

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

(1)

CWP No.315 of 2016 (O&M)
Date of Decision: April 3rd , 2017

Parminder Kaur and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(2)

CWP No.1177 of 2016 (O&M)

Neelam Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

(3)

CWP No.1281 of 2016 (O&M)

Jyoti Sood

...Petitioner

Versus

State of Punjab and others

...Respondents

(4)

CWP No.1320 of 2016 (O&M)

Saroj Bala and another

...Petitioners

Versus

State of Punjab and others

...Respondents

(5)

CWP No.1359 of 2016 (O&M)

Aman Salwan

...Petitioner

Versus

State of Punjab and others

...Respondents

(6)

CWP No.1382 of 2016 (O&M)

Gurpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(7)

CWP No.1442 of 2016 (O&M)

Nachhattar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(8)

CWP No.1443 of 2016 (O&M)

Baljit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(9)

CWP No.644 of 2016 (O&M)

Kanchan Mala Jindal

...Petitioner

Versus

State of Punjab and others

...Respondents

(10)

CWP No.725 of 2016 (O&M)

Lachhmi Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

(11)

CWP No.860 of 2016 (O&M)

Parminder

...Petitioner

Versus

State of Punjab and others

...Respondents

(12)

CWP No.965 of 2016 (O&M)

Kulwinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(13)

CWP No.207 of 2016 (O&M)

Paramjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(14)

CWP No.1101 of 2016 (O&M)

Shiv Karan

...Petitioner

Versus

State of Punjab and others

...Respondents

(15)

CWP No.1167 of 2016 (O&M)

Krishna Devi and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(16)

CWP No.1302 of 2016 (O&M)

Harpreet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(17)

CWP No.1736 of 2016 (O&M)

Rekha Bawa

...Petitioner

Versus

State of Punjab and others

...Respondents

(18)

CWP No.1621 of 2016 (O&M)

Virender Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(19)

CWP No.1679 of 2016 (O&M)

Gurpreet

...Petitioner

Versus

State of Punjab and others

...Respondents

(20)

CWP No.2199 of 2016 (O&M)

Veena Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

(21)

CWP No.1782 of 2016 (O&M)

Manmit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(22)

CWP No.12451 of 2016 (O&M)

Satish Kumar and another

...Petitioners

Versus

State of Punjab and others

...Respondents

(23)

CWP No.12461 of 2016 (O&M)

Kiran Bala

...Petitioner

Versus

State of Punjab and others

...Respondents

(24)

CWP No.17909 of 2016 (O&M)

Yashdeep Singh Kang

...Petitioner

Versus

State of Punjab and others

...Respondents

(25)

CWP No.18087 of 2016 (O&M)

Navdeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(26)

CWP No.14284 of 2016 (O&M)

Charnjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(27)

CWP No.18207 of 2016 (O&M)

Jyoti Sood

...Petitioner

Versus

State of Punjab and others

...Respondents

(28)

CWP No.520 of 2016 (O&M)

Nandini and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(29)

CWP No.17114 of 2016 (O&M)

Gora Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(30)

CWP No.17408 of 2016 (O&M)

Krishna Devi and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(31)

CWP No.17512 of 2016 (O&M)

Anita and another

...Petitioners

Versus

State of Punjab and others

...Respondents

(32)

CWP No.19919 of 2016 (O&M)

Jaspreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(33)

CWP No.17669 of 2016 (O&M)

Navita Rani and another

...Petitioners

Versus

State of Punjab and others

...Respondents

(34)

CWP No.20671 of 2016 (O&M)

Monika

...Petitioner

Versus

State of Punjab and others

...Respondents

(35)

CWP No.20672 of 2016 (O&M)

Neelam Rani

...Petitioner

Versus

State of Punjab and others

...Respondents

(36)

CWP No.19785 of 2016 (O&M)

Manjit Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(37)

CWP No.19557 of 2016 (O&M)

Sukhdeep Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

(38)

CWP No.1573 of 2016 (O&M)

Meenam Shikha

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunny Singla and Mr. Sunil Garg, Advocate
for the petitioners in CWPs No.315, 1442, 1443, 725, 860,
1167, 1302, 1621, 14284, 17408, 19919, 17669, 20671, 20672,
19785 and 19557 of 2016.

Mr. Anandeshwar Gautam, Advocate
for the petitioners in CWP No.1177 of 2016.

Mr. Aman Salwan, Advocate for
Mr. Vipin Mahajan, Advocate
for the petitioners in CWP No.1359 of 2016.

Ms. Alka Chatrath, Advocate
for the petitioners in CWP No.1382 of 2016.

Mr. Gitish Bhardwaj, Advocate
for the petitioners in CWPs No.644, 965, 1736, 1679, 12451,
12461, 17114 and 17512 of 2016.

Mr. Hakam Singh, Advocate for
Mr. P.S. Jammu, Advocate
for the petitioners in CWP No.1101 of 2016.

Mr. S.K. Arora, Advocate
for the petitioners in CWP No.2199 of 2016.

Mr. Raman Goklaney, Advocate
for the petitioners in CWP No.1782 of 2016.

