

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.Nos.33404 and 33405 of 2016
W.M.P. Nos.28839 and 28840 of 2016

1.Dr.C.Ponmuthu Rani ... Petitioner in W.P. No.33404/2016

2.Dr.J.Nina Priya ... Petitioner in W.P. No.33405/2016

Vs.

1. The Union of India
Represented by its Secretary
Government of India
Ministry of Health & Family Welfare
Department of AYUSH
AYUSH Bhawan, B-Block
GPO Complex, INA, New Delhi - 110 023
2. The Director General
Central Council for Research in Siddha
Department of AYUSH
Ministry of Health & Family Welfare
Government of India
SCRI Building, Anna Government Hospital Campus
Arumbakkam, Chennai - 600 106
3. The Registrar
Central Administrative Tribunal
Chennai - 104

... Respondents in both
Writ Petitions

Prayer in W.P.No.33404/2016:

Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus by calling for the records relating to the common order passed in O.A. No.310/01440 & 1464/2015 dated 10.08.2016 passed by the third respondent Tribunal and the impugned Advertisement No.8/2015 and the Corrigendum dated nill issued by the Second Respondent herein and quash the same and consequently direct the respondents to issue fresh notification by fixing the age limit based on the year of vacancies during which the vacancies have arisen or created.

Prayer in W.P.No.33405/2016:

Writ Petitions filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records relating to the common order passed in O.A. No.310/01440 & 1464/2015 dated 10.08.2016 passed by the third respondent Tribunal and the amendment made in the recruitment rules for the post of Research Officer (Siddha) which was not notified by deleting the experience clause in the educational and other qualification required for direct recruits (Essential Qualification) and the impugned advertisement No.8/2015 and the corrigendum dated nil issued by the second respondent herein and quash the same and consequently direct the respondents to issue fresh notification by fixing the age limit based on the year of vacancies during which the vacancies have arisen or created.

For Petitioners in both : Mr.R.S.Anandan
writ petitions

For Respondents in both : Mr.G.Rajagopalan,
writ petitions Additional Solicitor General
for R1
Mr.Chandrasekaran, for R2

COMMON ORDER
(Made by S.MANIKUMAR, J.)

Challenge in these writ petitions is to a common order made in O.A. Nos.310/01440 & 1464/2015 dated 10.08.2016 passed by the Central Administrative Tribunal, Chennai/3rd respondent and the impugned Advertisement No.8/2015 and the Corrigendum dated Nil issued by the Director General, Central Council for Research in Siddha Department of AYUSH, Ministry of Health & Family Welfare, Government of India, Chennai/2nd respondent.

2. The petitioners are aggrieved by the impugned notification of the 2nd respondent dated 5.9.2015 and the corrigendum that followed for filling up 26 vacancies of Research Officer (Siddha) in the council headed by the 2nd respondent. It prescribes an age limit of 40 years (relaxable for Government servants and for SC/ST/OBC candidates etc.... as per orders issued by the Central Government), as on the closing date for receipt of application, namely 3.11.2015. The essential qualifications required are stated to be (i) Post Graduate degree in Siddha system of medicine from a CCIM recognized institution; 2) Enrollment in the Central/State Register of Indian Medicine/Siddha as the case may be.

3. Petitioner in W.P.No.33404/2016, joined the services of the 2nd respondent institution as a Senior Research Fellow

(Siddha) on 2.7.2009 on passing a written test and an oral test. After completion of three years of service, since the petitioner in W.P. No.33404/2016, crossed the age of 40 years, her services were not extended. She possessed the degree of B.S.M.S & M.D. (Siddha) Maruthuvam. The petitioner in W.P. No.33405/2016 also possessed the degree of B.S.M.S and M.D. (Siddha) and joined the respondent council on 2.9.2009. Both the applicants have been offered the post of Senior Research Fellow (SRF) in the erstwhile Central Council for Research in Ayurveda and Siddha (CCRAS), which after bifurcation, had been constituted as the Central Council for Research in Siddha (CCRS) in the year 2010. Both the applicants continued to work in the successor council.

