

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.7745 of 2007(O&M)
Date of Decision : 11.03.2015**

Mam Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

None for respondent No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the action of the respondents in not considering him for absorption.

The brief facts are that the petitioner was working in the Haryana State Minor Irrigation Tubewell Corporation (for short '*Corporation*'). That Corporation was closed down in the year 2002. In the year 2006 (21.06.2006), the State of Haryana floated a scheme for re-employment of regular retrenched Group-C and Group-D employees of

various Board/Corporation/Public Undertaking etc. By that scheme it was decided that all further vacancies of Group-C and Group-D would be reserved for such retrenched employees. Apart from other conditions it was stipulated that those employees who had completed 55 years of age on 18.05.2006 or earlier would not be absorbed. The grievance of the petitioner is with the fixing of the date of 18.05.2006.

Learned counsel for the petitioner has argued that in most services in the State the person is permitted to continue till the end of the month in which he/she attains the age of superannuation. As per him, even if the birthday of a person is on 2nd day of the month in which he/she has to attain the age of superannuation, by a fiction of law his birthday would be postponed to the 1st day of the succeeding month and he would therefore continue to serve till the last of the month in which he/she completes the age of superannuation. He has further argued that on this analogy even if the Government wanted to fix the month of May, 2006 as the cut off month the appropriate date should have been 01.06.2006. The fact is that the petitioner would have attained the age of 55 years on 21.05.2006 and therefore missed the cut off date by 3 days. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of *D.S. Nakara and others vs. Union of India, (1983) 1 Supreme Court Cases 305* to contend that a cut off date which treats equal unequally has to be set aside.

Learned Additional Advocate General on the other hand has argued that originally as per the policy (Annexure R-1) which was framed

on 06.02.2001 some special provisions were made for retrenched employees but they were only to the extent of increasing the age of entry into service for them if they wanted to apply for any Government service. Thereafter, on 18.05.2001 the benefits given to such employees were enhanced in so much as it was decided that 25% of the future posts of Group-C and Group-D would be reserved for retrenched employees for a period of 5 years. As per him, 5 years later by the scheme dated 21.06.2006 the provision of reservation was increased from 25% to 100% and also the scope of the employees who were to be covered was fixed between those who had been retrenched on 01.03.2000 to those who had been retrenched upto 2005. He has further argued that the date of 18.05.2006 as the cut off date was chosen because the earlier scheme of 18.05.2001 was to expire on 17.05.2006 and it was felt that the cut off date should be taken as the date on which the earlier scheme stood expired. He has relied upon the decision of the Hon'ble Supreme Court in the case of ***CSIR and others vs. Ramesh Chandra Agrawal and another, 2009(3) SCC 35***. In that case the CSIR had framed a scheme for regularizing all Researchers who had completed 15 years on 02.05.2007. That scheme was challenged on the ground that it had been formulated on 03.07.1998 and the cut off date viz. 02.05.2007 was completely arbitrary and had no nexus with the subject sought to be achieved. At this stage, it also needs to be mentioned that the said scheme was formulated on the basis of some directions given by the Central Administrative Tribunal to frame a scheme for regularization which were partly upheld by the Hon'ble Supreme Court while dismissing the earlier

SLP filed by the Council of Scientific and Industrial Research by order dated 02.05.2007. In the reply the justification given by the counsel was that cut off date was fixed because on that date the Hon'ble Supreme Court had dismissed the SLP. In that case, the Hon'ble Supreme Court upheld the said date after having considered the judgment passed in D.S. Nakara's case (supra) and held as follows:-

“29. A 'State' is entitled to fix a cut off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2.5.1997 was the date fixed as the cut off date in terms of the scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularization scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr. Patwalia, by choosing 2.5.1997 as the cut off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary. The High Court, however, proceeded on the basis that the cut off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut off date an employee misses his chance very narrowly. Such hazards would be there

in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut off date.

The scheme was a one-time measure. The number of posts was not confined to the posts which have been sanctioned.

