

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

**CWP No.26166 of 2015 (O&M)
Decided on :21.01.2016**

Vineet Kumar and others

... Petitioners

Versus

State of Punjab and others

... Respondents

(2)

CWP No.26895 of 2015

Sukhjeet Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. H.C. Arora, Advocate for the petitioners
in CWP No.26166 of 2015.

Mr. Sunny Singla, Advocate for the petitioner
in CWP No.26895 of 2015.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S. Sandhawalia , J. (Oral)

CM-819-CWP-2016 in CWP-26166-2015

Application for permission to place on record the
replication is allowed, subject to all just exceptions.

CM stands disposed of.

Main Cases

The present judgment shall dispose of two writ petitions
i.e. CWP Nos. 26166 and 26895 of 2015. The facts are being
taken from CWP No.26166 of 2015.

The petitioners seek the quashing of the letter dated

14.10.2014 (Annexure P-3) issued by the Department of Personnel of the State of Punjab and advertisements Annexures P-7/1 to P-7/6 and Annexures P-8/1 to Annexures P-8/4 dated 20.11.2015. As per the said public notices, recruitment to a large number of Masters and Lecturers Cadre were issued, whereby the upper age limits for the purposes of direct recruitment in the State/Education Services was fixed as 37 years.

The petitioners seek parity and challenge the fixing of the upper age as 37 years and pray that the age should be fixed as 42 years, which is the prescribed age fixed as per the Punjab State Education Class-III (Primary Schools Cadre) Service Rules, 1997 for Elementary Trained Teacher (ETT) candidates. Accordingly, reliance is placed on interim orders passed by this Court, whereby candidates who had applied for the ETT Posts under the advertisements have been permitted to provisionally fill-in their forms. Similar, interim relief is also sought. However, in view of detailed arguments main case is being disposed of.

Counsel for the petitioner, accordingly, has argued that the action of the State in fixing different age limits for posts in the Education Department is an arbitrary action and is without any logic and, therefore, contends that the upper age limit should be 42 years across the board for the posts which are to be filled with the Education Department.

Reference is made to Annexure P-10, whereby the Sarva Shiksha Abhiyan Authority have invited applications for Science Master/Mistress, Math Master/Mistress, English Master/Mistress, ETT Teacher, wherein the age limit between 18 and 42 years as on 01.01.2010 has been fixed. Similarly, advertisement for the Punjab School Education Department (Annexure P-11) also has been referred to, wherein the upper age limit is 42 years. It is, accordingly, submitted that the fixing of upper age limit as 37 is not justify.

It is not disputed that the Punjab State Education Class-III (School Cadre) Service Rules, 1978 would govern the recruitment and conditions of service of persons to be appointed for the said posts. Rule 7 of the said rules reads as under:-

“7. (1) No person shall be recruited to the Service by direct appointment if he is less than seventeen years or more than twenty seven years of age on the date of such appointment or unless he is within such range of minimum and maximum age as may be specifically fixed by Government from time to time:

Provided that the condition of upper age limit may be relaxed up to 45 years in the case of a person already in the service of the Punjab Government, other State Government, or the Government of India:

Provided further that the Government may for reasons to be recorded in writing, relax the upper age limit for a category or class of persons:

Provided further that in the case of candidates belonging to Scheduled Castes and other backward Classes the

upper age limit shall be such as may be fixed by the Government from time to time.”

A perusal of the above rule would go on to show that 17 years is a minimum age, whereas, 27 years of age on the date of such appointment was the upper age limit. However, the State Government could also fix the range of minimum and maximum age limit from time to time.

The qualifications which are necessary as per Appendix-B of Rule-5 read as under:-

3.	(i) Master or Mistress or B.E.O	Degree of recognized University with B.T or B.E.d., B.Sc and S.S.T.C or B.T or B.E.d., Senior Basic Trained with any two of the four subjects in B.Sc. namely, Physics, Chemistry, Botany and Zoology OR B.A. with Mathematics A course and Physics or Physics and Geography with S.S.T.C., B.T, B.Ed. or Senior Basic Trained	75%	25% from trained graduates
	(ii) Mathematics Master or Mistress	B.A. (Math A & B Course) with S.S.T.C., B.T. B.E.d. or Senior Basic Trained OR B.A. with Physics and Mathematics A Course with S.S.T.C., B.T., B.E.d. or Senior Basic Trained		

	(iii) Social Studies Masters of Mistresses	B.A with subject combination as approved by Government from time to time with S.S.T.C. B.T., B.E.d. or Senior Basic Trained * (includes service of D.P.E.d. and B.P.Ed. as Masters and Mistresses with at least three years actual teaching experience)		
	(iv) Agriculture Master	B.Sc. (Agriculture)		
	(v) Commerce Master	B.Com		
	(vi) Physical Training Master or Mistresses (DPE)	Graduate with training in advanced physical training Course Degree or Diploma		

The qualification for ETT candidates as per 1997 Rules is different. The same reads as under:-

4. Junior Basic Trained Teacher/Elementary Trained Teacher	100% Direct Appointment	(i) Matric/10+2 (ii) Training/Elementary Teachers Training two years course of Punjab State or from any other State or Union Territory declared equivalent and recognised by the Punjab Government.
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It is a matter of fact under the Punjab Civil Services (General and Common Conditions of Service) Rules,1994, the

upper age limit is 37 years in the case of technical and non-technical posts on the first day of January of the year immediately preceding the last date fixed for submission of applications by the Commission or the Board, as per Rule-5. The same reads as under:-

“5. Age-- (1) No person shall be recruited to the Service by direct appointment, if he is less than eighteen years or is more than thirty seven years of age in the case of technical and non-technical posts on the first day of January of the year immediately preceding the last date, fixed for submission of applications by the Commission or the Board, as the case may be.

