

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 714 OF 2008

Shri Dilip V. Sawant,
of major age, Indian National,
resident of House No. 1021,
Tonk, Madkai, Mardol-Goa

... Petitioner.

Versus

(1) State of Goa, through
its Chief Secretary,
having office at
Secretariat, Porvorim,
Bardez-Goa

(2) Goa Public Service
Commission, through
its Secretary, having office
at EDC House, Block 'C',
First Floor, Dada Vaidya Road,
Panaji – Goa

(3) Shri Sanjay Anant
Halornekar, resident of
House No. 536, 'ANANTDEEP',
Morodwaddo, Candolim Beach,
Candolim, Bardez-Goa.

... Respondents.

Mr. Devidas J. Pangam, Advocate for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for
Respondent no. 1.

Mr. Amir Jamadar, Additional Government Advocate for Respondent no. 2.

Mr. Pankaj Vernekar with Mr. Abhishek Sawant, Advocates for Respondent no. 3.

***Coram : N. M. Jamdar,
Prithviraj K. Chavan, JJ.***

Date : 27 March 2018.

ORAL JUDGMENT (Per N. M. Jamdar, J)

The Petitioner, who was working as a Draughtsman, Grade-II in Town And Country Planning Department, Government of Goa, had applied for the post of Deputy Town Planner pursuant to an advertisement. His application was rejected on the ground that he was age barred, being forty five years and five months old on the relevant date. According to the Petitioner, since he is a Government Servant belonging to Other Backward Class, he is entitled to relaxation of age upto to forty eight years. He asserts that age relaxation meant for Government Servants has to be read cumulatively with the age relaxation meant for the Other Backward Class candidates. Whether he is right in his interpretation is the short question to be decided in this petition.

2. Since the year 1990 the Petitioner is working in the Town and Country Planning Department in the Government of Goa. An advertisement was issued by the Goa Public Service Commission on 11 January 2008 for filling up the post of Deputy Town Planner in the Town And Country Planning Department. The educational qualifications were prescribed as Degree in Regional/Town Planning from recognized University, two years experience in a planning of Architectural office, knowledge of Konkani and certain other qualifications, were also prescribed. The last date of submitting the applications was 31 January 2008. The Advertisement referred to Age Relaxation for certain categories. Pursuant to the advertisement the Petitioner applied on 29 January 2008. The Petitioner did not receive any intimation for interview which was scheduled on 25 April 2008. The Petitioner came to know that the Petitioner was not being considered for the post on the ground that he was forty five years and five months old on the relevant date, which was beyond the age of forty five years, the age limit prescribed for the Government Servants. The Petitioner made various representations that since he belongs to Other Backward Class, he is entitled to age relaxation upto eight years. The candidature of the Petitioner was not considered. The selection process continued and the Respondent no. 3 was appointed as Deputy Town Planner. The Petitioner, being aggrieved by the action

of the Department in not granting age relaxation upto eight years and the consequent appointment of Respondent no. 3, filed the present Petition. The Petitioner has prayed that the appointment of Respondent no. 3 be set aside and the Respondent authorities should hold fresh interview and relaxation in age on the relevant date should be granted to the Petitioner.

3. The Reply affidavit has been filed on behalf of the Town And Country Planning Department. Copy of the Government of Goa, Town and Country Planning Department, Group 'A' Gazetted posts, Recruitment Rules, 1988 are placed on record alongwith the affidavit. It is the stand of the Respondents that the age relaxation for two categories "Government Servant" and "Other Backward Classes" is to be read separately and not cumulatively. It is contended that neither the Advertisement nor the Rules contemplate that the relaxation periods are to be read cumulatively. The Petitioner as a Government Servant was entitled age relaxation upto five years, and since the Petitioner was beyond even the extended period, he was not considered.

4. We have heard Mr. D. J. Pangam, the learned Counsel for the Petitioner, Mr. Deep Shirodkar, learned Additional

Government Advocate for Respondent no. 1, Mr. Amir Jamadar, Additional Government Advocate for Respondent no. 2 and Mr. Pankaj Vernekar, learned Counsel for Respondent no. 3.

