The decision of the Bombay High Court in the case of Krantikumar Kishanrao Kaulwar and Anr. vs. Maharashtra Public Service Commissioner and Anr. also goes against the Petitioner inasmuch as this Court observed that benefit of age relaxation to economically backward class for open category cannot be given for recruitment for post of Civil Judge, Junior Division and Judicial Magistrate, First Class in the absence of any decision by High Court Administration to amend the Rules pursuant to provision of the Constitution. What is sought to be canvassed by the Petitioner is also squarely covered against the Petitioner by the said decision.

13. The decision of the Supreme Court relied upon by the Petitioner in the case of High Court of Delhi Vs. Devina Sharma is also not applicable to the facts of the present Petitioner since in the case before the Supreme Court, no examination was conducted during pandemic, whereas in the State of Maharashtra, recruitment process for judicial officers was held in 2019, 2020 and 2021. Furthermore on a complete reading of the decision of the Supreme Court in the case of (2020) 2 Mah LJ 543 Devina Sharma(supra) it is clear that same was based on a concession made by the counsel appearing for the Petitioner and therefore the said decision does not have any precedent value.

14. The Supreme Court in the case of Hirandra Kumar (supra) is also relevant. The issue before the Supreme Court was that as a result of Rules 8 and 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975, a candidate who has crossed the age limit prescribed between the date of last recruitment and the present recruitment was debarred from appearing in the competitive exam. The High Court permitted the candidate to appear in the preliminary exam, but the result was directed to be kept in sealed envelope. In paragraph No.11.5, the Supreme Court clarified that the directions in Malik Mazhar

Sultan & Anr. (supra) are only general directions issued to all High Courts to hold recruitment every year subject to the Rules of each High Court. The Supreme Court further observed that this general directions do not vest any enforceable right in a candidate. Therefore the reliance placed by the Petitioner in the case of Malik Mazhar Sultan & Anr. (supra) to seek age relaxation on the ground that if the time-schedule given by Malik Mazhar Sultan & Anr. (supra) decision would have been adhered to by the Respondents then he would not be age barred is also to be rejected. The Supreme Court further observed that validity of the Rule cannot be made to depend on the basis of individual hardships which inevitably arise in applying a principle of general application a Court in exercise of the power of judicial review does not take over that function for itself. In our view, the ratio of this decision squarely applies to reject the contention of the Petitioner insofar as the age relaxation is sought based on the decision in the case of Malik Mazhar Sultan & Anr. (supra) is concerned.

15. In High Court of Kerala vs. Reshma A. and Anr., the above clarification made by the Supreme Court in the case of Hirandra Kumar(supra) was further reiterated in paragraph no.41 and argument that the direction in Malik Mazhar Sultan & Anr. (supra) will prevail over the provisions contained in the Rule was rejected. The Supreme Court in paragraph no.76 expressly rejected the contention of the Petitioner that on account of pandemic the recruitment process was delayed and the Petitioner should be given benefit of covid pandemic. Rejecting the said contention, the Supreme Court observed that a candidate has no vested right to appointment nor in equity they are entitled to only on the ground that the selection is delayed because of covid and the recruitment has to be in accordance with the Rules. In our view, the submission of the Petitioner to make Government Resolution dated 17th December 2021 applicable on account of pandemic is squarely answered by the Supreme Court against the Petitioner.

16. To conclude, the Petitioner is not entitled for age relaxation by relying upon Government Resolution dated 17th December, 2021. The Writ Petition is dismissed with no order as to costs."

07. In **Malik Mazhar Sultan (3) And Another Vs. Uttar Pradesh Public Service Commissioner And Others, (2008) 17 SCC 703**, the Hon'ble Supreme Court has ordered in paragraph Nos.9 and 10, as under :-

"9. We request the Chief Justice of each High Court to constitute a committee of two or three Judges to monitor and oversee that timely selection and appointment of judicial officers is made. The Chief Justice is

further requested to constitute a special cell in the name of "Selection and Appointment" in the High Court or under such other name as the learned Chief Justice may consider proper with an officer of the rank of Registrar for assisting the Committee and the Chief Justice for complying with the aforesaid time schedule.

10. The Registrar of the aforesaid Selection and Appointment Committee shall send to the Registrar General of this Court by 31st January every year report as regards the filling up of vacancies with copies to Minister for Law and Justice in the Central Government and the Law Minister of the State concerned. The Registrar would also bring it to the notice of the Committee and the Chief Justice, any deviation from the time schedule."

08. In **Sagar Satish Patil (Supra),** it was canvassed by the learned Amicus Curiae that the decision in **Hirandra Kumar Vs.High Court of Judicature at Allahabad & Anr., (2020) 17 SCC 401** and in **High Court of Kerala Vs. Reshma A. and Anr., (2021) 3 SCC 755,** were considered by the Hon'ble Supreme Court and it was held that the directions issued in **Malik Mazhar Sultan (Supra),** are only recommendatory. This Court finally concluded in **Sagar Satish Patil (Supra)** that considering the rules applicable to the recruitment of the District Judiciary and taking into account the verdict of this Court in **Krantikumar Kishanrao Kaulwar Vs. Maharashtra Public Service Commission, 2020 (2) Mh.L.J.543**, the relaxation in the age in the light of Government Resolution dated 17.12.2021, would not be available to these Petitioners and no relief could be granted in view of **Reshma (Supra)** and **Hirandra Kumar (Supra)**.

