

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.5781 of 2015

Date of Decision: June 4th, 2015

Subhash Chand

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Anurag Goyal, Advocate with
Mr.Lalit Rishi, Advocate,
for the petitioners (in CWP Nos.6169, 6381,6696,6779,6781,
6784 & 6901 of 2015.

Mr.Vikas Malik, Advocate,
for the petitioners (in CWP Nos.6020,6024,6277,6289,6584,
6608,6904, 7057,7145 & 7773 OF 2015.

Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J.

By this common order, I intend to dispose of Civil Writ Petition
Nos.5781 of 2015 (Subhash Chand Versus State of Haryana & others), 6020
of 2015 (Yatender Kumar Versus State of Haryana & others), 6024 of 2015
(Vinti Gulati Versus State of Haryana & others), 6169 of 2015 (Baby Goyal
Versus State of Haryana & others), 6277 of 2015 (Khazan Singh Versus
State of Haryana & others), 6289 of 2015 (Savita Rani Versus State of

Haryana & others), 6381 of 2015 (Shakuntla Devi Versus State of Haryana & others), 6584 of 2015 (Balwan Singh Versus State of Haryana & others), 6608 of 2015 (Mamta Sharma Versus State of Haryana & others), 6696 of 2015 (Shakuntla Devi Versus State of Haryana & others), 6779 of 2015 (Abhilasha Arora Versus State of Haryana & others), 6781 of 2015 (Bela Rani Versus State of Haryana & others), 6784 of 2015 (Surender Kumar Versus State of Haryana & others), 6901 of 2015 (Phool Kumar Versus State of Haryana & others), 6904 of 2015 (Anil Kumar Versus State of Haryana & others), 7057 of 2015 (Dhanpati Devi Versus State of Haryana & others), 7145 of 2015 (Rajesh Versus State of Haryana & others) and 7773 of 2015 (Parmila Rani Versus State of Haryana & others) as the common question of law and facts involved in all the petitions is the same. The facts are being taken from the lead case, i.e., CWP No.5781 of 2015.

Shorn of the detailed facts.

Succinctly, the grievance of the petitioner is that vide impugned orders dated 14.10.2014 (Annexure P-10) and 13.2.2015 (Annexure P-11), despite having been recommended for appointment as Post Graduate Teacher (PGT) in various subjects, but no appointment letter, much less, counselling has been ordered by the then Haryana School Teachers Selection Board (for short “Board”) as respondents have resorted to misinterpretation of Rule 5 of the Haryana State Education School Cadre (Group B) Service Rules, 2012 (hereinafter referred to as “2012 Rules”), which has come into force on 11.4.2012, though it envisages the consideration of the age relaxation, but yet has not been made applicable to the petitioner as having become over age.

Mr.Anurag Goyal, learned counsel appearing for the petitioner submitted that in pursuance to the Advertisement bearing No.1/2012 dated 7.6.2012 (Annexure P-1), the Board invited applications for filling up the post of Post Graduate Teachers (PGT) HES-II (Group-B) Services for different subjects. The said advertisement indicated that the candidate was to apply the post in question by way of online application and the certificates were to be shown at the time of interview. He has drawn the attention of this Court to the advertisement, where, against the column of age, it has been mentioned as under:-

“Age:- 18-40 years, relaxation as given in special instructions. For Teachers upper age relaxation (see Note-3).”

Note 3 of Cat.No.35 (MWT) of advertisement (Annexure P-1) is reproduced as under:-

“One time exemption certificate for HTET/STET & one time upper age relaxation certificate from Head of the institute is required to be verified by DEO & counter signed by Director of Secondary Education of the concerned State. One time implies that an applicant can apply only once for a particular category of post in the first advertisement. No such exemption will be granted in the subsequent advertisement.”

Clause-3 of appendix-A of the advertisement reads as under:-

“Candidates applying for a post must ensure that they fulfill all the eligibility conditions on the last date of application. If on verification at any time before or after the written examination or interview or appointment, it is found that they do not fulfill any of the eligibility conditions or it is found that the information furnished is false or incorrect their

candidature will be cancelled.”

By referring to the aforementioned provisions, learned counsel for the petitioner submitted that even in the advertisement, it was mentioned that there was a provision for upper age relaxation other than specified. In other words, the candidate was permitted one time relaxation being over age. It has also been made clear that no such exemption would be granted in the subsequent advertisement.