5. Mr. Pangam, the learned Counsel for the Petitioner contended that since the Petitioner belongs to the Other Backward Class he is entitled to the age relaxation of three years as provided under the Rules. He submitted that this relaxation is pursuant to the reservation policy of the State, it will have to be read cumulatively alongwith age relaxation provided for general candidates, i.e. the Government Servants. He submitted that if this distinction is not made and the age relaxation is not considered cumulatively, it will amount to denial of the benefits conferred on the candidates belonging to Other Backward Classes. It was contended that the Rule 6 of the Recruitment Rules of 1988 provide that the relaxation in age limit provided by the Central Government to other special categories of persons such as Scheduled Caste, Scheduled Tribe, shall be protected. He submitted that the Advertisement is itself very clear that the age relaxation for Government Servants and candidates belonging to Other Backward Class has to be read cumulatively. It was contended that because the Petitioner is a Government Servant he does not lose his status as member of Other Backward Class and,

therefore, he is entitled to the age relaxation of eight years. Mr. Pangam also contended that since the post is reserved for the Other Backward Class, if the Petitioner claims that he falls in the category of Government Servant and claims exemption accordingly, he will not be claiming exemption as member of Other Backward Class, which will affect his claim to the reserved post. Mr. Pangam submitted that hence the reading of the rules of advertisement conjointly, in light of Rule 6 of the Rules of 1988, would indicate that a member of Other Backward Class, such as the Petitioner, who is a Government Servant, will be entitled to age relaxation of eight years. He contended that since the Petitioner has been wrongly deprived, reliefs prayed for be granted in his favour.

6. Mr. Deep Shirodkar, the learned Additional Government Advocate submitted that the framing of Rules is within the domain of the Government being a policy matter. He submitted that the age relaxation period, more particularly in respect of Government Servants as a class, are matters of policy of Government the interference of the Court should be limited to the exception where the policy is ex-facie arbitrary. He relied upon the decision of the Apex Court in the case of *Union of India vs. Shivbachan Rai*¹. He submitted that neither the Rules nor the Advertisement have made

¹ (2001) 9 SCC 356.

any distinction amongst the Government Servants, which form an independent class. He submitted that the Rules and the Advertisement does not contemplate cumulative reading of age relaxation periods and therefore the Petitioner has been rightly given exemption only of five years and not eight years as claimed. Mr. Shirodkar relied upon the decisions in the case of *Sudhansu Kumar Behera vs. Orissa Public Service Commission & Ors.*,² and *Alsa Ram Meghwal vs. Rajasthan Public Service Commission, Ajmer & Anr.*,³.

7. Thus, the limited issue that arises for our consideration is whether under the relevant Rules and the Advertisement, the Petitioner is entitled to exemption as the relaxation of five years or eight years. To be more precise, whether the Petitioner is entitled to contend that the age relaxation for the Other Backward Class of three years has to be added to the age relaxation of five years for the Government Servants.

8. Before we embark on the discussion to find a solution, we must remind ourselves of certain basic positions. First, the Court has to consider the claim within the ambit of Statutory Rules and Circulars. Secondly, the service conditions are generally considered as

2 2014 SCC OnLine Ori 443

3 2016 (4) RLW 3106, (Raj.)

matters of policy and the interference by the Courts is limited, within well defined boundaries.

9. The State of Goa has framed the Goa Town and Country Planning Department Group 'A' Gazetted posts, Recruitment Rules, 1988. These Rules govern the post in question that is, Deputy Town Planner. The Rules of 1988 deal with the method of recruitment, age limit and other qualifications. The Rule 3 lays down method of recruitment, age limit and other qualifications stating that they will be specified in the Schedule appended to the Rules. Rule 3 reads thus:

“3. Method of recruitment, age limit and other qualifications.-- The method of recruitment to the said posts, age limit, qualifications and other matters connected therewith shall be as specified in Columns 5 to 13 of the said Schedule.”

Rule 5 confers power on the Government to relax any of the provisions of the Rules with respect to any class or category of persons in a manner provided. It is reproduced below as under:

“5. Power to relax.-- Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons.”

Rule 6 states that nothing in the Rules shall affect reservation,

relaxation in age limit and other concessions required to be provided to Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance of orders issued by Central Government. Rule 6 reads thus:

“6. Saving:-- Nothing in these rules shall affect reservation, relaxation of age limit and other concessions required to be provided for Scheduled Castes, Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in that regard.

