

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

**CWP No. 24716 of 2015
DECIDED ON: NOVEMBER 26, 2015**

HARPREET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB & ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Vivek Salathia, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J (ORAL)

1. The petitioner claims that he had been selected at the time when recruitment of ETT Teachers was processed in Zila Parishad Schools. The teachers appointed to Zila Parishad Schools have been transferred to the Punjab Government Education Department in schools run by the State Government. The Punjab Government has presently notified a large number of vacancies of ETT Teachers in various government schools in Punjab to be filled by direct recruitment. The advertisement has been issued on 09.11.2015, inviting applications from eligible candidates. The recruitment process initiated by the Zila Parishad for appointment of teachers in its schools has been rendered infructuous.

2. In the changed circumstances the petitioner is at liberty to apply for the posts advertised and compete in open merit. However, his dilemma is

that he is now over age by 18 days and therefore ineligible to apply for the post and thus prays for a direction to the respondents to relax the age bar for him to enable him to apply without going through the online process since it is programmed to reject his application being age barred. In the considered view of this court issuance of such a direction would not be permissible in mandamus jurisdiction based on the well settled rule that a writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and a corresponding legal obligation on the State. At neither end of the spectrum are there rights present in tandem. Age limit is an essential qualification as per rules which is not relaxable.

3. Moreover, the law declared on the subject regarding age relaxation in appointments etc. is clearly elucidated by the Supreme Court in several rulings including in **Chairman, Public Service Commission, J&K v. Sudarshan Singh Jamwal**, (1998) 9 SCC 327 wherein the Supreme Court held as follows and the text is short and quoted in extenso:

“1. Rule 7 of the Jammu and Kashmir Civil Service (Judicial Recruitment) Rules, 1967, provided that no person should be recruited to that service who was more than 35 years of age on the first date of January preceding the year the examination for recruitment was conducted by the appellant-Commission. The first respondent was age-barred, but sought to rely upon an order dated 14-2-1985 in the following words:

“Sanction is accorded to the relaxation of upper age bar by two years, eight months and twenty-three days in favour of Shri Sudarshan Singh Jamwal, Librarian, High Court of Jammu and Kashmir.

By order of the Government of Jammu and Kashmir.

sd/-

(Secretary to Govt. Law Department)”

Meeting with resistance from the appellant, the first respondent moved the High Court of Jammu and Kashmir in a writ petition. The writ petition was allowed on the basis that the State Government was competent to relax the age bar.

2. The said Rules had earlier provided for such relaxation in Rule 9-A, which read thus:

“9-A. Notwithstanding anything contained in Rules 7 and 9 of these Rules, the Governor may, on the recommendation of the Court, exempt any person who holds any post under the Government by virtue of which he has kept himself in touch with and gained sufficient experience in the knowledge and application of law, from the operation of Rules 7 and 9.”

The appellant moved the High Court in review pointing out that Rule 9-A had been deleted from the said Rules by reason of an amendment made in August 1974. The High Court rejected the review petition holding, “Even if the provisions of Rule 9-A would have been placed before us, in our opinion it would not have any effect on the judgment as the order on the basis of which the age bar was relaxed is passed by the Government in exercise of its inherent powers, which always exists with the Government for which we can safely place reliance on the authority of their Lordships of the Supreme Court reported in *Sampat Prakash v. State of J&K AIR 1970 SC 1118*, paras 11 and 12.”

3. The decision in the case of *Sampat Prakash*¹ speaks of the application of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act says that where by any Central Act or Regulation a power to

issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. The order, upon which the first respondent relied, was, according to the High Court itself, issued in the exercise of the State Government's inherent power, meaning, apparently, the power derived from Section 21 of the General Clauses Act. The order was not issued in exercise of the power to make the said Rules and power was not exercised in the like manner and subject to the like sanction and conditions which operated for the making of the said Rules. Reliance upon the judgment in the case of *Sampat Prakash*¹ was, therefore, misplaced as also reliance upon Section 21 of the General Clauses Act. The exemption order did not, therefore, entitle the first respondent to appear at the recruitment examination.

4. The appeal is allowed. The order under appeal is set aside and the writ petition filed by the first respondent is dismissed. No order as to costs.”

4. The Supreme Court was even more articulate in **Union of India v. Arulmozhi Iniarasa**, (2011) 7 SCC 397 in answering the following question formulated by it, which reads: “Thus, in these appeals the first and the foremost question to be examined is whether in the matter of relaxation of age-limit, prescribed as eligibility criteria for appointment on a particular post, any principle of law has been laid down in the decision of this Court in **Nagendra Chandra v. State of Jharkand**, (2008) 1 SCC 798? If so, whether it could be applied to the facts of the present case for directing the

aforestated relaxation in age-limit?” In *Nagendra Chandra* case the Supreme Court had issued directions for relaxing age in recruitment. The question was answered in the negative. The Supreme Court held that the decision could not be regarded as a binding precedent and has to be read as confined to its own facts.

5. Thus, any relaxation given to an individual candidate will result in violation of equal protection laws in Articles 14 and 16 of the Constitution of India as the relaxation, if granted, would have to be given to all the candidates across board which would inevitably lead to re-advertising the posts and therefore, neither it is possible nor feasible to even consider entertaining a thought for issuing a direction to the State Government of the kind prayed for, and as a result, the alternative prayer for a direction to the respondents to decide the representation filed by the petitioner is also rejected as the recruitment process is in progress and not open to be disturbed on this score.

6. For the foregoing reasons, there is no substance found in the present petition and the same is ordered to be dismissed in limine as it does not merit hearing in motion after notice or after admission as no law is required to be settled in this case.

(RAJIV NARAIN RAINA)
JUDGE

NOVEMBER 26, 2015
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