30. The validity of the scheme has been challenged as unrealistic, illusive, arbitrary or unworkable.

We may at this juncture notice that whereas the Tribunal directed framing of a scheme, this Court directed the appellants to consider the same.

31. Cut off date has been fixed for those who are eligible as per the criteria laid down by the scheme. The service rules were framed in terms of the bye-laws of the society. It would bear repetition to state that the appellant No. 1 is not a statutory authority. It is a research oriented organization. It knows its needs. The research fellows and research associates because of their involvement in the research work are to get priority in their appointments. Particular projects whether funded by the Ministry concerned or others would depend upon the nature thereof. It, by a judicial fiat, could not have been made a continuous scheme.

Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not otherwise. The contention of the respondents that only two chances are granted for consideration of the candidature of the employees for the purpose of regularization is, in our opinion, misconceived. The scheme being a one-time measure, even one opportunity could have been granted.

32. It was with a view to give benefit to the concerned

employees that their services are continued so that they can avail another opportunity. Indisputably, the quantity/ quality of research work done by a researcher is a very important consideration for assessing the suitability. But, that would not mean that any researcher as on 2.5.1997 may not be in a position to complete 15 years of the service but would do so on 3.7.1998 and, thus, may be deprived of the opportunity of two chances by itself. This could not have been a ground to strike down the cut off date fixed by the appellants. It is reiterated that a person may get, having regard to the scheme, one chance or two chances.

It is not necessary that irrespective of the fact that as to whether they are eligible for consideration in terms of the scheme or not, must be given two chances. It is not a case where the cut off date is given a retrospective effect. We fail to understand how that would be inconsistent with the spirit of two chances or otherwise discriminatory unlike [D.S. Nakara and Ors. v. Union of India \(UOI\)](#) [(1983) 1 SCC 305]. It is also not a case where persons similarly situated are being treated differently.

33. Another aspect of the matter cannot also be lost sight of. Researchers are not selected on the basis of the tenure of research work alone but also on the basis of their performance in the interview by the selection board.

Submission to the effect that cut off date should have been fixed keeping in view the principles of legitimate expectation, to say the least, is misconceived. Legitimate expectation is based on the principles of natural justice. There has to be a basis for giving effect to the doctrine of legitimate expectation. It must not be based on mere anticipation. When this Court directed the appellants to frame a scheme, the same was required to be framed having regard to the provisions of

Articles 14 and 16 of the Constitution of India.

Reliance has been placed on [University Grants Commission v. Sadhana Chaudhary and Others](#)[(1996) 10 SCC 536] (which in our opinion otherwise has no application to the facts of the present case), wherein this Court held:

'Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment on the post of Lecturer. Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991 Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D or M.Phil degree and having good academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post of Lecturer without anything more. While introducing the requirement of clearing the eligibility test in the 1991 Regulation's, the UGC did not intend to deprive the persons who had obtained M.Phil degree or Ph.D degree prior to the making of the 1991 Regulations of their legitimate expectation in the matter of appointment on the post of Lecturer in universities or colleges.'

The ratio of the said decision does not support the contention of the respondents.

Strong reliance has been placed by the learned counsel appearing on behalf of the respondent on [Dr. Ami Lal Bhat v. State of Rajasthan & Ors.](#)[(1997) 6 SCC 614], wherein it has been opined :

"In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall

on the right side of the cut-off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable."

{See also [Union of India & Ors. v. Lieut \(Mrs.\) E. Iacats](#) [(1997) 7 SCC 334 - para 4]}."

It is the contention of the learned Additional Advocate General that the date fixed in this case cannot be termed as 'wholly unreasonable' as mentioned in Dr. Ami Lal Bhat's case (supra) or 'contrary' as mentioned in Ramesh Chandra Agrawal's case (supra).

In my considered opinion, the judgment relied upon by the learned Additional Advocate General is fully applicable to the facts of the present case. Consequently, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 11, 2015

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**(AJAY TEWARI)
JUDGE**