09. We also find from **Malik Mazhar Sultan (Supra),** that the Hon'ble Supreme Court has been monitoring the schedule for the recruitment to the posts by direct recruitment and promotion, in subordinate Courts in all States, except the State of Sikkim, where the cadre of judicial service is very small. Monitoring committees have been constituted in every High Court to ensure that appointments are made timely. Even time limits are fixed for issuance of appointment letters to the direct recruits.

10. An argument has been canvassed before us that there could be a case of a candidate who did not make an attempt pursuant to the advertisement No.270 of 2021, since he became an LL.B. graduate thereafter, and before the present advertisement could be issued, he has became age barred. In such cases wherein the candidate has passed the LL.B. course after the first exam post Covid, and became age barred immediately thereafter, we do not find that the Government Resolution dated 17.12.2021 could be of any assistance in such cases.

11. Insofar as the reliance on the Government Resolution dated

03.03.2023 and the corrigendum dated 10.03.2023 in similar circumstances, this Court [Coram : Ravindra V. Ghuge & Y.G. Khobragade, JJ.] has delivered a judgment on 25.09.2023 in Writ Petition No. 11841 of 2023 and has concluded as under :-

> "3. The Government Resolution dated 03.03.2023 outlines the object for which the Government Resolution was introduced. It is specifically stated as under:-
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> > "**प्रस्तावना:—**
> > स्वातंत्र्याच्या अमृत महोत्सवी वर्षाचे औचित्य साधून राज्य शासनाने ७५ हजार पदभरतीची प्रक्रीया सुरू करण्याचे घोषित केले असून, याकरीता पदभरतीवरील निर्बंध काही कालावधीकरीता शिथिल करण्यात आले आहेत. त्या अनुषंगाने भरती प्रक्रीया सुरू झाली आहे. दरम्यानच्या कालावधीत काही लोकप्रतिनिधींकडून निवेदने प्राप्त झाली आहेत. सदर निवेदनांद्वारे अशी मागणी करण्यात आली आहे की, विविध कारणांमुळे (उदा. कोरोना, सदोष मागणीपत्रे व मागणीपत्र न पाठविणे इ.) पुरेशा जाहिराती प्रसिध्द न झाल्याने, ज्या उमेदवारांना परिक्षांना बसण्याची संधी प्राप्त झाली नाही आणि त्यांची कमाल वयोमर्यादा संपुष्टात आली आहे, अशा उमेदवारांना परिक्षांना बसण्याची संधी प्राप्त व्हावी, यास्तव शासनाने कमाल वयोमर्यादेत सवलत देण्याबाबत सकारात्मक निर्णय घ्यावा. या पार्श्वभूमीवर उमेदवारांना कमाल वयोमर्यादेत शिथिलता देण्याची बाब शासनाच्या विचाराधीन होती.
> > **शासन निर्णय :—**
> > प्रस्तावनेत नमूद कारणांचा साधकबाधक विचार करून, या शासन निर्णयाद्वारे खालीलप्रमाणे सुचना देण्यात येत आहेत.
> > १) या शासन निर्णयाच्या दिनांकापासून ते दि. ३१ डिसेंबर, २०२३ पर्यंत शासकीय सेवेत सरळसेवेने नियुक्तीसंदर्भात प्रसिध्द होणाऱ्या सर्व जाहिरातींकरिता अर्ज करणाऱ्या उमेदवारांसाठी संदर्भाधीन दि.२५.०४. २०१६ च्या शासन निर्णयात विहित केलेल्या कमाल वयोमर्यादेत (खुल्या प्रवर्गासाठी ३८ वर्षे व मागास प्रवर्गासाठी ४३ वर्षे) दोन वर्षे इतकी शिथिलता (खुल्या प्रवर्गासाठी ४० वर्षे व मागास प्रवर्गासाठी ४५ वर्षे) देण्यात येत आहे.
> > २) ....."
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> 4. In the above backdrop, a corrigendum was issued on 10.03.2023 and the State Government specifically mentioned those advertisements which would be covered by the Government Resolution dated 03.03.2023. The advertisement No.047/2023 is excluded from the ambit of the said Government Resolution.
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> xxxxxx
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> 7. This Petition need not be entertained for a second reason that the Government Resolution dated 03.03.2023 pertains to those posts for which a recruitment process was not conducted for several years as is set out in the

> reproduced portion. Several candidates became age barred. To give them one opportunity for appearing in the recruitment exam, the Government Resolution was introduced and by the corrigendum, the ten specific advertisements covered by the Government Resolution, were also specified."

12. The learned Advocate appearing on behalf of the MPSC has tendered the results to this Court in deference to the earlier order. As such, the order is complied with.

13. In view of the law laid down by the Hon'ble Supreme Court and the judgment of this Court in **Sagar Satish Patil (Supra)**, **these Writ Petitions are disposed off**.

[R.M. JOSHI,J.] **[RAVINDRA V. GHUGE,J.]**

snk/2024/MAR24/wp6143.23