Provided that where different lower and upper age limits have been specifically prescribed for posts in the Service Rules, these limits shall be made applicable for appointment to such posts;

Provided further that the upper age limit may be relaxed upto forty-five years in the case of persons already in the employment of the Punjab Government, other State Government or the Government of India.

Provided further that in the case of candidates belonging to Scheduled Castes and other Backward Classes, the upper age limit shall be such as may be fixed by the Government from time to time.”

The 1994 Rules regulate the recruitment in General and Common Conditions of Service of persons appointed to Group A, B, C Service in connection with the affairs of the State of Punjab. The said rules came into force after the 1978 Rules and as per Rule 20 there is an overriding effect of the said rules which

provide that anything contrary contained in the rules for the time being and in force for regulating the recruitment and conditions of the service shall not have effect. Rule 20 reads as under:-

“20. Over riding effect- The provisions of these rules shall have effect notwithstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State.”

It is not disputed that vide instructions dated 08.10.2012 (Annexure R-4), the upper age limit was enhanced to 38 years. The said instructions were, thereafter, withdrawn on 14.10.2014 (Annexure P-3) which is now subject matter of challenge. Thus, the State Government has taken a categorical decision vide its decision by the Council of Ministers in its meeting held on 23.09.2014. The letter reads as under:-

“Subject:- Regarding withdrawal of letter dated 8.10.2012 regarding raising the upper age limit for direct recruitment of employees of Punjab Government (raised to 38 years instead of 37 years)

Sir/Madam,

I am directed to draw your kind attention towards the Punjab Government Circular Letter No.1/5/2006-5PP1/805, dated 08.10.2012 vide which the upper age limit was raised to 38 years instead of 37 years for direct recruitment in State services, and to intimate that as per decision taken by the Council of Ministers in its meeting held on 23.09.2014 the above letter dated 08.10.2012 is now hereby withdrawn

2. This letter may kindly be brought to the

notice of all concerned.

3. Kindly the send the acknowledgement of this letter.”

It is, thus, apparent that the State Government has taken a conscious decision as such to reduce the upper age limit to 37 years and under the rules governing recruitment and conditions of service. It has taken a decision that the same should be fixed at the age of 37 years. It is settled principle that it is always open to the employer to fix the service conditions of the employees and it is not for the Court to go into this issue as to what would be the correct age until something can be shown that the criteria fixed was such that it was patently incorrect and arbitrary. The policy decision of the Government is, thus, not liable to be interfered at the asking.

Reliance can be placed upon the judgment of the Apex Court, which has been relied upon by the State in ***'Union of India Vs. Pushpa Rani & others' 2009 (1) SCT 267***. The relevant part reads as under:-

“Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the

preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

Keeping in view the above principle in mind and the fact that a joint reading of the 1978 Rules read with 1994 Rules would go on to show that the Government has the power and it has taken a decision as such to keep the upper age limit at 37 years for all posts. The argument which is now sought to be raised that under the 1997 Rules for the ETT candidates under which the interim orders have been passed, the same benefit should be granted is without any basis.

While granting such orders, firstly it is to be taken into account that those orders are interim in nature and are not a matter of precedent. As per the settled principles of law the same shall be subject to the final decision of the writ petition. Secondly, the reason for granting those interim orders by this Court is that in

the 1997 Rules itself it is provided that the upper age limit should be 42 years.

Accordingly, keeping in view the proviso to Rule 5 of the 1994 Rules which itself specifically provides that where the upper age limit has been specifically prescribed for the posts in the service rules, then those limits are to be made applicable for appointments to such posts, the benefit has been granted.

In the present case as noticed rather the upper age limit under the rules was only 27 and in view of the subsequent 1994 rules and the decision of the Government, the advertisement have mentioned that the upper age limit of 37 years.

In such circumstances, no fault can be found in fixing the upper age limit. Reference to Annexure P-10 is of no help to the petitioners, as admittedly the posts which are to be filled up by the Sarva Sikhsha Abhiyan are by a different appointing authority and are contractual in nature and its a joint venture with the Central Government who is funding the said authority. Similarly, the conditions which are prescribed as per Annexure P-11 pertaining to the appointments made with Punjab School Education Board cannot be as such equated for the appointments which are to be made by the State under the rules which have been discussed above.

The petitioners have never approached the

Government, though the advertisements were of 20.11.2015, but have opted to approach the Court when the cut-off-date of 02.12.2015 was approaching. The petitioners in other case in ETT came at the initial stage itself and a direction had been issued by this Court to the State to decide the issue. The State Government had rejected the said request and in pursuance of the said, interim orders were passed as noticed. The qualifications also for the ETT candidates are different and, therefore, they are two different categories and there can be no such comparison that all the posts should have the same upper age limit.

Resultantly, keeping in view the above discussion, this Court is of the opinion that the decision as such fixing the upper age limit of 37 years is not liable to be interfered with. Accordingly, the present writ petitions are dismissed.

JANUARY 21, 2016

Naveen

**(G.S. SANDHAWALIA)
JUDGE**