Mr. Rajesh Gupta, Advocate
for the petitioners in CWP No.17909 of 2016.

Mr. Shailendra Sharma, Advocate
for the petitioners in CWP No.520 of 2016.

Mr. Anil Chawla, Advocate
for the petitioners in CWP No.1573 of 2016.

Mr. T.N. Sarup, AAG Punjab.

JAISHREE THAKUR, J.

1. By this common order, this court proposes to dispose of the 38 connected writ petitions since a common set of facts and law point are involved. For the sake of brevity, facts have been culled out of Civil Writ Petition No. 315 of 2016 Parminder Kaur and others Versus State of Punjab and others.

2. In brief, the respondents issued an advertisement to invite online applications for recruitment of 3522 ETT teachers in Punjab State to be filled in by 2.12.2015. The age limit as prescribed in the advertisement was specified to be between 18 to 37 years as on 1.1.2015. The petitioners who had the necessary qualification, having passed the two years ETT

course, tried to apply online but the computer refused to accept the applications on the ground that the petitioners were overage. The upper age limit of 37 years, as prescribed in the advertisement dated 09.11.2015, was challenged before this Court in Civil Writ Petition No. 24693 of 2015. Since some of the petitioners had also represented to the Department concerned, the writ petition was disposed on 03.12.2015 by giving a direction to the respondents to decide the claim of the petitioners in relation to the upper age limit fixed at 37 years. In compliance of order dated 3.12.2015, the respondent Department passed a speaking order on 15.12.2015, rejecting the claim of the petitioners by relying upon the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules 1994 (hereinafter called '**the 1994 Rules**'). Aggrieved the instant writ petition has been filed.

3. Mr. Sunny Singla, learned counsel appearing on behalf of the petitioners, contends that as per Rule 5 of the Punjab State Education Class-III (Primary Schools Cadre) Service Rules 1997, (for short '**the 1997 Rules**') age of an eligible applicant is fixed between 18 to 42 years. This is a special law which came into force on 11.6.1998 and was enacted to govern the service conditions of Primary School Carders. Being a special law, it will have primacy over the Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 where maximum age limit fixed is 37 years.

4. Per contra, Shri T.N. Sarup, Additional Advocate General, counsel appearing on behalf of the respondent—State submits that the petitioners who are over the maximum age limit of 37 years would not be

eligible to apply for the post of ETT and the age criteria, as mentioned in 1994 rules, would be applicable.

5. The short question that arises for determination in these bunch of writ petitions, is whether the age limit as specified in the 1994 Rules, where the upper age limit has been prescribed at 37 years or would the 1997 Rules apply, where the upper age limit has been prescribed at 42 years.

6. The Punjab State Education Class III (Primary School Cadre) Service Rules 1997 were notified on 11.6.1998 to govern the services of teachers of Primary School Cadre. Rule 5 of 1997 Rules prescribe the age in respect of a person who is to be recruited to the service. Rule 5 reads as under:

“Age- 5(l) No person shall be recruited to the Service by direct appointment if he is less than eighteen years or is more than forty two years on Ist day of January of the year immediately preceding the last date fixed for submission of applications by the board or such authority as may be specified by government in this behalf from time to time unless he is within such range of minimum and maximum age limits as may be specifically fixed by the government from time to time provided that the upper age limit may be relaxed up to 45 years in the case of a person already in the employment of Punjab government, other state government or in the government of India”(emphasis supplied).

7. Rule 9 of 1997 Rules further read as:

“9. Application of the provisions the Punjab Civil Services

(General and Common Conditions of Service) Rules 1994 - in respect of the matter is not provided in these rules, the provisions contained in the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 as in appendix “D” shall be applicable to the members of the service.”

8. Whereas in the 1994 rules the age limit, as prescribed for recruitment of a person in service, has been prescribed in rule 5. Rule 5 prescribes that no person shall be recruited to the service by direct appointment, if he is less than 18 years or is more than 37 years of age in the case of technical and non-technical posts as on the 1st 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, with a proviso that the upper age limit may be relaxed up to 45 years in case a person is already in the employment of the Punjab government, as other State Government or the Government of India with the further proviso 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. Further Rule 5 (2) prescribes the upper age limit in the case of ex-servicemen to be as prescribed in the Punjab recruitment of ex-servicemen Rules 1982, as amended from time to time.

9. The respondents herein have advertised and invited online applications to recruit 3522 ETT teachers in the State of Punjab. In the advertisement, apart from the educational qualifications, the age limit has been prescribed to be between 18 to 37 years by relying upon the age as prescribed in the 1994 Rules. The Punjab Civil Services (General and

Common Condition of Service) Rules 1994 were enacted under Article 309 of the Constitution of India which regulate the recruitment and general common conditions of service of persons appointed to group 'A', group 'B' and group 'C' services in connection with the affairs of Punjab. These rules are applicable across board to group 'A' group 'B' and group 'C' services in the State of Punjab and are general rules. However, to govern the services of those employees working in Primary School Carders, service Rules came into effect in the year 1997. Rule 9 of 1997 Rules in no uncertain terms stipulated that in respect of matters not provided in these rules the provisions contained in the Punjab Civil Service (General and Common Conditions of Service) Rules 1994 shall be applicable to members of the service. Meaning thereby, that the 1997 Rules were self-contained and would be applicable to members of Primary School Cadre, and only in the eventuality an issue which is not covered, the 1994 Rules would be applicable.