4. Petitioners submit that the 2nd respondent earlier had issued an advertisement in the year 2011, notifying three vacancies of Research Officers (Siddha), out of which, one was reserved for Scheduled Caste. Petitioner in W.P. No.33404/2016 belonged to SC community. However, no selection was made in pursuance of the said notification. Thereafter, the 2nd respondent issued another notification on 31.12.2013 for the vacancies of Research Officer (Siddha), out of which, one vacancy was reserved for Scheduled caste. Through a corrigendum issued subsequently in 2014, number of vacancies were reserved for Scheduled Caste. However, this notification was also withdrawn later allegedly due to certain procedural lacunae. The petitioners challenged the notification issued in 2014 in O.A. No.1184/2014 and sought regularization of their services after absorption. Their plea was rejected and the Original Application was dismissed.

5. Petitioners have further submitted that, while the 2011 notification required professional experience of 8 years after obtaining the degree, out of which, three years have to be in Research/Training in a recognized institution/college/university, no such requirement was mentioned in the 2014 notification. The petitioners alleged that as per the Bye Laws of the Council, the Executive Committee alone had the power to amend the conditions of service of staff. No such decision of the Executive Committee or a formal notification to amend the rules was ever placed in the public domain.

6. The petitioners are aggrieved by the withdrawal of two earlier notifications, under which they were eligible and stood a bright chance of being selected. They possessed the requisite qualifications including experience and were within the age limit at the relevant time. However, withdrawal of the two notifications followed by the impugned notification dated 5.9.2015 has put the petitioners at a disadvantage. As a matter of fact, they have been deprived of their right to compete for

the posts inasmuch as they are now ineligible for appointment to the said posts on account of the maximum age prescribed. Even the 2014 notification that excluded the requirement of experience exposed them to compete with fresh graduates although they were still eligible. The respondents should not be allowed to cancel the notifications of recruitment issued already indiscriminately and arbitrarily and in the process render qualified and experienced persons ineligible by issuing fresh notifications at a time of their choice. They accordingly sought for intervention of the Tribunal to set aside the impugned notification fixing the age limit based on the year of the vacancies.

7. Respondents have filed a reply contending that the relief sought by the petitioners as being devoid of merits. According to them, in terms of Rule 46(v) of Rules and Regulations governing CCRS, the Executive Committee has full powers to make such bye laws as they deemed fit for the regulation of business of the council including the appointment of staff and their conditions of service. The recruitment rules for the post of Research officer have been amended with the approval of the Chairman of the Executive Committee by notification dated 21.2.2014. The council has followed the guidelines issued by the DOP & T in determining the age limit for direct recruits and accordingly, prescribed that the age limit shall be reckoned as on the closing date for receipt of applications. There is no provision in the rules for fixing the age limit as in the year of vacancies. The recruitment rules earlier contained a provision for 8 years of professional experience for the post of Research Officer. However, this recruitment was deleted through an amendment to the rules, as it was felt that fresh ideas and young blood needed to be infused in the system and the condition of experience should not impose the selection of the most deserving doctors. Even in the pre-amended rules, there was a provision for the experience requirement being relaxable at the discretion of the Selection Committee. Post-amendment, although experience is not an essential requirement, it would certainly confer an advantage on a candidate, where other things being equal. The previous notifications for filling up the post of Research Officer had to be cancelled for various administrative reasons, which were beyond the control of the respondents. It is pointed out that the applicants could have allowed the 2014 recruitment to proceed and conclude, in which case they would have stood a good chance of selection as they were eligible in terms of age and education qualifications and had the added advantage of experience. However, for reasons best known to them, they chose to challenge it and obtained a stay from the Tribunal. In the process, they succeeded in holding up the recruitment, which turned out to be against their own interests. Finally, the OA was dismissed, as the applicants failed to make

out a valid case. Thus the respondents are not responsible for the plight of the applicants.