In the application form, there are two columns of upper age relaxation and as well as whether the person had been registered with the Employment Exchange before attaining the age of 40 years. The same reads thus:-

<i>Registration Number</i>	<i>11308833</i>
<i>Post Applied for</i>	<i>PGT Hindi (Cat.No.13)</i>
<i>Applicant's Name</i>	<i>Shubash Chand PHOTO</i>
<i>Father's Name</i>	<i>Telu Ram</i>
<i>Mother's Name</i>	<i>Savitri Devi</i>
<i>Date of Birth</i>	<i>1/1/1969</i>
<i>Age as on 28.06.2012</i>	<i>43 years 6 months 14 days</i>
<i>Gender</i>	<i>Male</i>
<i>Marital Status</i>	<i>Married</i>
<i>Nationality</i>	<i>INDIAN</i>
<i>Category</i>	<i>General Sub Category</i>
<i>District Mewat Cadre</i>	<i>NO</i>
<i>Are you working as Guest Teacher in Haryana</i>	<i>NO</i>
<i>Upper Age relaxation required:</i>	<i>3 years 6 months 14 days</i>
<i>Certificate of having qualified Haryana Teachers Eligibility Test (HTET)/School Teacher Eligibility Test (STET) of respective</i>	<i>YES</i>

*Subject for the post applied, conducted by
Board of School Education Haryana,
Bhiwani.*

$$xxx$$
$$xxx$$
$$xxx$$

*“Whether registered in Employment
Exchange before attaining the age
of 40 years and still name
exists as registered unemployed?”*

By referring to the aforementioned Clauses in the advertisement and the application form, learned counsel for the petitioner submitted that the petitioner fulfilled the eligibility qualification, in essence, qualified for the post in question and accordingly was called for interview. All the documents were verified by the members of the Committee. The result was declared by the Board on its website on 1.1.2014, wherein the petitioner was shown as qualified/selected candidate. Copy of the result card of one of the subject pertaining to the petitioner has been annexed with the writ petition as Annexure P-4. It has further been submitted that the Government had issued instructions dated 25.6.1981 and 12.2.1982, which provided that where a candidate got himself registered with the Employment Exchange within the age as provided in the rules and got over aged during the interregnum, i.e., before getting regular employment, then such type of candidates would be considered till the time they are appointed on regular basis. The aforementioned instructions have been annexed with the writ petition as Annexures P-5 and P-6 and the same read thus:-

Annexure P-5

“Copy letter No.32/104/80-Edu.III(4) dated 25.6.1981 sent to

Director, School Education, Haryana, Chandigarh from financial Commissioner & Secretary, Govt.of Haryana, Department of Education.

Sub:- Extension in age for B.Ed.Teachers for entry into Govt. service

The Government has considered on the issue and decided that if any B.Ed/M.Ed. Trained applicant within the age prescribed as per the Rules got his name registered with the Employment Office and got over aged before getting regular employment in that case these applicants would be considered within age up to the time they are regularly appointed on the basis of B.Ed./M.Ed. For this purpose, relaxation in age be given as per the requirement.

You are hereby requested that as per this decision concerned officer/institutions may be given directions accordingly and copy of the same may be sent to the Govt.”

ANNEXURE P-6

“Copy letter no.32/104/80-Edu.-1-II (4) dated 12.2.1982 sent to Director, School Education, Haryana from Financial Commissioner & Secretary, Govt.of Haryana Department of Education.

Sub: Extension in age of C&V Lecturer for entry into Govt. service.

This is in reference to your letter no.8407-12/24-77 even (2) dated 11.12.1981 on the subject cited above.

The government has considered on the issue and decided that if any classical/vernacular and School Lecturer Trained applicant within the age prescribed as per the Rules got his name registered with the Employment Office and got over aged before getting regular employment in that case these applicants would be considered within age up to the time they are regularly appointed as C&V School Lecturer. For this purpose relaxation in age be given as per the requirement. You

are hereby requested that as per this decision concerned officer/institutions may be given directions accordingly and copy of the same may be sent to the Govt.”

It has been submitted that the petitioner had been registered with the Employment Exchange before he has attained the age of 40 years and while filling the form had disclosed the factum of registration. As per averments, the petitioner was, flabbergasted, to receive a show cause notice dated 15.7.2014 (Annexure P-8), whereby it had been stated that the petitioner was not liable to be considered for the post being “over age” and the respondent-authorities contemplated to recommend the name to the Board for cancellation of the candidatures for appointment as PGT. The aforementioned show cause notice has been replied by the petitioner, including similarly situated persons, particularly in this case, vide Annexure P-9, wherein there is a reference of the instructions and as well as the pragmatic interpretation of Rule 5 of the 2012 Rules. Apprehending, that the petitioner may not be communicated the decision after filing the reply, the petitioner approached this Court vide Civil Writ Petition No.18876 of 2014 and this Court, vide order dated 11.9.2014, issued a direction to respondent No.2 to take a final view and to pass a speaking order and on the basis of the aforementioned direction, the impugned order dated 13.2.2015 (Annexure P-11) has been passed, on the receipt of the recommendation from the Additional Chief Secretary, Government of Haryana, School Education Department, Chandigarh dated 14.10.2014 (Annexure P-10).