10. The law is well-settled in regard to the application of special law vis-a-vis the general law, and special law versus special law. In case there is a conflict between specific provisions and general provisions, special provisions would prevail over the general provisions. Normally, general provisions would come into effect only in such cases when there is no provision in the specific law. In 1961 **J.K. Cotton Spinning and Weaving Mills Company Limited versus State of U.P and others AIR 1961 SC 1170**, a conflict arose between the application of Clause 5 (a) and Clause 23 of the Standing Orders as applicable to the industry and it was held as under:-

“9. There will be complete harmony however if we hold instead that clause 5 (a) will apply in all other cases of proposed dismissal or discharge except where an inquiry is pending within the meaning of clause 23. We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislature instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In *Pretty v. Solly* (1859) 26 Beav. 606 (quoted in Craies on Statute Law at p. 205, 5th Edition) Romilly, M. R. mentioned the rule thus :-

"The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply". The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: *De Winton v. Brecon* (1858) 28 L.J. Ch. 598 *Churchill*

v. Crease (1828) 5 Bing. 177 United States v. Chase (1890) 135 U.S. 255 and Carroll v. Greenwich Ins. Co. (1905) 199 U.S. 401.

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the special provisions of clause 23 are applicable.”

11. Similarly, in in the case of **Suresh Nanda versus CBI (2008) 2 SCC 674**, the passport of the appellant before the Supreme Court had been seized and impounded by exercising powers under Section 102 read with Sections 165 and 104 of the Code of Criminal Procedure. It was argued that Section 10 the Passport Act provides for impounding and revocation of passports and travel documents, therefore, when there is a special Act in place the same should be resorted to instead of General Act providing for the matter. It was held *“in our opinion, even the court cannot impound a passport. Therefore, no doubt, section 10 for criminal procedure code states that the court may, if it thinks fit, impound any document or think produced before it, in our opinion, this provision will only enable the court to impound any document or playing other then a passport. This is because impounding 'passport' is provided for in section 10 (3) of the Passports Act. The passport act is a special law while the criminal procedure code is a general law. It is well-settled that the special law prevails over the general law wide G.P.Singh's principles of Statutory Interpretation (9th edition page 133). This principle is expressed in the maxim “Generalia Specialibus*

Non Derogant”. Hence, impounding of a passport cannot be done by the court under section 104 criminal procedure code though it can compound any other document authoring.”

12. The maxim “*Generalia Specialibus Non Derogant*” has been discussed in the judgment rendered in **Commercial Tax Officer Rajasthan Vs Binani Cements Limited And Another (2014) 8 SCC 319**, wherein it is held that when a general and special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law to the extent dealt with by the special law is impliedly repealed:

“35. Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject-matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes § 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [137 L Ed 2d 917 : 520 US 651 (1997)] , Wardenv. Marrero [41 L Ed 2d 383 : 417 US 653 (1974)]).”

36. The maxim *generalia specialibus non derogant* is dealt

with in Vol. 44(1) of the 4th Edn. of Halsbury's Laws of England at Para 1300 as follows:

“The principle descends clearly from decisions of the House of Lords in Seward v. Vera Cruz [(1884) LR 10 AC 59 : (1881-85) All ER Rep 216 (HL)] and the Privy Council in Barker v. Edger [1898 AC 748 : (1895-99) All ER Rep Ext 1642 (PC)] and has been affirmed and put into effect on many occasions.... If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament's true intention was to establish thereby a rule of universal application, then the special provision must give way to the general.”

13. Apart from the cases cited above, the law has been enunciated in several other cases to the effect that where there are special laws and general laws, the provisions of special law would prevail over the general law. In this background, the special law, that is rules notified for Class III Primary Service Cadre Teachers in 1997, would prevail over the General Conditions of Service Rules of 1994. The framers of the 1997 Rules (being later in point of time) were well aware of the age limit as prescribed in the General

Condition of Service Rules of 1994 and consciously fixed the upper age limit in the 1997 Rules to be 42 years. To substantiate this, Rule 9 is relevant and cannot be overlooked, which specifically mentions that the 1994 Rules will only be applicable in a given situation when there is no provision made out in the 1997 Rules. Once rules are in existence, there will be no occasion to deviate from them by reducing the age of eligible applicants to 37 years. Reduction of age in the advertisement is wholly unwarranted being *dehors* the rules.

14. In view of the above discussion, it is held that the age specified in the advertisement is not sustainable and has to be in accordance with the Punjab State Education Class III (Primary School Cadre) Service Rules 1997 notified on 11th June, 1998, which is 18 to 42 years.

15. The writ petitions are allowed accordingly.

April 3rd, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes