

Court No. - 20

Case :- WRIT - A No. - 3321 of 2024

Petitioner :- Nidhi Singh

Respondent :- State Of U.P. Its Addl. Chief Secy. Prin.Secy. Deptt. Of Medical Education And 3 Others

Counsel for Petitioner :- Gaurav Mehrotra,Ritika Singh

Counsel for Respondent :- C.S.C.,Anupras Singh

Hon'ble Shree Prakash Singh,J.

Heard Sri Gaurav Mehrotra, learned counsel for the petitioner, Sri Pradeep Kumar Singh, learned Additional Chief Standing Counsel for the State and Sri Anupras Singh, learned counsel for the opposite parties no. 2 to 4.

By means of instant writ petition, the petitioner has assailed the impugned advertisement dated 05-03-2024 to the extent of the post of the Electro Encephalography (EEG) & Electro Myography Technical Assistant/Neuro Technician as well as the impugned rejection order dated 18-04-2024 on the ground that the same is published/passed without application of mind.

Contentions of learned counsel for the petitioner is that the petitioner was initially appointed on 14-05-2016 on the post of Electro Encephalography (EEG) & Electro Myography Technical Assistant/Neuro Technician, in Dr. Ram Manohar Lohia Institute of Medical Sciences, Lucknow (hereinafter referred to as 'Institute') on contractual basis through the Outsourcing Agency, and she kept on working uptill date. He added that on 30-11-2022, aforesaid post was sanctioned in the institute and an advertisement was also published in the year 2023, for the other posts, except the post of Electro Encephalography (EEG) & Electro Myography Technical Assistant/Neuro Technician.

Further contended that once the post was advertised, the advertisement prescribed the cut-off date as 01-05-2024, so far as the computation of the minimum age as per eligibility criteria. He next added that the Chief Medical Superintendent, Dr. Ram Manohar Lohia Institute of Medical Sciences, Lucknow, without considering the settled

proposition of law as well as Rules, namely 'Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules, 1992' has passed the impugned order. The extract of the provision with respect to relaxation of the age limit for recruitment, is quoted hereinunder:-

"Relaxation of the age-limits for recruitment:-

3. Notwithstanding anything to the contrary in any rule regulating the maximum age of recruitment to a service or post in connection with the affairs of the state, relaxation in the maximum age-limit may be granted by the governor in favour of a candidate or a class or candidate"

Provided that in case in which recruitment is made through the Commission, that body shall be consulted before the relaxation is granted."

Referring the aforesaid, he submits that the power vests with the State Government in so far as the relaxation of age is concerned and the institute has adopted it, the same will also apply to the employees of the Institute or the recruitments made therefor.

In support of contention he has placed reliance on the Judgment reported in **(2022) 4 Supreme Court Cases, 643, High Court of Delhi Vs. Devina Sharma** and has referred paragraph nos. 17 & 18 of the said Judgment, which are quoted hereinunder :-

"17. The time schedule for conducting the recruitment process to the judicial service has been stipulated by the judgment of this Court in Malik Mazhar Sultan (3) v. U.P. Public Service Commissions. The object and purpose of the directions of this Court has been to ensure that the recruitment process for the judicial service is conducted on schedule every year, subject to the rules of each High Court. The High Court of Delhi held its last examination for recruitment to DJS in 2019. Admittedly, no examination has been held in 2020 or in 2021. The examination for 2020 could not be conducted since the process for 2019 was still to be completed. The examination for 2020 could not be held due to the onset of the COVID-19 Pandemic. In this backdrop, since the examination was not conducted for two recruitment years, the High Court has after considering the issue stated before this Court through the learned Senior Counsel that as a one-time measure, this Court may accept the suggestion that candidates who would have qualified for the examinations were they to be held on schedule for recruitment years 2020 and 2021 in

terms of the rules as they then stood, may be permitted to appear for the ensuing examinations.

18. Having regard to the fact that the recruitment examination for DJS has been last held in 2019 and two recruitment years have elapsed in the meantime, we are of the view that the suggestion of the High Court should be accepted for this year. The consequence of the acceptance of the suggestion by this Court. would be that candidates who would have fulfilled the upper age limit of 32 years, for the recruitment years 2020 and 2021 would be eligible to participate in the examination for the ensuing recruitment year 2022. The age bar which they would now encounter is not of their own volition. The real element of hardship faced by such candidates has been remedied by the High Court and there is no reason for this Court not to accept the suggestion. The examination cannot however, be postponed indefinitely nor can the candidates who have applied be left in a state of uncertainty. The existing candidates can have no grievance by the widening of the competition. In order to facilitate this exercise, we accept the suggestion of the High Court that the last date for the receipt of application forms shall be extended to 3-4-2022 and the examination shall be held on 24-4-2022. We direct that no impediment shall be caused in the conduct of the examination and no court shall issue any order of stay at variance with or contrary to the above directions of this Court."

Referring the aforesaid, he submits that the case of the present petitioner is squarely covered with the ratio of the Judgment abovesaid.