Mr.Anurag Goyal, learned counsel for the petitioner, in support of the stand taken in the writ petition, has raised various submissions while

challenging the rejection order (Annexure P-10) and communication (P-11), which are summarised herein below:-

a) Rule 5 of 2012 Rules envisages the discretion with the Government to fix the age from time to time while submitting an application to the recruiting agency. Rule 5 reads thus:-

5. No person shall be appointed to the post in the service by direct recruitment on contract 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 onetime measure only.”

b) The show cause notice only spoke about the registration with the Employment Exchange and its renewal, whereas, the rejection order did not deal with the renewal of the registration with the Employment Exchange but totally apposite stand has been made out that since Rule 5 has been promulgated in 2012, therefore, the instructions of 1982 would not be applicable;

c) De hors of the fact that the petitioner may not interpret Rule 5 in the manner suitable to them, but the fact remains that it envisages provision with regard to the relaxation and as well as the proviso, which empowers the authorities, to give

relaxation in upper age limit to the extent of service rendered by the teacher subject to a maximum of five years and the said relaxation shall be only as one time measure;

d) Assuming for the sake of argument that the stand taken by the respondents is correct, but, erstwhile Rules of 1998 dealt with the age provided maximum 35 years, which was later on extended to 40 years, subject to the condition of relaxation, of five years vis-à-vis the Scheduled Castes, Scheduled Tribes and Backward Classes and at that time also, the instructions aforementioned were in vogue and few of the effected candidates, whose names were registered with the Employment Exchange, before attaining the age of 40 years, were denied the appointment, which compelled them to approach this Court by filing Civil Writ Petition No.8144 of 2011, wherein similar rejection order was challenged, on the ground that the petitioner (therein) had been denied interview for the post of Lecturer in Punjabi being over age. This Court vide order dated 9.5.2011 (Annexure P-25 in CWP No.6169 of 2015), while issuing notice of motion, permitted him to participate in the interview. Thereafter the writ petition was disposed of as infructuous, vide order dated 5.12.2011, in view of the statement made by the learned counsel for the Haryana Public Service Commission that the petitioner shall be considered for selection as Lecturer in the school cadre. Thus, in essence the respondents applied the instructions of 1982 when 1988 rules

were in vogue;

- e) The instructions of 1982 have not been withdrawn;
- f) No candidate had submitted any relaxation certificate signed by the D.E.O. or countersigned;
- g) Since a confusion arose in the department with regard to the applications received on behalf of the candidates, a Committee consisting of three members was constituted and as per the report of the Committee (Annexure P-12), pertaining to those candidates who had applied in Hindi category, the candidates, except few, were eligible for the post of PGT Hindi on account of age relaxation on the basis of teaching experience or having been registered with Employment Exchange. The relevant portion of the Note of the committee dated 14.5.2014 reads thus:-

“It is certified that all above mentioned candidates except Merit No.523-Meena Kumari, 697-Sanjay Kumar and 1235-Mukesh are Eligible for the post of PGT Hindi on account of Age Relaxation on the basis of Teaching Experience or Registered the name in Employment Exchange accordingly.

Smt.Sushila Janga, APO Smt.Nirmal Panghal, APO

Member

Member

Jaivir Singh Dhanda, Deputy Director

Committee Chairman”.

- h) Various persons, who were over age, had been issued appointment letters. Copy of the same has been annexed with the writ petition as Annexure P-3;

i) Reference to Annexure R-1 attached with the written statement, i.e., list of 267 candidates, whose age is more than the prescribed age as on last date of submission of application form was made and only 14 out of the aforementioned list, have been issued show cause notice.

On the other hand, Mr.Hitesh Pandit, learned Additional Advocate General, Haryana appearing on behalf of the State, while rebutting the arguments of Mr.Anurag Goyal, learned counsel for the petitioner, has raised the numerous submissions, which are summarised herein under:-

- i) The advertisement and the rules do not envisage the applicability of the instructions and, therefore, the petitioner cannot be permitted to rely or take the aid of the instructions;
- ii) Clause 7 of Appendix-A provided that the age is 18 years to 40 years on the last date of submission of application and the one time upper age limit is granted to only those teachers working in privately managed Govt.Aided Schools, recognized schools and Government schools, who have an experience of five years and above. Clause 7 of the advertisement reads thus:-

“7. AGE:- The age is 18 years to 40 years on the last date of submission of application.