8. After hearing the arguments of both sides in support of their contention, the Central Administrative Tribunal, vide order, dated 10.08.2016, declined to grant the relief sought for by the petitioners and thus dismissed the Original Applications. The Central Administrative Tribunal, in paragraphs 21 to 23 held thus:

"21. Prescription of age limit for recruitment is entirely the prerogative of the respondents' council. They would be guided in this regard by the relevant provisions in the bye-laws, rules, executive decisions and such orders/institutions of the DOP & T which the council has decided to adopt or are binding on them as an autonomous organisation coming under the Ministry of Ayush. If any age relaxation is considered desirable in the case of candidates who have experience, it is within the power of the institution to make appropriate provision for the same. Similarly, it is for the respondent council to consider whether experience should be prescribed as a desirable qualification or to be merely granted some weight at the time of overall assessment of the candidates during personality test/interview. All that could be said in the light of the citations produced by the learned counsel for the applicant is that if the respondent institution chose to make any deviation or relaxation of the relevant rules in deserving cases based on reasonable classification bearing nexus with the purpose/objectives/goals that they seek to achieve, it would not be illegal or ultravires of their powers. However, no direction could be given to the respondents by the Tribunal to grant age relaxation or include the experience clause as necessary or desirable qualification by substituting its own view to that of the competent authority.

22. We have carefully gone through the citations attached to the written arguments submitted on behalf of the applicants. None of them relate to a situation where persons who temporarily held a post on a one time contract for a limited period and have subsequently ceased to be employed in the organisation in any capacity have been granted age relaxation or other special privilege in the matter of direct recruitment. Nor is there any law laid down in any of these cases that the

direct recruitment vacancies advertised shall be split into vacancies that arose prior to amendment to the rules and those that had arisen since and a differential criteria adopted for different persons under the same recruitment. As such, we are unable to see any merit in the arguments of the learned counsel for the applicant in attempting to place reliance on those citations.

23. In view of the above, the OAs fail and are, therefore, dismissed. The interim order dated 28.10.2015 granting stay of further action consequent to Advt. No.8/2015 dated 5.9.2015 is vacated. M.A. No.310/00279/2016 & M.A. No.310/00280/2016 in O.A./310/01440/2015 and M.A. No.310/00277/2016 & M.A. No.310/00278/2016 in O.A./310/01464/2015 accordingly stand disposed of. There shall be no order as to costs."

9. Being aggrieved by the common order of dismissal dated 10.08.2016, petitioners have filed the instant writ petitions. Since, both the writ petitions are filed against the common order and they are similar in nature, grounds in W.P. No.33404/2016 are dealt with. The respondents ought to have seen that, as per the recruitment rules, the age limit for direct recruitment, shall be reckoned as on 1st January of the year in which, a particular recruitment is done. Admittedly the notification was issued on 5.9.2015. Thereby, the year of recruitment is 2015. Therefore, the age limit for this direct recruitment shall be reckoned as on 01.01.2015. If it is taken, the petitioner would be within the age limit. Therefore, the notification in Advertisement No.8/2015 itself is not in conformity with the rules. In fact the Central Council of Research in Siddha (CCRS) has been bifurcated from Central Council of Research in Ayurveda and Siddha (CCRAS) and functioning independently with effect from 1st September 2011, consequent upon the decision of the Cabinet in its meeting dated 4th March, 2010 and the organization has been registered under the Tamil Nadu Societies Registration Act, 1975 on 27.07.2010. There are no separate recruitment rules for the CCRS and the recruitment rules for the CCRAS are followed. Therefore, as per Rule 6 (3.8) the age limit for direct recruitment has to be reckoned as on 1st January of the year, in which the recruitment is done. Accordingly, the age should be reckoned from 1.1.2015 and the petitioner is eligible for the recruitment to the post of Research officer by considering the age relaxation eligible for the Schedule caste community. Thereby the notification itself is issued not in conformity with the rules in force.