Concluding his arguments, he submits that this Hon'ble Court may also consider that the petitioner is working in the Institute since the year 2016, and is having the vast experience of the post in question. Further submitted that in so far as the recruitment session for the employees of the U.P. Government is concerned, that starts from 1st of July of the year, and ends on 30th of June in the next year, and if it is considered, then the petitioner will come under the criteria, as aforesaid, therefore, submission is that the impugned order dated 18-04-2024, may be quashed and the age relaxation, may be provided to the petitioner considering the Rules, 1992 as well as settled proposition of law as laid by the Hon'ble Apex court. He further added that the impugned order has been passed by the Chief Medical Superintendent, though the same should have been passed by the Director, who is the

appointing authority of the petitioner.

He further added that time and again, the matter with respect to age relaxation has been considered by the State authorities as well as by the other statutory bodies, and therefore, submission is that the petitioner is also entitled for relaxation of the upper age limit.

On the other hand, Sri Anupras Singh, learned counsel appearing for the respondent-Institute has vehemently opposed the contentions aforesaid and submitted that there is no provision with respect to the relaxation of the age in the identical situation. He added that the age limit is prescribed under the Uttar Pradesh Recruitment to Services (Age Limit) (Tenth Amendment) Rules, 2012 and the petitioner has no right to claim the relaxation in the age limit as per the provision of law. Further added that the issue in question has already been settled by the Hon'ble Apex Court in the case of ***Rekha Chaturvedi (Smt.) Vs. University of Rajasthan and Others***, reported in ***1993 Supp(3) Supreme Court Cases, 168*** and has referred the paragraph no. 11 of the said Judgment, which is quoted hereinunder:-

"11. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes.

B. The candidates selected must be qualified as on the last

date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.

C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.

D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.

E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available."

Placing reliance on above, he submits that infact the guidelines, which have been framed by the Hon'ble Apex Court, with respect to the age relaxation, clearly indicates that once the statue provides with respect to relaxation of the age limit, that cannot be relaxed. He also added that it has also been provided that the qualifications, which are advertised for post in question, should not be at variance with those, which are prescribed by it's ordinance or statute.

Further has placed reliance on the Judgment reported in **(2019) 14 Supreme Court Cases, 370, Electronic Corporation of India Limited and Another Vs. M. Shivani and Another** and

has referred paragraph no. 9 of the said Judgment, which is quoted hereinunder :-

9. Two features emerge in the matter. First is about the nature of engagement of the respondents. The record indicates that they were engaged through an outsourcing agency. Going by the terms of the advertisement the respondents were, therefore, not entitled to have any age relaxation. Secondly, the advertisement was issued on 19-12-2017 and the last date for submission of applications was 5-1-2018. Challenge itself was raised by the respondents by filing Writ Petition No. 382 of 2018 on 2-1-2018. The Single Judge of the High Court was, therefore, right and justified in rejecting the challenge. By the time the matter came up before the Division Bench, the period was already over. The Division Bench did not consider the submissions whether the respondents could, as a matter of right, claim relaxation in age-limit. Without considering said aspect of the matter, the Division Bench proceeded to pass the directions as quoted above.

Referring the aforesaid, he added that it has specifically been held that an identically situated person appointed by the Outsourcing Agency, sought some relaxation in the age and that too, was decided while observing that such employee cannot claim it as a matter of right in the relaxation of the age. Further added that in fact there are Rules as well as the settled proposition of law with respect to relaxation in the age thus in the present scenario and therefore, the petitioner is not entitled for any relief.

Considering the submissions of learned counsels for the parties and after perusal of material placed on record, it transpires that the Chief Medical Superintendent vide impugned order dated 18-04-2024, has rejected the claim of the petitioner with respect to relaxation of the age by observing that the matter of the petitioner is not considerable though no reason has been assigned.

When this court examines the matter in its facts and law, it transpires that the Rules, 1992, clearly provides the upper limit of age as 40 years and that too, is mentioned while publishing the advertisement and it is an undisputed fact in between the parties and so far as the age relaxation sought by the petitioner is concerned that is on the basis of Rules, 1992, wherein in the case of recruitment of the state employees, the

procedure prescribed for relaxation in age, though, learned counsel for the petitioner has failed to demonstrate the Rules, 1992, except the reference with respect to the age limit, which is quoted in the Judgment abovesaid and that's why, the aforesaid Rules, 1992 cannot be read without reading the aim and object of issuance or promulgation.

Considering upon the settled proposition of law in the cases of Rekha Chaturvedi(Supra) as well as Electronic Corporation of India Limited and Another(Supra), the legal position is clear that in so far as the age relaxation is concerned, that cannot go beyond the provisions prescribed under the statute or the Rules.

Further sheet anchor of the argument of the learned counsel for the petitioner that since the issue in question has not been considered by the Chief Medical Superintendent and the claim of the petitioner has been rejected by a single line of order that finds some strength.

This court has also taken note of the fact that the impugned order dated 18-04-2024 has been passed by the Chief Medical Superintendent though undisputedly, the appointing authority of the petitioner is Director.

Considering upon abovesaid submissions and discussions, the order dated 18-04-2024 is hereby quashed.

Further, in the interest of justice, the petitioner is given liberty to move a fresh representation before the competent authority within a period of three days and if such representation is moved, the competent authority is directed to decide the same within further period of one week.

It is clarified that this court has not entered into the merits of the case.

With the aforesaid observations, the instant writ petition is **disposed of.**

Order Date :- 29.4.2024
AKS