In case of SC/BC/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 upto 45 years as per Government instructions.

For ESM candidates relaxation up to continuous Military service added by three years.

For teachers working in privately managed Govt. Aided Schools, recognized schools and Government Schools one time upper age limit to the extent of service rendered by them as a teacher subject to a maximum of 5 years.”

iii) The eligibility for the candidates for the post in question would have to be reckoned as per the last date stipulated in the advertisement. The entire matter was reconsidered by the department and it was found that the appointment letter issued by the respondent department to Isham Singh son of Bir Singh, was not in consonance with the existing rules but a sheer inadvertence and show cause notice had been issued to all the other persons. The petitioner is wrongly interpreting Rule 5 of 2012 Rules as the word mentioned is “or” and, thus, prayed that the claim of the petitioner and others, is not substantiated from the interpretation of the rule, much less, instructions and, therefore, they are not entitled for appointment and prayed for dismissal of the writ petitions.

I have heard the learned counsel for the parties and appraised the paper book.

On consideration of the aforementioned rival submissions as summarised above, I deem it appropriate to draw my attention to Rule 5 of

2012 Rules, which lays down minimum and maximum age for being appointed to the post in the service by direct recruitment as 18-40 years, but it also envisages word expression “or” such age as fixed by the Government from time to time on the last date of submission of the application to the recruiting agency. Such proviso in the rule has to be read in conjunction with the instructions of 1981 and 1982, for the simple reason, that said instructions, till date, have not been withdrawn or repealed owing to commencement of 2012 Rules. The aforementioned instructions deal with both technical and non-technical posts and clearly envisage that a person, whose name has been registered with the Employment Exchange, before attaining the age of 40 years, would be eligible for consideration on the post for which he wants to apply. The advertisement and the application form also envisage a clause as to whether the candidate had been registered with the Employment Exchange before attaining the age of 40 years. Had the instructions been overruled, there would not have any occasion for incorporating clauses in the application form, much less, putting a Note in the appendix with regard to relaxation of age.

No doubt, the Government has the power to promulgate the notification by invoking the powers under Article 309 of the Constitution of India to give the relaxation and probably keeping in view that fact, a provision has been made in Rule 5 of 2012 Rules. The pith and substance of the rejection order hinges upon one ground that rules have been promulgated in the year 2012 and the instructions dated 12.2.1982, with regard to the relaxation on the basis of the endorsement with the Employment Exchange have been promulgated in the year 1982 and, thus,

the instructions have not been revoked in 2012. Such interpretation, in my view, is erroneous, illegal and much less an act of repugnancy.

No doubt, the instructions cannot be given effect to, after the rules, but the fact remains that even before promulgation of 2012 Rules, 1998 rules were in force and even as per 1998 rules, the upper age limit prescribed was 40 years and the petitioner (therein) vide CWP No.8144, when approached this Court, was appointed on the basis of the statement made by the learned counsel appearing for the Board. On preponderance that instructions were having force of law, otherwise there was no provision in 1998 rules to give relaxation vis-à-vis 2012 Rules, which envisages “such age to be fixed by the Government on the last date of submission of the application to the recruiting agency”. The proviso to Rule 5 also envisages a relaxation in upper age limit to the extent of service rendered by a teacher subject to a maximum of five years as one time measure, in essence, the proviso to Rule 5 envisages relaxation to such type of candidates who have teaching experience of five years. Thus, once the Government accorded relaxation to the teachers having five years experience, it has not taken care of the candidates who had been registered with the Employment Exchange long time ago, i.e., even they had not attained the age of 40 years, but have been permitted to apply in pursuance to the advertisement issued by the Government for filling up the post of particular category, for which they were eligible. The right of such candidates cannot be taken away by misinterpreting the rule, particularly in view of the existence of the instructions which have valid force of law.

Once the Board had given statement in the Court to give the

appointment to the candidates, who were registered with the Employment Exchange when they were below the age of 40 years during the validity of 1998 Rules, which did not envisage the relaxation, but the present scenario after 2012 is quite different as per observation in preceding paras. Had the authorities thought to apply rules as they had sought to while rejecting the case of the petitioner, then there would not have any clause in the advertisement and as well as in the application form for relaxation of the age, much less, registration with the Employment Exchange.

In view of what has been observed above, the writ petitions are allowed and the directions are issued to the respondents to call the petitioners for counselling and issue the appointment letters to them for the post of PGT in respect of categories for which they have been appeared or interviewed. The petitioners are also entitled for consequential benefit of seniority.

June 4th, 2015
ramesh

(AMIT RAWAL)
JUDGE