

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

C.W.P.No.24826 of 2017 (O&M)

Date of Decision: November 28, 2017

**Chandigarh Administration through Secretary, Department of Education,
Chandigarh & another**

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

**Present: Mr.Ashish Rawal, Advocate,
for the petitioners.**

AMIT RAWAL, J.

Chandigarh Administration has impugned the order dated 9.1.2017 (Annexure P-1) rendered by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby the Original Application preferred by respondent No.2-Mukesh Bharti, has been allowed and his claim seeking relaxation in age of 5 years, i.e., upto 35 years, as he had been working since 2007 in Kendriya Vidyalaya Sangathan (KVS) under the control of Ministry of Human Resource Development, has been accepted.

Mr.Ashish Rawal, learned counsel representing the petitioners submitted that vide notice published in November, 2014 (Annexure P-2 colly), the petitioners invited online applications to fill up 548 posts of TGT in various subjects, including 3 posts in the subject of Music. Out of these 3

posts, 2 were meant for general category candidates and one was for OBC category candidate. The recruitment notice, *inter-alia*, provided that selection will be made purely on the basis of merit in the written test subject to fulfillment of eligibility conditions. In so far as clause pertaining to relaxation in age is concerned, it was provided that the age limit for all the posts of TGT was 30 years, to be calculated as on 1.1.2014. The notice also provided for relaxation of age upto 40 years in case of a widow and deserted woman and upto 35 years for scheduled caste, government servant and woman etc.

It was further argued that respondent No.2-applicant applied for TGT (Music) under the OBC category vide application dated 25.11.2014. He appeared in the written test and secured 137 marks out of 200 in the merit list of OBC category candidates and was at Sr.No.2 of the list of OBC candidates. Accordingly, respondent No.2-applicant was called for documents verification and during that process, a discrepancy list was uploaded on the official website on 17.6.2015. The Committee had made certain observations and he was given an opportunity to appear before the Committee on 23.6.2015 for submitting documents and further verification. Respondent No.2 appeared before the Committee and submitted OBC certificate dated 18.6.2015 issued by the University of Delhi etc. After verification of the said document and scrutiny of the application form, the Committee found that respondent No.2 was not eligible as he was overage and accordingly, was omitted in the list of eligible candidates. The aforementioned decision of the Committee was impugned by the applicant before the CAT, resulting into allowing of the Original Application. He further contended that the impugned order is liable to be set-aside on the

following grounds:-

- i) The CAT has erroneously allowed the Original Application by giving benefit of relaxation in age on the premise that applicant-respondent No.2 was a government employee;
- ii) The impugned order is contrary to the facts and circumstances of the case, much less settled proposition of law;
- iii) The judgment relied upon is not applicable to the facts and circumstances of the present case;
- iv) Respondent No.2-applicant was rightly declared ineligible being overage as the age prescribed in the recruitment notice was 30 years and relaxation upto 35 years for OBC category candidates;
- v) The candidates, who are/were not working with Chandigarh Administration are/were entitled for relaxation upto 3 years. However, in the present case, the age of respondent No.2 on the date of making application was 33 years and 11 days and as such he was overage on the date of the application owing to the fact that he was not a Government employee and could not take the benefit of relaxation in age upto 35 years being OBC category candidate;
- vi) The CAT overlooked the advise dated 28.9.2015 (Annexure R-1 with the reply) issued by the Secretary Personnel, Chandigarh Administration, whereby in terms of Rule 2.24 of the Punjab Civil Services Rules, 'Government' means Chandigarh Administration and the 'Government

servant' means employee of the Chandigarh Administration, but since respondent No.2 was employed with KVS, would not be a Government employee and, therefore, the impugned order is liable to be set-aside. The relevant portion of the said memo reads thus:-

“A.D.is informed that in terms of rule 2.24 of the Punjab Civil Services Rules, Government means the Punjab Government in the Administrative Department. In Chandigarh, Government means the Chandigarh Administration and Government Servant means the employees of Chandigarh Administration. Thus, as per provision contained in the notified Recruitment Rules, employees of the Chandigarh Administration are entitled for the benefit of age relaxation.”