10. The respondents ought to have seen that the vacancies have arisen well before 9.6.2015. Because of the administrative

delay the same has been notified only on 5.9.2015. Consequently, the applicants though eligible when the vacancies arose now made ineligible on the date of notification. Therefore, her right to the post has been ruled out. In fact the second respondent herein has issued notification for filing of the vacancies twice in the year 2011 and in the year 2014, but due to procedural lacuna, the same has not been proceeded with and cancelled or withdrawn. Thereby the petitioner has lost his chance of selection for the post. For the administrative delay the petitioner should not be penalised to be ineligible for the post.

11. The respondents ought to have seen that the age limit should be prescribed, based on the date on which vacancies arose and the same cannot be fixed based on the closing date of notification to the whims and fancies of the respondents. Further, if any delay is caused, the prospective candidates should be given age relaxation by notifying the same in the notification itself. Any failure would clearly amounts to violation of the protection guaranteed under the Constitution of India. For the administrative delay the petitioner should not be penalized. Consequently, the impugned notification and the consequent corrigendum are liable to be set aside.

12. The respondents ought to have seen that the respondents in the reply filed by them to the original applications have contended that the Council followed the DoPT's guidelines determining the age limit for direct recruits. But when the recruitment rules specifically state that the age limit for direct recruitment shall be reckoned as on 1st January of the year in which the particular recruitment is done, the respondents cannot follow the DoPT's Guidelines. The respondents cannot overrule or bypass the recruitment rules and follow the DoPTs guidelines. Only in the absence any provision in the rules, the DOP can be followed. Though the same was pointed out in the arguments before the Tribunal, the same was not properly considered by the Tribunal. Further the petitioner now came to know that the second respondent herein in Advertisement Nos.1, 2 & 3 of 2015 issued for direct recruitment to the post of Research Officers in various field followed the recruitment rules and recokned the age limit as on 1st January 2015. Thereby the second respondent had acted on his own without following recruitment rules to his whim and fancies. Consequently the entire notification itself is liable to be set aside or cancelled.

13. The second respondent fixed the date for written examination on 25.9.2016 in a hurried manner and sent mail to some of the candidates and notified in the official website only on 18.09.2016. The respondents have not even prescribed the syllabus for the written examination when six branches of Post

graduate degree are available and eligible for the post of Research Officer (Siddha). Therefore, the same will be a disadvantage to the candidates, if the questions are framed for the written examinations from other branch of study and advantages to the candidates, if the questions are framed from their branch. Therefore, without prescribing syllabus for the written examination the examination cannot be conducted.

14. Respondents have filed a common counter affidavit, reiterating the averments made in the reply statement.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. On 29.09.2016, we passed the following order:

"On 23.09.2016, we permitted the petitioners to take up the examination scheduled on 25.09.2016 and further directed that inter se merit of the candidates have to be borne in mind in the process of selection. While doing so, we also made it clear that the liberty granted to the petitioners to take up the examination should not be construed as a right to the post. We also ordered that results of the selection would be subject to the outcome of the writ petitions.

2. Examination has been conducted. Mr.G.Rajagopalan, learned Additional Solicitor General submitted that the total number of posts notified under various communities is 26. Insofar as the petitioner in W.P. No.33404 of 2016, Dr.Ponmuthu Rani, is concerned, it is the submission of the learned Additional Solicitor General that in the written examination, the petitioner has secured only 10 marks out of 70. In the overall ranking, she was in 196th position among 199 candidates, who attended the examination. She was not called for interview and not selected. Insofar as the petitioner in W.P. No.33405 of 2016, Dr.Nina Priya (OBC) is concerned, he submitted that she secured 32.5 marks out of 70 in the written examination and stood in 35th position out of 199 candidates, who appeared for the examination. She was also permitted to take up the interview and secured 20 marks out of 30. The petitioner has secured 52.5 marks. The last candidate selected under OBC category has secured 56.5 marks.

3. According to the learned counsel for the petitioners, six seats have been notified under OBC category. Though Mr.R.S.Anandan, learned counsel for the petitioners submitted that there are

irregularities in the examination and selection, this court is not inclined to advert to the oral submissions.

