

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

**LPA No.248 of 2016 (O&M) IN
CWP No.26166 of 2015**

Date of decision: April 04, 2016

Vineet Kumar and others

---Appellants

Versus

State of Punjab and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.H.C. Arora, Advocate
for the appellants.**

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent Act has been filed against the order dated 21.01.2016 of the learned Single Judge, whereby, the writ petition filed by the appellants challenging the circular letter dated 14.10.2014 (Annexure P-3) and public notices (Annexure P-7/1 to P-7/6) and (Annexure P-8/1 to P-8/4) dated 20.11.2015 inviting applications for recruitment to the post of Masters and Lecturers to the extent of prescribing the upper age limit for the purpose of direct recruitment as 37 years, has been dismissed.

The appellants are over 37 years of age as presently their age is between 38 to 42 years. In terms of the aforesaid circular and public notices they are not eligible to apply, hence aggrieved.

Circular dated 14.10.2014, fixing the the upper age limit for direct recruitment in State Services at 37 years had been issued consequent to the decision of the Council of Ministers in its meeting held on

23.09.2014, whereby the earlier letter dated 08.10.2012 fixing the upper age limit at 38 years was withdrawn.

The appellants challenged the said circular and the advertisements inviting applications for the posts of Masters/ Mistresses to the extent of fixing the upper age limit at 37 years, mainly on the ground of discrimination. It was pleaded that as per Punjab State Education Class-III (Primary School Cadre) Service Rules, 1997, which are applicable to Elementary Trained Teachers (ETT) , the upper age limit has been fixed at 42 years. In Annexure P-10 (undated) whereby Sarva Shiksha Abhiyan Authority invited applications for the post of Science Master/Science Mistress, Math Master/Mistress, English Master/Mistress the upper age limit was 42 years as on 01.01.2010. In the advertisement issued by Punjab School Education Board (Annexure P-11), for recruitment to various posts of Lecturers, Masters/Mistresses in rural area Adarsh Schools the upper age has been fixed at 42 years.

Learned Single Judge first took note of the relevant statutory provisions relating to the age of recruitment. As per Rule 7 of the Punjab State Education Class-III (School Cadre) Service Rules, 1978, (for short '1978 Rules'), which governs recruitment and conditions of service of the post of Masters/ Mistresses, for direct appointment the candidate is required to be not less than 17 years or more than 27 years of the age on the date of such appointment. However, the Rule empowers the State Government to fix the maximum and minimum age limit from time to time. As per Rule 15 of the Punjab Civil Service (General and Common Conditions of Service) Rules, 1994 (for short '1994 Rules'), which apply to all posts in Group 'A', Group 'B' and Group 'C', services in the State of

Punjab the upper age limit in the case of direct appointment to technical and non-technical posts is 37 years on the 1st day of January of the year immediately preceding the last date fixed for submission of the applications by the Commission or the Board. Rule 20 of these Rules, gives an overriding effect to these Rules, notwithstanding anything contrary contained in any other Rules for the time being in force for regulating the recruitment and conditions of service for appointment to public services and posts in connection with the affairs of the State.

Ld. Single Judge noted that as per the 1978 Rules which are applicable to the appellants the upper age limit was 27 years and it was only in view of the 1994 Rules and the decision of the Government that the upper age was fixed at 37 in the impugned advertisements. Hence, they could have no grievance on this score.

The State earlier issued instructions dated 8.10.2012 enhancing the upper age limit to 38 years, which were withdrawn on 14.10.2014, thereby restoring the upper age of 37 years. Ld. Single Judge noted that it is a settled principle that it is open to the employer to fix the service conditions of employee and the Court would not interfere with the same unless shown to be patently arbitrary. Accordingly, it was held that the conscious policy decision taken by the State Government to revert to the upper age limit of 37 years was not liable to be interfered with.

The plea of discrimination vis-a -vis the upper age limit for the ETT Teachers to be filled by Sarva Shiksha Abhiyan Authority and for the appointments to be made by the Punjab School Education Board was negated by holding that the appointing authorities are different. Moreover, the posts to be filled by the Sarva Shiksha Abhiyan Authority were

contractual in nature.

Learned counsel for the appellants has mainly stressed that there is no rationale for fixing upper age limit for recruitment to the post of Lecturer Cadre or Master Cadre at 37 years while fixing the upper age limit for recruitment to the post of ETT teachers at 42 years. He has stressed that it takes additional two or three years for acquiring the qualification of graduation and B.Ed., which is the minimum qualification for recruitment to the post of Master/Mistresses than the period required for acquiring a diploma of teachers training.

This argument on the ground of discrimination has also been negated by the learned Single Judge. The posts are different. The applicable Rules are different. The nature of appointment is different. The appointing authority is different.

Thus we find no arbitrariness in the action of the Government in fixing the age limit for recruitment to the post of Master/ Mistresses at 37 years. Moreover, this upper age limit is uniformly applicable for direct recruitment to posts in all Group 'A', Group 'B' and Group 'C', services in the State of Punjab.

Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 04, 2016
Atul