

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

Date of decision: 29.11.2016

CWP No.21776 of 2013 (O&M)

Dinesh Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs. Sangita Dhanda, Advocate, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R.K.Malik, Senior Advocate, with
Mr. Bhupinder Malik, Advocate, for respondent No.4.

RAJIV NARAIN RAINA, J.

The petitioner has approached this Court against an order dated 11.09.2013 (Annex P-8) rejecting his candidature for the post of Assistant Superintendent Jail (Male) on the ground that he is over age. The age bar was discovered after the petitioner was selected in the result declared on 22.04.2013. He is a Scheduled Caste candidate and prays for age relaxation up to 40 years against direct recruitment in OSP-SC category as per the advertisement.

Prior to approaching the Court, he had served a legal notice on the respondents on 30.07.2013 praying for issuance of an appointment letter, but the notice was not replied when the petition was filed.

The process of recruitment began by advertisement dated 14.08.2010 for filling up certain posts in Prisons Department, Haryana. In Category No.3 relevant to this case, 29 posts of Assistant Superintendent Jail (Male) were notified for different categories to be filled up by way of direct

recruitment. There was a note in the advertisement stipulating that reservation of the posts will be as per Haryana Government instructions.

The date of birth of the petitioner is 21.07.1974, which made him 36 years and 21 days on the date of receiving application as per the terms of the advertisement, which has to be determined and as the age for first entry against direct recruitment of Class 'C' post. The petitioner is an in service candidate and works as a Warder. He secured 42.25 marks on merit which placed him in qualifying merit position under Category OSP-SC (1) post. 28 candidates of the total 29 have been issued appointment letters and are working. The appointment letters were issued on 19.07.2013 to all except one. The petitioner sets up a case based on twin benefits, one as a Government servant for which the maximum age is 35 years and/or age relaxation admissible to SC category for direct recruitment. The petitioner insists that his upper age limit should be 45 years against direct recruitment against a Class 'C' post, as a member of the Scheduled Caste for whom relaxation is given. That is, $35 + 10 \text{ years} = 45$, while the age limit for open general category candidates is 21 to 25 years.

Earlier, the petitioner filed CWP No.18196 of 2013 praying for implementation of the instructions dated 01.10.1995 (Annex P-5) to bring him relief in the same selection process. On notice having been issued, the respondents meanwhile during pendency of the petition passed the impugned order dated 11.09.2013 rejecting his case on the ground of not fulfilling the age criteria. It is his case that the instructions have been by-passed to cause him injury and defeat his appointment even though he qualifies on merit within his category. Since the impugned order gave rise to fresh cause of action, the petitioner sought permission for filing a fresh writ petition. He

was allowed to withdraw the writ petition with liberty to approach this Court again.

On notice, the State has put in its written statement contesting the case. The State adverts to the binding conditions in the advertisement prescribing the minimum and maximum age limit for eligibility of candidates as 21 to 25 years. In case of Government servants, who have not less than 5 years of service under the Government, the upper age limit was 35 years in age. However, the general terms and conditions for relaxation of age for 48 categories of posts of different Departments was also given which include SC/BC/PHC candidates where upper age limit is relaxable by Haryana Government instructions for Ex-servicemen candidates for whom relaxation is up to continuous Military service added by three years which is permissible limit; the upper age limit in respect of widows, legally separated women, divorce, deserted women and unmarried women will be up to 45 years as per Government instructions. Where applicable the physical disability should be not less than 40% to make a candidate eligible for admission to the Physically Handicapped Category.

The State explains that the nature of the job of Assistant Superintendent Jail requires discharge of tough and demanding duties, which are strenuous in nature, both physically and mentally. The inductees would be responsible for maintaining security, manage Jail Administration, control all activities within Jail premises and would be called upon to handle hardened criminals. Therefore, for recruitment of Assistant Superintendent Jail, the younger age is preferable. The last date for accepting applications was 30.09.2010 and by the cut-off date the petitioner was over-age. He was 36 years, 1 month & 23 days at the time of submission of application form. Hence, he was over age. The State refers to the governing rules of service

i.e. the Punjab Jails Department State Service (Class III - Executive) Rules, 1963, as applicable to Haryana, which prescribe as follows:

“Appendix ‘A’ (b) (ii): in case of Government servants who have not less than 5 years service under Government, upper age limit shall be 35 years.”

So far as the moot instructions dated 01.10.1999 are concerned and which have been heavily relied on by the petitioner, they prescribe that the maximum age limit for recruitment has been raised from 35 to 40 years for employment to public services in the State of Haryana. Though these instructions are extant, but there are specific rules in respect of recruitment of Assistant Superintendent Jails, Haryana which have primacy and statutory limitations as to age of entry into service. These instructions are not applicable in the case of petitioner. It is settled law that administrative and executive instructions cannot override the statutory rules for a particular class of service. The maximum age of entry is clearly defined in the Rules keeping in view the job requirements because the Prisons Department is a uniformed service with special demands and workload.

The advertisement itself speaks of relaxation to Government servants like the petitioner, who have less than 5 years of service, whose age limit shall be extended to a maximum of 35 years as per rules. Government employees already have the benefit of age relaxation of 10 years as against the maximum 25 years demanded from open market candidates. Even the Police Department does not recruit Constables up to the age of 40 years because of the specific job requirements. Different Departments have different job requirements and different age limits are prescribed for entry into service.

It is the case of Mrs. Sangita Dhanda appearing for the petitioner that the petitioner should be given the benefit of age relaxation via

reservation law and then as a Government servant and when both these benefits are given consecutively, then the petitioner falls within the extended age limit, with still many years left to make attempts in case he fails in this petition for any other reason. This double whammy argument has no statutory basis and I would not accept the contention as legal and valid since the court would have to re-write the terms and conditions of the advertisement and the prescriptions in the statutory rules framed under the Proviso to Article 309 of the Constitution governing service of Assistant Superintendent Jails, Haryana.

I find that the query of the Haryana Staff Selection Commission, the recruiting agency, was satisfied by Government clarification dated 10.06.2013 advising and guiding that the petitioner was over-age on the last date of receipt of applications. It is well settled that the terms of the advertisement are binding on the parties and cannot be departed from. In case, they are departed from, it would mean that the entire selection has to be upset to accommodate the claims of others, who may be over-age on the last date of receipt of applications as they would have rights and may not have applied by reason of age bar. To accommodate the claims of candidates, who were over-age on the last date of receiving application forms in reserved categories similar to the petitioner or not, but did not apply because of the age bar, then any interference in this case would amount to hostile and invidious discrimination and culpable infringement of equal opportunities in Articles 14 & 16 of the Constitution of India whereby this Court would be loathe to even imagine doing anything of the sort which may amount to fraudulent preference or giving undue benefit when it is not only not deserved but prohibited by the letter of the law. I would, therefore, in the

result, not interfere in this case which is found wholly devoid of merit and would hence not hesitate to dismiss the petition. It is ordered accordingly.

29.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>