4. The fact remains that writ petitioner in W.P. No.33404/2016 has secured 196th position, out of 199 and therefore, the respondents have not chosen to call her for interview. The petitioner in W.P. No.33045/2016, is concerned, she has not been selected.

5. In the above said circumstances, there is absolutely, no impediment to the respondents to publish the results and proceed in accordance with law, subject to the outcome of the writ petition.

6. Post the writ petitions for final disposal on 01.11.2016."

17. Before advertizing to the merits of the case, it is worthwhile to extract both Advertisement No.8/2015 and Corrigendum to the said Advertisement, impugned in both the writ petitions, as follows:

Advertisement No.8/2015:

CENTRAL COUNCIL FOR RESEARCH IN SIDDHA
Ministry of AYUSH, Government of India

Advertisement No.: 8/2015

The CCRS is the Apex body in India for formulation, co-ordination, development and promotion of research in Siddha. The Council carries out its activities and function through its network of 5 Institutes/Units located in Chennai, Puducherry, Thiruvananthapuram, Palayamkottai and Mettur dam. Applications are invited for the following posts to be filled by Direct Recruitment.

1. Name of post : Research Officer (Siddha)
No. of vacancies : 26 vacancies* #
[14-UR, 4-SC, 2-ST, 6-OBC]
Age : Not exceeding 40 years
(as on 3.11.2015) (Relaxable for Government servants and for SC/ST/OBC candidates etc... as per orders issued by the Central Government)
Scale of Pay : Pay band (PB-3) (Rs.15600-39100+Grade Pay of Rs.5400/-)+NPA

Qualifications

: Essential:-

1. Postgraduate Degree in Siddha system of medicine from a CCIM recognized Institution.
2. Enrolment in the Central/ State Register of Indian Medicine/ Siddha as the case may be.

2. Name of post

: Research Officer (Siddha Pharmacy)

No. of vacancies

: 1 vacancy* [UR]

Age

: Not exceeding 40 years

(as on 3.11.2015)

(Relaxable for Government servants and for SC/ST/OBC candidates etc... as per orders issued by the Central Government)

Scale of Pay

: Pay band (PB-3) (Rs.15600-39100+Grade Pay of Rs.5400/-)+NPA

Qualifications

: Essential:-

1. Postgraduate Degree in Siddha Gunapadam from a CCIM recognized Institution.
2. Enrolment in the Central/ State Register of Indian Medicine/ Siddha as the case may be.

*Number of vacancies may vary according to the need of council.

Out of 26 vacancies one is reserved for Physically Handicapped candidate.

Selected candidates can be posted anywhere in India.

Corrigendum to Advertisement No.8/2015:

In the General Information and Conditions, uploaded in the Council's website relating to the Advertisement No.8/2015 for filling up of the posts of Research Officer (Siddha) and Research Officer (Siddha Pharmacy), the following modifications are made:

1. Points No. 3 and 4 under "General information" may be DELETED

2. Point No. 5 under the General information may be read as under-

"The upper age limit, qualification will be

reckoned as on the closing date for receipt of the application (03.11.2015)

3. Point No. 4 under "Documents to be enclosed along with each Application" may be DELETED

4. Bullet point No. 4 under "Invalid Applications" may be read as under -

"Candidates not having the required qualifications as on the closing date for the receipt of applications"

5. Bullet Point No. 6 under "Invalid Applications" may be read as under -

"Applications without documents (self-attested photocopies) in proof of Date of Birth, Educational qualifications, Category, etc."

18. General instructions, reservation and age relaxation set out in Advertisement No.8/2015, are given below:

"GENERAL INFORMATION AND CONDITIONS:

Applicants are advised to read all instructions carefully before filling up their applications.

1. The applicant must be a citizen of India.

2. All applicants must fulfill the essential requirements of the post and other conditions stipulated in the advertisement. Before applying, they are advised to satisfy themselves that they possess essential criteria laid down for the post. No enquiry asking for advice as to eligibility will be entertained.

