

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: May 28, 2015

+ W.P.(C) 5033/2014 & CM APPL. No. 10051/2014

MANISH DAK

..... Petitioner

Through Mr. Tahir Ashraf Siddiqui,
Advocate

versus

SECRETARY, INDIAN COUNCIL
OF AGRICULTURAL RESEARCH & ORS

..... Respondents

Through Mr. Vikram Singh, Proxy Counsel
for Mr. S.K. Gupta, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. By way of this writ petition, the petitioner seeks to question the tenability of the order dated 21.03.2014 passed by the learned Central Administrative Tribunal (hereinafter referred to as 'learned Tribunal), whereby it dismissed the Original Application being O. A. No. 2334/2012 preferred by him.

2. Facts of the case in brief are that the Agricultural Scientists Recruitment Board (ASRB) had issued a notification dated 29.08.2011 for holding a competitive examination for filling up the vacancies of

Scientists in the Indian Council of Agricultural Research Institute (ICAR), combined with National Eligibility Test (NET) for recruitment of Lecturers / Assistant Professors by the State Agricultural Universities and Agricultural Universities. The last date for receipt of application forms was 30.10.2011. The examination for the said competitive examination was in two parts i.e. Preliminary ARS examination and ARS Main Examination. As per the notification, the prescribed educational qualification was that the candidate should be holding a Master's degree or equivalent with specialisation as given in Annexure II (for Preliminary) and Annexure III (for Main) on or before 1.08.2011 and as per this qualification, the candidate must possess a Master's degree as on 1.8.2011. The age limit laid down for ARS was minimum 21 years and maximum 32 years as on 1.8.2011. As per Rule 2 on Age Limit, the upper age limit prescribed for the candidates holding Ph.D. degree was laid down as 35 years. It was further stipulated that in such cases, the candidates should have obtained Ph.D. degree on or before 1.8.2011, which was the reckoning date for age determination.

3. On 12.09.2011, a corrigendum was issued by the ASRB revising the cut off date for determining the eligibility for the qualifying

examination from 1.8.2011 to 30.11.2011. The proof of eligibility was to be submitted by 31.12.2011. The petitioner herein had submitted his application form on 22.10.2011 i.e. well before the last date laid down for submission of application. The date of birth of the petitioner happens to be 04.04.1978 and the petitioner had completed his Ph.D. on 13.10.2011 therefore he claimed entitlement of age relaxation in terms of Rule 2 of the Notification read with Corrigendum dated 12.09.2011. The admission certificate issued to the petitioner was however rejected vide letter dated 29.06.2012 on the ground that he had completed his Ph.D. degree on 13.10.2011 after the cut off date, i.e., 01.08.2011 and therefore, was not entitled to the age relaxation and as on 01.08.2011 his age was more than the age of 32 years.

4. Feeling aggrieved by the said letter of rejection, the petitioner had preferred an O.A. being O.A.No. 2334/2012 and vide order dated 21.03.2014 the said O.A. was dismissed by the learned Tribunal.

5. Assailing the legality and correctness of the decision taken by the learned Tribunal, Mr. Tahir Ashraf Siddiqui, the learned counsel for the petitioner vehemently contended that the learned Tribunal failed to properly appreciate the exact controversy in the matter and thus

committed an error in dismissing the O.A. preferred by the petitioner. The contention raised by the learned counsel for the petitioner was that the learned Tribunal failed to appreciate that for the applicants between the age group of 32 to 35 years, the qualifying examination was PH.D. and not post graduation and once by the corrigendum dated 12.09.2011, the cut off date for the qualifying examination was extended to 30th October 2011, the benefit of the said relaxation could not have been denied to the petitioner. The learned counsel for the petitioner further submitted that the learned Tribunal committed a grave error in taking a view that to avail age relaxation beyond 32 years for a general candidate like the petitioner, the qualifying examination would remain master's degree and not Ph.D. Counsel further argued that the petitioner had duly obtained his Ph.D. degree before the extended date of 30.11.2011 and therefore, he was clearly entitled to get the benefit of relaxation in terms of the corrigendum. Counsel also argued that the learned Tribunal further misdirected itself in not appreciating that, creating a classification amongst the candidates holding Ph.D. degree and post graduate degree would be unfair and discriminatory and in violation of Article 14 of the Constitution. The contention raised by the counsel was that once the

petitioner had qualified the Ph.D. degree before the cut off date i.e. on 30.10.2011, then to say the candidates who were in possession of post graduate degree before the said date and had obtained the Ph.D. degree before 1.8.2011 would be entitled to the age relaxation but those who obtained Ph.D. degree between 1.8.2011 and 30.10.2011 would not be entitled to age relaxation is a highly perverse, irrational reasoning and the same is per se discriminatory to the candidates obtaining Ph.D. degree between 1.8.2011 to 30.10.2011. Based on the aforesaid submissions, the learned counsel for the petitioner urges for setting aside the impugned order dated 21.03.2014 passed by learned Tribunal, dismissing the O.A. filed by the petitioner. In support of his arguments, the learned counsel for the petitioner relied upon the following judgments:

- a) *Gopal Krushna Rath vs. M.A.A.A. Baig, AIR 1999 SC2093;***
- b) *National Council for Teacher Education vs. Shri Shyam Shiksha Prashikshan Sansthan, (2011) 2 SCR 291;***
- c) *B. Manmad Reddy and Ors. Vs. Chandra Prakash Reddy and Ors., (2010) 3 SCC 314***

6. Per contra, the learned counsel for the respondents submitted that as per Rule 3 of ARS Rules a candidate must have master's degree or its equivalent in the concerned subject and cut of date for determining

eligibility for the purpose of qualifying examination was laid down as 1.8.2011 and this cut off date was extended till 30.10.2011 by corrigendum dated 12.09.2011. The learned counsel for the respondents further argued that the reasons for issuance of such a corrigendum was duly explained by the respondent before the learned Tribunal in the additional affidavit dated 23.08.2011 filed by them. The same have been duly referred to in the order passed by the learned Tribunal. Counsel further argued that the petitioner had completed his Ph.D. degree on 30.10.2011 after the cut of date i.e. 1.8.2011 and therefore, the petitioner was over age and as such his candidature was rightly rejected by the respondents vide letter dated 29.06.2012. Counsel further argued that there was no revision of the cut of date for completion of Ph.D. and it remained the same for all the candidates and therefore the petitioner cannot complain of any kind of discrimination or unfair treatment meted out to him. Based on these submissions the learned counsel for the respondents pleaded for upholding the order passed by the learned Tribunal.

7. We have heard the submissions made by the learned counsel for the parties and also gone through the material placed on record and the

judgments cited by the learned counsel of the petitioner.

8. As per the application form submitted by the petitioner, he had completed his post graduation, i.e., M.A. (Agreement) in the year 2004 and Ph.D. in the year 2011 i.e. on 13.10.2011. The petitioner had earlier also appeared for the said examination i.e., ARS 2006 and 2007 but in both the said exams he was not selected. This was perhaps the third attempt of the petitioner. The relevant rules for the Agricultural Research (ARS) National Eligibility Test (NET) Examination 2011, which have been placed on record, clearly shows that Rule 2 of the same deals with age limits while Rule 3 deals with the educational qualifications for ARS and NET. For better appreciation, both the said Rules are reproduced as under:-

“2. **AGE LIMITS:-**

a) ***For Agricultural Research Service:-***

*A candidate seeking admission to the ARS Examination must have attained the age of **21 years** but not have attained the age of **32 years** as on **01-08-2011**. In service candidates of ICAR of less than 45 years in age as on **01-08-2011** will also be eligible to appear subject to possession of prescribed qualifications. In service candidates of the State Agricultural Universities of less than 35 years in age as on **01-08-2011** will be eligible to appear for ARS subject to possession of prescribed qualifications.*

The upper age limit prescribed above will also be relaxable:-

- (i) *Upto a maximum of five years if a candidate belongs to SC or ST.*

- (ii) *Upto a maximum of 3 years in the case of candidates belonging to Other Backward Classes, who are eligible to avail of reservation applicable to such candidates.*
- (iii) *For Physically Challenged candidates, the upper age limit will be relaxable upto a maximum of 10 years. Candidates belonging to SC, ST and OBC are also covered under the Physically Challenged category will be eligible for grant of cumulative age relaxation under both the categories.*
- (iv) *For ARS the upper age limit for the candidates holding Ph.D. degree will be 35 years. Consequently the upper age limit for SC/ST/OBC./ Physically Challenged candidates holding Ph.D. degree will be relaxable by a further period of 3 years. Thus, the maximum limit for SC/ST candidates in such cases will be 40 years, for OBC candidates 38 years and for Physically Challenged candidate 45 years. In such cases the candidates should have obtained Ph.D. degree on or before **01-08-2011** which is the reckoning date for age determination.*
- (v) *Up to a maximum of five years if a candidate had ordinarily be domiciled in the State of Jammu & Kashmir during the period from the 1st January, 1980 to the 31st day of December, 1989.*
- (vi) *To other bonafide displaced persons/repatriates of Indian origin / Defence Services Personnel/Border Security Force Personnel etc. as per the existing instructions of the Government of India on the subject.*
- b) **FOR NATIONAL ELIGIBILITY TEST:**
A candidate must have attained the age of 21 years as on 01-08-2011. There will be no upper age limit for the National Eligibility Test.

Save as provided above, the age limits prescribed can in no case be relaxed.

Rule 3 reads as under:

3. EDUCATIONAL QUALIFICATIONS FOR ARS AND NET:-

A candidate for the Prelim-Agricultural Research Service/National Eligibility Test must have a master's degree or equivalent in the concerned subject with specialization as defined in Annexure-II and for ARS- Main examination, a candidate must have a Master's degree or equivalent in concerned subject as defined in Annexure-III against each discipline, from any Indian University incorporated by an Act

of Central or State Legislature in India or other educational institution established by an Act of Parliament or declare to be deemed University under Section 3 of the University Grants Commission Act, 1956 of her/she must have qualification from a foreign University recognized as equivalent by the Government of India.

The candidates having Master's degree from a foreign University must attach a certificate of equivalence and recognition of that degree issued by the University Grants Commission/Govt. of India.

NOTE-I:- *Candidates who have appeared at an examination the passing of which would render them eligible/qualified for this examination, but have not been informed of the result and also the candidates who intend to appear at such a qualifying examination, will not be eligible for admission to this examination.*

NOTE-II:- *For the purpose of the above eligibility, the candidate must submit proof that he/she has, or will appear, for the qualifying examination, in all papers, by 1st August, 2011. If selected, the candidate would have to provide proof of his/her having qualified the examination, before his/her appointment letter issued.*

NOTE-III:- *In ARS the scientist will be placed in the same discipline in which he/she has qualified the ARS examination and no request for change of discipline will be entertained.*

NOTE -IV:- *The candidates selected for appointment to the posts in Veterinary Sciences disciplines will be entitled to Non Practicing Allowance as admissible under the rules of Indian Council of Agricultural Research and subject to fulfilment of the conditions of entitlement as prescribed by the Council."*

9. Vide corrigendum dated 12.09.2011, the cut off date for determining the eligibility for qualifying examination was revised from 1.8.2011 to 30.11.2011. The Corrigendum dated 12.09.2011 reads as under:-

***"AGRICULTURAL SCIENTISTS RECRUITMENT BOARD
KRISHI ANUSANDHAN BHAVAN, PUSA, NEW DELHI-
110012 (INDIAN COUNCIL OF AGRICULTURAL
RESEARCH)***

F.No.1(1)/2011- Exam-II

Dated the 12th September, 2011

CORRIGENDUM

AGRICULTURAL RESEARCH SERVICE/NATIONAL
ELIGIBILITY TEST EXAMINATION -2011

The Agricultural Scientists Recruitment Board had issued Notification for holding a competitive examination on 12th February, 2012 for filling up the vacancies of scientists in ARS in the ICAR Institutes combined with National Eligibility Test for recruitment of Lecturers/Assistant Professors by the State Agricultural Universities (SAUs) and Agricultural Universities (Aus) vide even number dated 29th August, 2011.

Kindly refer to Rule 3 of the Rules for examination vide the above mentioned Notification. The cut-off date for determining the eligibility for qualifying examination has been revised as follows:-

“The cut-off date for determining the eligibility for the qualifying examination would be 30th October, 2011. However, for the purpose of aforesaid eligibility, the candidate must submit proof of his/her having qualified the examination on the cut-off date i.e. 30th October, 2011 by 31st December, 2011 failing which his/her candidature would stand cancelled.”

The other terms and conditions for the aforesaid ARS/NET Examination-2011 will remain the same as notified earlier. The candidates are advised to consult the notification before filling up the applications.

CONTROLLER OF EXAMINATIONS”

10. The candidature of the petitioner was rejected by the respondents vide order dated 29th June 2012 and the reasons given by the respondents for rejecting the candidature of the petitioner are reproduced as under:-

“Subject: Application for ARS/NET Examiantion-2011 regarding.*

With reference to his application for the above mentioned examination, it is informed that the candidature of Sh. Manish Dak has been rejected due to the following reasons:

As per notification, for ARS the upper age limit for the candidates holding Ph.D. degree is 35 years. In such

case the candidates should have obtained Ph.D. Degree on or before 01.08.2011 which is the reckoning date for age determination. He has completed his Ph.D. degree on 13.10.2011 after cut off date i.e. 01.08.2011.

