

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

Date of decision: 22.12.2016

CWP No.21275 of 2015 (O&M)

Pulkit Pareek

...Petitioner

Vs.

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kul Bhushan Sharma, Advocate, for the petitioner.

Mrs. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

The sole question which falls for consideration in this case, is; whether the petitioner is overage for recruitment as a Sub Inspector of Police in terms of Rule 12.6(2)(c) of the Punjab Police Rules, 1934, as applicable to Haryana. The Rule requires that “*a candidate must not be, on or before the 1st day of February next preceding the date of submission of application to the Public Service Commission/Subordinate Service Selection Board, less than 21 years and more than 27 years of age for the post of an Inspector or Sub Inspector*”. This rule has come in for interpretation before a Division Bench of this Court in Sachin Vs. State of Haryana & others, 2009 (3) SLR 763, wherein the *vires* of Rule 12.6(2)(c) were challenged claiming that Articles 14 & 16 (1) of the Constitution have been infringed by the rule making authority. The argument did not find favour of the Division Bench to sustain the challenge to the *vires* of Rule 12.6(2)(c), as the Bench was of

the opinion that condition of age of 21 years on a particular specified date can legally be provided. The Bench held as follows:

“2. ‘...Having heard the learned counsel for the petitioner, we find that there is nothing in the arguments, which may sustain the challenge that the above-quoted rule ultra vires of Article 14 and 16 (1) of the Constitution. For selection to the post of Inspector, which is quite superior post in the hierarchy of police, therefore, the condition of age of 21 years on a particular specified date can legally be provided. Hon'ble the Supreme Court in *Rekha Chaturvedi v. University of Rajasthan*, 1993 Supp. (3) SCC 168, specifically held that in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications has to be judged, the only certain date for scrutiny of the qualifications would be the last date for making the applications. Similar view has been expressed by Hon'ble the Supreme Court in another judgment in the case of *Dr. M.V.Nair v. Union of India and others* (1993) 2 SCC 429. Once the Supreme Court has given liberty to the Government to specify date for recruitment with reference to which the qualifications and eligibility is to be determined then it would not be possible to conclude that presumption of 21 years of age on February 1 of the year, when advertisement was issued, suffer from any legal infirmity.

3. We are further of the view that fixing of age of recruitment to service entry is within the legislative competence or the rule making authority, which of course is subject to the provisions of Articles 14 and 16 (1) of the Constitution. There are numerous factors which enter at the time of determining the age of recruitment to service. In the present case, the hierarchy of the police would show that at the first level Constable is recruited then he may by process of promotion become Head Constable. Thereafter if his service record shows satisfactory performance and he pass the prescribed examination then a Head Constable could be promoted as Assistant Sub Inspector and then as Sub Inspector. In the hierarchy four channels of promotion have to

be achieved before a Constable could be appointed as Inspector. In the present case, the age of 21 years as on February 1, 2008 has been fixed by the Rule which cannot be considered to be unfair or arbitrary because an incumbent of the post of Inspector would require a particular level of maturity and experience. The petitioner even otherwise is young and is likely to have numerous other opportunities. Therefore, we find no arbitrariness in the fixation of 21 years age as on February 1, 2008.”

Another facet of the issue arose before the Division Bench also headed by M.M.Kumar, J. [as His Lordship then was] in Amit Chillar Vs. State of Haryana & another, 2008 (4) SCT 329. In Amit Chillar’s case, the Bench was dealing with a case where an advertisement inviting applications for the post of Sub Inspector of Police was issued on 07.09.2007 with closing date for the receipt of applications as 08.10.2007 wherein age criteria was notified as ‘not below 21 years and not over 27 years as on 1st day of February, 2007’ but not 1st day of February, 2008. The only difference is that in the present case, there is no date fixed in the advertisement, but all the same, the Division Bench had found the advertisement in *Amit Chillar* to be in line with Rule 12.6(2) in Para.7 of the judgment while holding as follows:

“7.A perusal of the afore-mentioned Rule shows that a candidate should not be less than 21 years of age as on 1st February next preceding the date of submission of the application. The aforementioned Rule has been clarified in the advertisement by specifically stating that the candidate should not be less than 21 years of age on 01.02.2007. If the interpretation, which is sought by the petitioner, is adopted then it would result into sinister results. A person who is less than 21 years of age would be able to apply, although the appointment may be made in the same year or a month or two after the advertisement. Likewise, a person with age of 30 which is maximum age prescribed by the rules would be able to apply, but at the time of appointment he may be more than

30. Such an interpretation is full of inherent contradiction and would violate intent the Rules. Therefore, proposed construction of Rule as suggested by the learned counsel does not commend itself to us. Therefore, we hold that on a correct interpretation of Rule 12.6(2)(c), minimum age of 21 has to be on the date of 01.02.2007. Even otherwise, the eligibility has to be settled in accordance with the date given in the advertisement. A perusal of the advertisement with regard to the age is expressly mentioned to be 01.02.2007. In that regard reliance may be placed in the judgments of Hon'ble Supreme Court in the cases of Rekha Chaturvedi Vs. University of Rajasthan & others, 1993 (2) SCT 279: 1993 Supp.(3) SCC 168 and Dr. M.V.Nair Vs. Union of India & others, (1993) 2 SCC 429, therefore, the writ petition is liable to be dismissed."

Ms. Goyal carves out her case on the last sentence of the quoted part of Para.7 of this judgment. To enlighten the Court, she refers to the facts of the present case which are rather interesting. When the Government sent a requisition to the Board on 15.07.2015 for filling up vacancies of Sub Inspector, they fixed a date 01.02.2016 while the advertisement is dated 19.07.2015, but the Haryana Staff Selection Commission did not mention this important date in the advertisement when it should have been. It is urged that this was an omission and an act of carelessness on the part of the Commission since it was only the selection authority with no right to alter the terms of the advertisement. The flaw may exist, but the argument is in the province of a hypothesis since the selection process was initiated and concluded in terms of the advertisement. This is now an irreversible and an accomplished fact saved by the observations in *Amit Chillar* case as underlined for emphasis (supra). When the principle is applied to the instant case, then the petitioner was within the age criteria and therefore eligible for

appointment. His case could not be rejected on the ground it was. The date of birth of the petitioner is not a disputed fact.

As a result, the petition succeeds and the impugned decision is quashed. The petitioner is declared within the age limit. Further action be taken accordingly.

22.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*