3. Mere fulfilling the minimum prescribed qualifications and experience do not entitle candidates to be called for written test/interview. The Competent Authority reserves the right to shortlist candidates on the basis of higher qualifications/year of experience in the subject/other criteria. The decision of the Director General, CCRS will be final in this regard.

4. The period of experience rendered by a candidate on part time basis, daily wages, visiting/guest faculty will not be counted while calculating the valid experience.

5. The upper age limit, qualification and/or experience will be reckoned as on the closing date for receipt of the application (03.11.2015)

6. The candidates serving in Central/State Govt./Autonomous/Statutory bodies/Universities should apply only through proper channel and their duly forwarded application should reach the Central Council for Research in Siddha on or before the closing date.

They should submit 'NO OBJECTION' certificate from their employer at the time of interview.

7. The No. of vacancies advertised is provisional and are liable to vary. This is subject to change without any notice.

8. Candidates applying for more than one post must send separate application for each post along with application fee. One envelope should contain one Application Form only.

9. DG, CCRS reserves the right to make any amendment, cancellation and changes in this advertisement in whole or in part without assigning any reason thereof.

10. Any corrigendum/ order regarding this advertisement will be issued on the website only. Candidates are advised to remain in touch with the website for this purpose. No separate corrigendum etc. will be published in Employment News or in any other Newspaper.

11. Applicants will be fully responsible for accuracy of the information they furnish. Any information furnished by the candidate, if found wrong at any stage, will result in his/her disqualification and/or dismissal from the service at any stage and no correspondence will be entertained at all.

12. The call letter for the written test/interview, in the case of shortlisted candidates, shall be sent by speed post. However, the Council shall not be responsible for any postal delay/lapse, whatsoever. The date of written test/interview will be displayed in the Council's website.

13. The candidate shall have to appear for written test/interview, if called for, at his/her own cost.

15. The appointment carries with it the liability to serve anywhere in India.

16. No Correspondence or personal enquiries shall be entertained.

17. Canvassing in any form will be treated as a disqualification for the post.

18. Any dispute in regard to this recruitment will be subject to Courts/Tribunals having jurisdiction in Chennai.

RESERVATION AND AGE RELAXATION:

1. Date of birth will be reckoned as on 03.11.2015 (Proof for DOB will be based on SSC/HSc/Matriculation board certificate)

2. Candidates who wish to be considered against vacancies of reserved category or seeking age

relaxation must submit the required certificate from the Competent Authority.

3. Applications not supported by self-attested copies of the appropriate certificate for the reservation category claimed, will be summarily rejected. In case the Council observes any false information or discrepancy in their certificate, their candidature will be rejected summarily. No correspondence will be entertained at all.

4. Certificate of Other Backward Class (OBC) for the purpose of Age Relaxation and Reservation will mean "Persons of OBC category not belonging to the Creamy Layer" as defined in the Circulars issued by Department of Personnel & Training from time to time. The candidates claiming OBC status may note that certificate of creamy layer status should have been obtained within three years before the closing date.

5. SC/ST/OBC/PH candidates are required to produce original community/PH certificate issued by the specified authority, at the time of interview. It is mandatory."

19. Central Council for Research in Siddha (CCRS) has been registered under the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975). Powers of the Executive Committee provided in the Memorandum of Association of CCRS, are extracted hereunder:

"45. The Executive Committee shall have general control of the affairs of the Institute and shall have authority to do, exercise and perform all the powers, acts and deeds for the planning, establishment and running of the Central Council, and its branches whether within or outside India consistent with the aims and objects of the Central Council, as set forth in the Memorandum of Association.

46. The Executive Committee shall have full powers to make such bye laws as they shall think essential for the regulation of the business of the Institute and in particular with reference to

- (i) The keeping of accounts;
- (ii) The preparation and sanction of budget estimates;
- (iii) The sanctioning of expenditure;
- (iv) Entering into contracts;
- (v) The appointment of staff and determination of their Conditions of service;
- (vi) Recommendation for creation and abolition of posts;
- (vii) Any other purpose that may be necessary.

47.The Executive Committee may amalgamate, coordinate, take over or accept the management and administration of any endowment or trust or any subscription or donations, gifts, provided that the same is unaccompanied by any condition inconsistent or in conflict with the objects for which the Central Council is established.

48.The Executive Committee may by resolution delegate such administrative and financial powers as it may think proper to any Committee, the Chairperson, the Director General and such officers of the Central Council as may be considered necessary.

49.The Executive Committee shall have the power to frame, amend, or repeal bye laws for the administration and management of the affairs of the Central Council.

50.The Executive Committee shall have full power to institute, conduct, defend, compound, compromise or abandon any legal proceedings by or against the Institute or otherwise relating to the affairs of the Central Council.

51.The Executive Committee may appoint Committees or Sub-Committees for such purposes and with such powers as may be specified by it.

52.Nothing in these rules shall prevent the Chairperson from exercising all or any of the powers of the Executive Committee for the furtherance of the objects of the Central Council and the action taken by the Chairperson on such occasions shall be reported to the Executive Committee subsequently for ratification."

20. As per Rule 46(v) of Rules and Regulations, governing Central Council for Research in Siddha (CCRS), the Executive Committee shall have the full powers to make such bye-laws, as they think essential for the regulation of the business of the institute and in particular, with reference to the appointment of staff and determination of their conditions of service. Rule 49 makes it clear that the Executive Committee shall have the power to frame, amend, or repeal bye laws for the administration and management of the affairs of the Central Council. Recruitment rules for the post of Research Officer had been amended with the approval of the Chairman of the Executive Committee, by notification, dated 21.02.2014.

21. Initially, except the Advertisement No.8/2015 and Corrigendum to the said Advertisement, there is no challenge to the recruitment rules. Later, in W.M.P.No.29652 of 2016, the petitioner has sought for a modification of the prayer in W.P.No.33405 of 2016, challenging the amendment to the

recruitment rules. As there is no objection for such modification, the petition was ordered on 01.11.2016.

22. The question of extending age relaxation, is with reference to the duties and responsibilities of the post, for which, recruitment is made. Age relaxation cannot be claimed as a matter of right, unless and until the applicant satisfies the eligibility criteria, in the recruitment rules framed for the post. The condition imposed for fixation of age limit, upto 40 years, only reflects the intention of the Department that if a Government servant had rendered service for three years, in the same line or allied cadre, then the knowledge, experience gained by such government servant, in the same or allied field can be utilised, by the department, in which recruitment is made.

23. Had the petitioners rendered service in the same Department for nearly three years and crossed the age of 40 years, they would not be eligible to seek for relaxation of age. Merely because the services rendered by them in same department, is not considered for the purpose of granting age relaxation, it is not open to him to contend that that the condition imposed is ultravires of the Constitution of India.

24. In Food Corporation of India v. Bhanu Lodh reported in 2005 (3) SCC 618, the Hon'ble Supreme Court held as follows:

"Even assuming that there is a power of relaxation under the Regulations, we think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an 'open Sesame' for all and sundry."

25. In Union of India v. Alok Kumar reported in 2010 (4) SCALE 92, the Hon'ble Supreme Court held as follows:

"The Court would normally adopt an interpretation which is in line with the purpose of such regulations. The rule of contextual interpretation can be purposefully applied to the language..."

26. Contention of the petitioners that they were eligible for the post of Research Officer (Siddha), till 09.06.2015, but due to the administrative delay, vacancies were notified only on 05.09.2015, fixing the upper age limit, as on 03.11.2015, cannot be accepted, as it is the prerogative of the employer to fix a cut off date for considering the eligibility, in the matter of educational qualifications and age and merely because some would

be affected, fixing a cut-off date, cannot be held to be arbitrary. In this context, we deem it fit to consider the decision of the Hon'ble Apex Court.