We have heard the learned counsel for the petitioners, appraised the paper book and are of the view that there is no force and merit in the submissions of the learned counsel for the petitioners and the writ petition is liable to be dismissed for the following reasons:-

- a) The order of the CAT is based upon appreciation of facts and law not for one reason but many;
- b) Uncontroverted fact is that respondent No.2-applicant had applied under the OBC category and his date of birth is 21.12.1980. He was working as PR Teacher in Music in KVS at the time of clearing the test for the post of TGT (Music) in U.T.Chandigarh;
- c) The over-all control in the functioning of KVS is of Ministry of HRD, Government of India and its Minister is the Chairman of the Sangathan, whereas the Deputy Chairman is

the Minister of State and an officer of the Ministry of Human Resources Development, specified by the Central Government for this purpose is the Vice Chairman of the Sangathan, whereas other members are also appointed by the Central Government from amongst senior officers of the Ministry of Finance, Defence, Works & Housing, Health and Department of Personnel and Training etc. Thus, for all intents and purposes, KVS is an instrumentality of Central Government and its employees are also entitled for relaxation of age in the category of Government servant upto 35 years;

d) Reference to Rule 2.24 of the Punjab Civil Service Rules would not come to the rescue of the petitioners, for, the classification, which is intended to be projected before this Court, is no longer *res integra* in view of the judgment rendered by the Division Bench of this Court in **Union Public Service Commission Versus Dr.Jai Dev Wig and others,** (1999) III LLJ 1305 PH, wherein it was held as under:-

“8. It is undoubtedly correct that [Article 14](#) permits reasonable classification. But such classification must be founded on an intelligible differentia and that differentia must have a rational nexus with the object sought to be achieved. [Article 14](#) forbids arbitrariness.

9. Indisputably, while filling up the Faculty positions in the Medical College, the object of the Government and the Union Public Service Commission would be to select the best persons. For achieving this object, it would be reasonable to have a wide field of choice so that eminent people from everywhere in the country are able to compete. It may be, as has been urged by the counsel for

the petitioner that persons serving in the Government hospitals have to initially serve in rural dispensaries or in suburban areas. Yet, when they come to the Medical Colleges they discharge the same functions as are being performed by the members of the Faculty of the PGI. Thus, there is prima facie no basis for treating them differently.

10. It is indisputable that the PGI is an Institute of national importance. In fact, it has been so declared by the Act of Parliament. [Section 2](#) of the Post-Graduate Institute of Medical Education and [Research Act](#), 1966, in terms declares that it "is an Institute of National Importance". It was constituted to "develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to bring together, as far as may be, in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and to attain self-sufficiency in postgraduate medical education to meet the country's needs for specialists and medical teachers." Should persons working in such an Institute be excluded from consideration for appointment to the posts of Professors in Government Medical Colleges? We find no reason to keep them out of consideration by laying down different requirement regarding age etc. The mere fact that some members of the Faculty of the PGI may not have in the initial stages of their career worked in a rural dispensary, does not entitle the Commission to exclude them from consideration or to deny the benefit of relaxation of age which is admissible to those teaching in Government Medical Colleges or working in Government Hospitals. The object being to select the best, the action of the Commission amounts to ignoring a significant section of the available talent in

the country. We find no justification for such a course of action.

11. Still further, even if it is assumed that persons working in autonomous Institutes are in certain ways different from those working in Government Hospitals, the difference has no rational nexus with the object of selecting the best persons. It is undoubtedly correct that the Government does not appoint teachers in the PGI. It may also be correct (though it has not been so contended) that members of the Faculty of the PGI do not have the protection of [Article 311](#) of the Constitution. Yet, it is undeniable that the Government has a deep and all-pervasive control in the functioning of the PGI. The Minister for Health presides over the Institute's meetings. The Secretaries of the Ministries of Health and Finance are on the governing body. The funds are totally provided by the Government. The Institute follows the instructions and rules framed by the Government. The Central Government has the power to frame the rules governing the functioning of the Institute. In this situation, it is apparent that there is really no substantive difference between the persons working in the Institute and those working in Government Medical Colleges. Even if technically, the provisions of [Article 311](#) do not apply to the employees of the Institute, the protection under the rules and the principles of natural justice is almost the same as that applicable to the employees of the Government.

12. We are clearly of the view that the members of the Faculty in the PGI are men of distinction. It would not be in public interest to exclude them from consideration for appointment to the Senior Faculty positions in institutions imparting medical education. The benefits admissible to the employees of the Government should not and cannot be denied to the members of the Faculty

in the PGI.”

There is no force in the submission of Mr.Rawal that respondent No.2-applicant would not be considered as a Government employee and cannot claim relaxation of age and was, thus, overage by 3 years and 11 days. The respondent No.2-applicant was employed with KVS of which over-all control in the functioning is of the Ministry of Human Resource Development, Government of India. Therefore, for all intents and purposes, KVS is taken to be an instrumentality of Central Government and its employees would, therefore, be entitled for relaxation of age in the category of Government servant upto 35 years. Ministry of Human Resources Development is also a Central Government and, therefore, to assign different meaning to the definition of Government, in our view, would be legally unacceptable. Nothing to the contrary has been produced to form a different opinion so as to hold the order of the CAT unsustainable.

As an upshot of our observations, no ground for interference is made out. Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**November 28, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No