In the Schedule as appended to the Rules, Recruitment criteria as regards Deputy Town Planner, age limit has been specified. Though it is not a part of the Petition, a Notification dated 9 April 2001 is placed before us, by which the age limit of thirty five years has been increased to forty years. The Schedule reads as under:

1	<i>Name of the post</i>	<i>Junior Town Planner/Deputy Town Planner</i>
2	<i>No. of posts</i>	<i>11 (1985) Subject to variation dependent on work-load.</i>
3	<i>Classification</i>	<i>General Central Service Group 'A' Gazetted.</i>
4	<i>Scale of pay</i>	<i>Rs.700-40-900-EB-40-1100-50-1300.</i>
5	<i>Whether Selection or non selection post</i>	<i>Selection</i>

6	<i>Age limit for direct recruits.</i>	<i>Not exceeding 35(40) years. (Relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government).</i> <i>Note: The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (other than those in Andaman and Nicobar Islands and Lakshadweep).</i>
6(a)	<i>Whether benefit of added years of service admissible under rule 30 of the C.C.S. (Pension) Rules, 1972.</i>	<i>No.</i>
7	<i>Educational and other qualifications required for direct recruits.</i>	<i>Essential:</i> <i>i) Degree in Regional/Town Planning from a recognised University/ Institution or equivalent.</i> <i>ii) 2 years' experience in a Planning or architectural office.</i> <i>Note 1: Qualifications are relaxable at the discretion of the U.P.S.C. in case of candidates otherwise well qualified.</i> <i>Note 2: The qualification(s) regarding experience is/are relaxable at the discretion of the U.P.S.C. in the case of candidates belonging to</i>

		<i>Scheduled Castes and Scheduled Tribes if, at any stage of selection, the U.P.S.C. is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.</i> <i>Desirable:</i> <i>i) Associateship of the Institute of Town Planners (India) or equivalent membership of a professional Institution.</i> <i>ii) Experience in the preparation of development plans.</i>
8	<i>Whether age & Educational Qualifications prescribed for the direct recruit will apply in the case of promotees.</i>	<i>Age: No.</i> <i>EQ: Yes.</i>
9	<i>Period of probation, if any</i>	<i>i) 1 year for direct recruits.</i> <i>ii) 2 years for promotee.</i>
10	<i>Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.</i>	<i>25% by promotion failing which by direct recruitment and 75% by direct recruitment.</i>
11	<i>In case of recruitment by</i>	<i>Promotion: Planning Assistant</i>

	<i>promotion/deputation/trans-fer grades from which promotion/deputation/trans-fer is to be made.</i>	<i>with 5 years' regular service in the grade.</i>
12	<i>If a D.P.C. exists, what is its composition.</i>	<i>Group 'A' D.P.C. (for considering promotion).</i> <i>i) Chairman/Member, U.P.S.C. – Chairman.</i> <i>ii) Chief Secretary, Government of Goa, Daman and Diu – Member.</i> <i>iii) Administrative Secretary, Government of Goa, Daman and Diu – Member.</i> <i>iv) Chief Town Planner, Government of Goa, Daman and Diu – Member.</i> <i>2. Group 'A' D.P.C. (for considering confirmation).</i> <i>i) Chief Secretary, Government of Goa, Daman and Diu – Chairman.</i> <i>ii) Administrative Secretary, Government of Goa, Daman and Diu – Member.</i> <i>iii) Chief Town Planner, Government of Goa, Daman and Diu – Member.</i>
13	<i>Circumstances in which Union Public Service Commission is to be consulted in making recruitment.</i>	<i>Selection on each occasion shall be made in consultation with the Union Public Service Commission.</i>

The Schedule also prescribes that the posts will be filled 25% by promotion failing which by direct recruitment and 75% by direct recruitment. Qualifications have been provided for in the Schedule.

10. The Rules alongwith the Schedule, provide for age limit of forty years relaxable upto five years in case of Government Servants. The learned Counsel for the parties have placed before us the Notification dated 27 December 1996. By this Notification the Government of Goa has relaxed the upper age limit prescribed for direct recruitment by three years in respect of the candidates belonging to Other Backward Classes. Thus, the Rules, Schedule and the Notifications dated 27 December 1996 and 9 April 2001 lay down that the age limit to be considered for the appointment to the post of Deputy Town Planner is forty years; with relaxation of five years in case of 'Government Servants' and three years for the 'candidates' belonging to Other Backward Class.

11. Turning now to the Advertisement dated 11 January 2008. Based upon this Advertisement, the Petition was filed contending that the age relaxation denied to the Petitioner is contrary to the terms of the Advertisement. Clause 3 to the advertisement deals with age relaxation. The relevant clause of the Advertisement reads thus:

“3. The age limit shown against each post is relaxable upto five years for Government servants and the candidates belonging to SC/ST, upto 3 years for candidates belonging to OBC, upto 10 years (15 years for SC/ST and 13 years for OBC) in the upper age limit to blind, deaf-mute and orthopaedically handicapped persons and upto 5 years for children of freedom fighters.”

Though the clause may appear complex at first glance, careful reading of this clause shows that it is not so. Separate categories have been consciously made. Periods of age relaxation are provided in respect of different categories. The first is the category of 'Government Servants' for which age relaxation upto five years is provided. Then reference is made to 'Scheduled Castes', 'Scheduled Tribes' and 'Other Backward Classes,' 'blind', 'deaf-mute' and 'orthopaedically handicapped' and 'children of freedom fighters'. These groups have been pre-fixed by using the word 'candidate'. The Advertisement thus refers to 'Candidates' and 'Government Servants'. These two distinct and different words in the same sentence thus carry separate meanings. For 'Candidates' belonging to Scheduled Caste/Scheduled Tribe, the age relaxation is upto five years, for 'Candidates' belonging to Other Backward Class it is three years and for the Handicapped it is ten years, and five years age relaxation is given for children of freedom fighters. The Advertisement thus makes a clear distinction between the Government Servants and non-Government Servants by

referring them by distinct phrases that is, 'Government Servant' and 'Candidate'.

12. We have reproduced the Rules and the Advertisement. From the plain reading of the Rules and the Advertisement, there is no indication whatsoever that the periods of age relaxation for Government Servants and candidates belonging to Other Backward Class has to be read cumulatively. The Advertisement is clear that there cannot be any such conjoint reading. Government Servants and candidates belonging to Other Backward Class have been separately referred. If the contention of the Petitioner is accepted, we would be re-writing the Rule of 1988. The Apex Court in the case of *Union of India vs. Shivbachan Rai* has held that prescribing an age limit to a given post and the extent to which the relaxation has to be given, is a matter of policy. Not only such interpretation will be re-writing the Rule, but such interpretation will give rise to various claims from the other groups such as 'physically handicapped', 'children of freedom fighters', with various permutations and combinations demanding cumulative reading, thus taking age relaxation to the absurd extent of twenty years.

13. In the case of *Sudhansu Kumar Behera* the Division Bench of Orissa High Court dealt with a similar challenge. The

Petitioner therein who had applied to the post Civil Judge in the Orissa Judicial Service was not considered on the ground that he was age-barred. The Petitioner therein was a Scheduled Caste candidate who contended that being Government Servant he should be given the benefit of age relaxation, both, as Government Servant and as a Scheduled Caste candidate. The Division Bench of Orissa High Court repelled the challenge holding that the candidates who are not Government Servants and the Government Servants are two distinctly different streams. The Division Bench held that the In-Service persons constituted separate class and there was no question of any discrimination. In the case of *Alsa Ram Meghwal*, the Division Bench of Rajasthan High Court considered an Intra Court appeal against the order of Single Judge of the Court negating the claim of the Petitioner therein claiming relaxation in age of five years being member of Scheduled Caste over and above the upper age limit prescribed for the In-Service candidate. It was urged before the Division Bench that there cannot be any distinction between In-Service candidate and candidate belonging to other categories and such interpretation would be against the spirit of the Constitution of India which confers certain benefits on the members of the Scheduled Caste. The Division Bench considered the relevant Rules in question and observed that the 'Government Servant' is a separate category and the candidates who are not Government Servants,

belonging to Scheduled Caste, Scheduled Tribe and Other Backward Class form a separate category. Holding thus, the Division Bench dismissed the Intra court appeal reiterating the limited scope the Courts have in the matter of the policies of the State in respect of age relaxation.

14. Mr. Pangam, contended that in none of the above decisions, the Rule 6 of the present Rules was under consideration. According to Mr. Pangam, in view of Rule 6, the benefits which have been conferred on the members of Other Backward Class by the Central Government will apply and cannot be taken away. In this present Petition, there is no challenge to the Rules of 1988 on the ground that they deprive the candidate belonging to Other Backward Class the benefit of the status such candidate enjoys under the reservation policy. After the State Government filed its reply in the year 2015, till date there is no rejoinder. Therefore, we proceed on the basis of Rules and Advertisement.

