

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

CWP No. 20110 of 2014 (O&M)

Date of decision : 6.1.2015

Som Nath

.. Petitioner

versus

The State of Haryana and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sushil Bhardwaj, Advocate, for the petitioner in
CWP No. 20110 of 2014 and
Mr. Hemen Aggarwal, Advocate, for the petitioner in
CWP No. 20373 of 2014.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.

Rajesh Bindal, J.

This order will dispose of two petitions bearing CWP Nos. 20110 and 20373 of 2014. However, the facts have been extracted from CWP No. 20110 of 2014.

The prayer is for quashing the advertisement no. 1/2014 dated 30.8.2014, which denies upper age relaxation to the candidates upto maximum period of five years, who had worked in privately managed government Aided Schools, Recognised Schools and Government Schools.

Learned counsel for the petitioner submitted that the petitioner having qualified his M.A. from Himachal Pradesh University in the year 1997, passed UGC NET in June, 1998. He got Ph.D. degree from Kurukshetra University in Sanskrit in 2005 and thereafter passed the Haryana Teacher Eligibility Test in July, 2013. The respondents advertised posts of PGT including 398 posts of PGT Sanskrit vide advertisement no. 1/2014. The petitioner being eligible sought to upload his application online, however, the same was not accepted for the reason that the petitioner was 43 years and 5 months of age, his date of birth being 7.3.1971, whereas the maximum age prescribed in the advertisement was 42 years.

The grievance of the petitioner is that though in terms of Rule 5 of the Haryana State Education School Cadre (Group B) Service Rules, 2012 (for short, 'the Rules'), the maximum age for entry into service is provided as 40 years, however, the teachers working in privately managed Government aided, recognised and Government schools, are to be given upper age relaxation to the extent of service rendered by them as a teacher subject to a maximum of five years. As the petitioner is working as Sanskrit Teacher in Government school, he is entitled to the aforesaid age relaxation, but has not been granted on the ground that such relaxation is one time measure only with reference to the advertisement issued for selection. The petitioner claimed that he has not claimed any such relaxation earlier in his life time as a teacher, hence, was entitled to the same. He further submitted that the advertisement was otherwise also contrary to the Rules. Though the proviso to Rule 5 of the Rules provides for age relaxation but there is no such provision in the advertisement. Only age relaxation as per the government instructions has been provided for but not as is envisaged in the Rules. He further submitted that in the advertisement no. 2/2014 issued on the same day for recruitment of PGT Teachers in different subjects, the provision of grant of relaxation upto 5 years for the teaching experience in Government Aided, recognized and Government Schools, was provided. The submission is that relaxation in upper age limit is to be granted to a candidate which is being denied.

Learned counsel for the petitioner further submitted that the stand in the reply that relaxation is to be granted as one time measure only with reference to the process of recruitment is not in spirit with the Rules. He further submitted that though a stand has been taken that the posts in the subject were filled earlier, however, with reference to advertisement no. 2/2014, where such a relaxation is granted in other subjects, no such stand has been taken. The respondents are trying to proceed as per their whims and not as per the Rules.

Additional contention of learned counsel for the petitioner in CWP No. 20373 of 2014 is that in response to the advertisement issued in the year 2012, she applied but was not selected. Her claim is that the relief is to be given once in the life time of a candidate not in first advertisement

only after the Rules were framed.

Learned counsel for the respondents submitted that the Rules clearly envisage that the age relaxation is to be granted to the teachers working in privately managed Government aided, recognised and Government schools to the extent of service rendered by them as a teacher, subject to maximum of five years but the aforesaid relaxation is a one time measure. The same was provided in the first advertisement issued after the Rules were framed in the year 2012 and not in any subsequent advertisement. Learned counsel for the respondents submitted that with reference to advertisement no. 1/2014, a specific stand has been taken in the reply that posts were advertised in June, 2012 and filled up where the candidates were given such relaxation. The present advertisement is pertaining to the posts which became available after that and the relaxation is not being given as the petitioners are not entitled to the same. With reference to CWP No. 20373 of 2014, it was submitted that admittedly the petitioner having already availed relaxation in the advertisement issued in the year 2012 is not entitled to the same with reference to the present advertisement.

Heard learned counsel for the parties and perused the paper book.

The issue under consideration in the present petitions is as to whether the concession of age relaxation as provided in Rule 5 of the Rules is admissible to the candidates in the first advertisement issued after framing of the Rules or with reference to a candidate. The relevant Rule 5 of the Rules is extracted below:-

“5. No person shall be appointed to the post in the service by direct recruitment on contractual basis who is less than eighteen years or more than forty years of age or such age as fixed by the Government from time to time on the last date of submission of application to the recruiting agency.

Provided that teachers working in privately managed Government aided, recognized and Government schools, shall be given age relaxation in upper age limit to

the extent of service rendered by them as a teacher subject to a maximum of five years. However, the said relaxation shall be as a one time measure only.”

A perusal of the aforesaid Rule shows that the age for entry into service is between 18 years to 40 years. In the advertisement in question the age prescribed was 18-42 years with relaxation as per the instructions. It was submitted that maximum age as prescribed was increased to 42 years from 40 years. As given in the special instructions, Appendix-F (7) containing age in advertisement no. 1/2014, 'the upper relaxation is to be given on the basis of a certificate from the competent authority as specified. It also provided that upper age is relaxable for SC/BCA/BCB/PHC candidates of Haryana State. It also provided that the upper age limit in respect of widow, legally separated woman, divorcee, deserted woman and unmarried woman of Haryana will be up to 45 years as per Government instructions and for ESM candidates relaxation is up to continuous Military service added by three years. Relevant clause of the advertisement is reproduced below:-

“7. **AGE** : The age is 18 years to 42 years on the last date of submission of application.

- > In case of SC/BCA/BCB/PHC candidates of Haryana State, the upper age limit is relaxable as per Haryana Govt. instructions.
- > The upper age limit in respect of widow, legally separated woman, divorcee, deserted woman and unmarried woman of Haryana will be up to 45 years as per Government instructions.
- > For ESM candidates relaxation up to continuous Military service added by three years.”

No provision was provided for relaxation to the candidates having teaching experience in terms of proviso to Rule 5 of the Rules.

Contention of learned counsel for the petitioner is that the relaxation is with reference to the candidates whereas the stand of the State is that relaxation was provided in the first advertisement issued after framing of the Rules. A perusal of Rule 5 of the Rules as reproduced above

shows that the age has been defined with reference to the candidates to be appointed on the posts. The relaxation as noticed above is with reference to the teaching experience subject to maximum of five years in privately managed Government aided, recognized and Government schools. Thereafter, it has been provided that the relaxation shall be as one time measure only. The line in the Rule which provided that relaxation shall be as a one time measure is to be read in the context of the Rules which provide for age limit for recruitment as a teacher, hence, has to be given interpretation in terms thereof. It will be too harsh to interpret the Rules to mean that relaxation would mean only in the first advertisement issued after framing of the Rules rather it should be understood to mean that the relaxation is available to a candidate once for his/ her appointment. There has been adhocism in the State for quite some time as the posts were being filled up on contract basis for quite some time and there has been no regular recruitment, hence, lot of candidates in the line could not get opportunity to be recruited on regular basis. In the process, some became over age as well. This relaxation is meant for these type of candidates, as experience always matters. The experience, the relaxation for which is being granted is only for teaching in privately managed Government aided, recognized and Government schools and not in some small tutor types shops. In the recognized, privately managed Government aided schools, there is some control on the quality of teaching as well, hence, the relaxation in age to these categories of candidates is to be granted once for his/ her selection and not for any subsequent selection.

For the reasons mentioned above, the writ petitions are allowed. The petitioners shall be entitled to relaxation in age as permissible in the Rules to the extent of their teaching experience subject to a maximum of five years.

As the applications of the petitioners were not accepted online and in the case of petitioner in CWP No. 20110 of 2014 by way of interim order, the application of the petitioner was directed to be accepted provisionally, there may be many more candidates similarly situated whose applications may not have been accepted online for the same reason, it is directed that to provide equal opportunities to all the candidates, who are

similarly placed, the State shall issue a corrigendum affording opportunity to only those candidates who could not upload their applications on account of the aforesaid condition, however, the eligibility shall be considered on the last date fixed in the advertisement only. No fresh application of any other category, which could be filed earlier shall be entertained.

6.1.2015

vs

(Rajesh Bindal)
Judge

(Refer to reporter)