*Sd/-
Under Secretary”*

11. The main plank of argument of the petitioner before the learned Tribunal and before this Court has been that in so far as the candidates holding Ph.D. degree were concerned, their essential qualification to be taken into consideration was their Ph.D. degree and not the master's degree and therefore the petitioner was clearly entitled to the benefit of the extension of date in terms of the corrigendum dated 12.09.2011 as before the said cut off date, he had obtained his Ph.D. degree. The stand of the respondents on the other hand has been that the corrigendum issued by the respondent was meant to give benefit to post graduate candidates i.e. the candidates having master's degree which was a qualifying examination to appear for the said ARS exams as in the corrigendum there is a reference to Rule 3 i.e. eligibility for the qualifying examination which deals with the educational qualification and the said corrigendum nowhere refers to Rule 2 of the ARS/NET Examination-2011. As per the respondents, there was no such extension of time period in so far as the Ph.D. degree was concerned and for that there was no change in the cut

off date which remained as 1.8.2011.

12. It is quite apparent that in so far as the age relaxation part is concerned, Rule 2 of the said ARS/NET Examination 2011, deals with the subject and as regards the essential qualification part is concerned, Rule 3 of the same stipulates about the essential qualifications. Ph.D. degree is not an essential qualification to make the person eligible to seek admission to ARS examination. This degree of Ph.D. entitles a person for the age relaxation in terms of Rule 2 of the Notification.

13. A candidate if seeking admission to ARS examination on the strength of master's degree then for him the age limit is 32 years and if such a candidate also possesses Ph.D. degree then the age limit is 35 years. Petitioner is thus under a great misconception that for candidates possessing Ph.D. degree the essential qualification itself would be a Ph.D. degree and therefore, the petitioner would become entitled to the benefit of corrigendum dated 12.09.2011. Even on bare perusal of the Corrigendum, one finds that the same refers to Rule 3 of the Notification, which deals with the essential qualification and not with Rule 2 dealing with the age limit. The justification and reasons which led to the issuance of the corrigendum were explained by the respondents in the additional

affidavit filed by them before the learned Tribunal and in para 5.2 of the impugned order the learned Tribunal has dealt with those reasons. Instead of repeating the same, we reproduce the same as under:-

“5.2 Moreover, during the course of hearing of this case we had enquired from the learned counsel for the respondents as to what was the justification for issuing such a corrigendum. We had directed him to file an additional affidavit explaining the reasons for doing so. Accordingly, he has filed an additional affidavit on 23.08.2011 in which he has stated that a large number of representations had been received from Universities and students stating that the academic calendar of the Universities was such that students completed their postgraduate degree by the end of September only every year. In the representations it was pleaded that if the cut off date was not changed till the end of October every year many students would lose opportunity to appear in the exam. The respondents have also produced copies of the representations received from University of Agricultural Sciences, Bangalore in this regard bearing signatures of several M.Sc students. The matter was, thereafter, discussed in the 68th Board Meeting of the ASRB held on 12.09.2011 in which it was decided to issue the corrigendum. From these facts it is clear that the corrigendum was issued on the request of Vice-Chancellor as well as several students, in view of the academic calendar followed in the Universities, according to which, postgraduate degree programme generally gets completed only by September of the year. Thus, the justification for issuing the corrigendum existed only for acquiring a postgraduate degree. Since no such academic calendar is applicable for those acquiring Ph.D. degree, there was no necessity for extending the cut off date for Ph.D. degree holders also. This makes it absolutely clear that the respondents issued corrigendum only for postgraduate degree holders. The contention of the applicant that the cut off date was extended for Ph.D. holders also, appears to be without basis.

5.3 We also do not feel that extending the cut off date only for students holding the Master's degree was unfair and discriminatory and violative of Article-14 of the Constitution as argued by the applicant's counsel. For the reasons brought out in the preceding paragraphs, it is clear that students of

Master's' degree were following an academic calendar which was not applicable to Ph.D. students, as such intelligible differentia can be made between the two."

14. It is an undisputed fact that if we take into consideration the master degree of the petitioner, then he was clearly ineligible having crossed the age of 32 years and in so far as Ph.D. degree is concerned, the same was obtained by him on 13.10.2011 and therefore, the petitioner is clearly not entitled to the age relaxation of 35 years of age to appear for ARS/NET Exams. The petitioner had earlier also appeared in the said exams at least on two more occasions as is evident from his application form and therefore, it is not expected of the petitioner that he was not knowing the criteria laid down and the rules governing his admission in the said exam and also a corrigendum which subsequently referred to Rule 3 of the notification and not Rule 2.

15. In view of the aforesaid discussion, we find no illegality or perversity in the reasoning given by the learned Tribunal and also in the decision of the respondents rejecting the candidature of the petitioner vide their letter dated 29.06.2012.

16. Accordingly, the impugned order dated 21.03.2014 passed by the learned Tribunal is upheld and the present Writ Petition alongwith the

pending application filed by the petitioner are dismissed.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

May 28, 2015
Pkb/v