15. The clause 6 of the Rules of 1988 only provides that the Rule shall not affect any age relaxation provided for Other Backward Class. Learned Counsel have pointed out to us that when the Rules were framed, Goa was not a State and, therefore, reference is made to Central Government which now has to be construed as State

Government. The Rules of the Central Government for some of the posts are part of the record. These Rules admittedly do not apply and they have been annexed by way of illustration. We notice therefrom that in tabular form, a distinction has been made in respect of Government Servant from general category, Government Servant from Other Backward Class, Government Servant belonging to Scheduled Caste, Scheduled Tribe and those who are not in Government service. Thus whenever such cumulative reading has been contemplated, it has been provided for. No such provision is found in the Rules in question. It also needs to be seen from the Advertisement that whenever additional age relaxation is to be granted it has been specifically provided so, as can be seen for the Persons with Disability.

16. It is the contention of the Petitioner that the benefits conferred on the Other Backward Class will be continued to be attached to him and will be protected by virtue of clause 6 even though he becomes a Government Servant. We do not find that clause 6 is meant to confer any additional benefit over and above what has been granted to the members of the Backward Classes. Clause 6 only protects the concession already granted. As we have stated above and as has been made clear in the Advertisement and also by the affidavit of the State Government, the 'Government

Servant' forms a separate class. The three years age relaxation has been provided to the 'candidate' belonging to Other Backward Class. It is this age relaxation that is protected under Rule 6.

17. The argument of the Petitioner proceeds on a fallacious presumption that category 'Government Servant' is akin to General Category. In the context of the present case it is not. In the present case, 'Government Servant' forms a distinct class than a 'Candidate'. Thus the 'Candidate' referred to as belonging to Other Backward Class clearly means a non-Government Servant. We find support in the view expressed by the Division Bench of the Rajasthan High Court and the Orissa High Court. The upper age limit has been provided for Government Servants, treating them as a distinct class and no further division can be made amongst this class.

18. To re-state the Rules of 1988 read with the Advertisement, the three years age relaxation meant for Other Backward Class is clearly meant for those who are not in service. If a member of the Other Backward Class is in Government service, he will fall within the category 'Government Servant' and thus entitled to age relaxation upto five years. There is no question of further dissecting the class 'Government Servant' and inserting 'Other Backward Class Government Servant' to confer age relaxation of

eight years.

19. Mr. Pangam then submitted that if the Petitioner seeks age relaxation as a Government Servant, the Petitioner will not be considered eligible for appointment to the post reserved for Other Backward Class. This apprehension is misplaced. The class 'Government Servant' has been referred to for a limited purpose to grant benefits of age relaxation. The eligibility of the Petitioner to be considered for the post reserved for Other Backward Class is not taken away merely because the Petitioner claims age relaxation as a Government Servant. It is also not clear why the Petitioner harbours this apprehension. It is not the stand of the State Government that the Petitioner will not be considered eligible to apply to the post reserved for Other Backward Class if the Petitioner claims exemption of five years being a Government Servant. It is also not the argument of the learned Additional Government Advocate. Thus the apprehension of the Petitioner is entirely misplaced and academic.

20. As far as challenge to the appointment of Respondent no. 3 is concerned, Mr. Pangam made it clear that it is not the case of the Petitioner that Respondent no. 3 is not qualified, but the argument is that the appointment should be set aside since Petitioner has a better claim.

21. In conclusion, we hold that the Advertisement and Rules do not contemplate that age relaxation of five years for the 'Government Servant' has to be increased to eight years, i.e. five plus three, if the 'Government Servant' belongs to Other Backward Class. The age relaxation of three years provided for the 'Candidate' belonging to Other Backward Class, means one who is not in the Government service.

22. This being the position the Petitioner was entitled for age relaxation upto five years being a Government Servant. The Petitioner had to be forty five years old on the relevant date. Admittedly, the Petitioner was over forty five years on the relevant date. In these circumstances, since the Petitioner was age-barred, he was correctly not considered. There is no error in this decision. Thus, the appointment of Respondent no. 3, which is challenged only on the ground of non-consideration of the Petitioner, cannot be set aside and there is no question of directing fresh selection process.

23. The Writ Petition thus fails and is dismissed. Rule is discharged. No order as to costs.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.