(i) In Dr.Amit Lal Bhat v. State of Rajasthan reported in 1997 (6) SCC 614, the Hon'ble Supreme Court, held as follows:

"4. Is such a cut off date fixed by the Rules applicable to the relevant service, arbitrary? It has been urged before us by the petitioners and/or appellants that the cut off date of 1st of January following the last date fixed for receipt of applications is arbitrary. The cut off date should only be fixed with reference to the last date of making the application in question. It is submitted before us that the date of 1st of January has no nexus with the application in question and, therefore, must be struck down.

5. This contention, in our view, is not sustainable. In the first place the fixing of a cut off date for determining the maximum or minimum of minimum age prescribed for a post of not, per se, arbitrary. Basically, the fixing of a cut off date for determining the maximum or minimum age required for a post, is in the discretion of the Rule-making Authority or the employer as the case may be. One must accept that such a cut off date cannot be fixed with an mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut off date is fixed there will be some persons who fall on the right side of the cut off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut off date, per se, arbitrary unless the cut off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this court in Union of India and another etc. V. M/s. Parameswaran Match Works etc. (AIR 1974 S.C. 2349) and has been reiterated in subsequent cases. In the cases of A.P.Public Service Commission, Hyderabad and another v. Sharat Chandra and Ors. (1990 2 SCC 669) the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut off date was challenged. This Court considered the various steps required in the process of selection and said, "when such are the different

steps in the process of selection the minimum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may taken an uncertain time, it is desirable that such a cut off date should be with reference to a fixed date. Therefore, fixing an independent cut off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of Union of India and Anr. v. Sudhir Kumar Jaiswal, (1994) 4 SCC 212) the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut off date had become arbitrary. Negating this view of the Tribunal and allowing the appeal. This Court Cited with approval the decision of this Court in Parmeshwar Match Works case (supra) and said that fixing of the cut off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the court would be reluctant to strike down such a cut off date.

7. In the present case, the cut off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All service Rules are uniform on this point. Looking

to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time gap between the advertisement and the cut off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut off date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut off date. But there is no basis for urging that this is the only reasonable cut off date. Even such a date is liable to question in given circumstances. In the first place, making a cut off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependent on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fail on the wrong side of such a cut off date may well contend that the cut off date is unfair, since the advertisement could have been issued earlier: Or in the alternative that the cut off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is by this court has said in the case of Parameshwaran Match Works (supra) and later cases that the cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut off date

can be the last date for receiving applications, appears to be without any basis. In our view the cut off date which is fixed in the present case with reference to the beginning of the Calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

.....

In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to be large number of candidates who might be similarly situated, but who may not apply, thinking that they are age barred. We fail to see how the power of relaxation can be exercised in the manner contended."

(ii) In Bhupinderpal Singh v. State of Punjab reported in 2000 (5) SCC 262, at Paragraphs 12 and 13, the Hon'ble Supreme Court held as follows:

"12. All the appeals and the writ petitions have been taken up for hearing analogously. The only question arising for decision in this case is by reference to which date the eligibility of the several candidates is to be judged and the consequences flowing from failure to satisfy the eligibility test in the facts and circumstances of the case.

Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman,

Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpna JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

13. In view of several decisions of this Court relied on by the High Court and referred to herein above, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellants/petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose

practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut off date for testing the eligibility qualifications on the principles deducible from decided cases of this Court and stated herein above which have now to be treated as the settled service jurisprudence."

(iii) In *Jasbir Rani v. State of Punjab* reported in 2002 (1) SCC 124, at Paragraph 11, the Hon'ble Supreme Court held as follows:

"11. No doubt, the Rule does not provide a cut-off date by which an applicant is to satisfy the prescribed eligibility qualification pertaining to age. In the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement. This is necessary not merely to enable the appointing authority to sort out the applications of the eligible candidates from those candidates who do not fulfil the prescribed qualification, but also to avoid criticism of a favoritism and nepotism against the authority. In the first advertisement issued in the case on 18th September, 1997 the cut-off date was fixed as 1st September, 1997 i.e. about two weeks prior to the advertisement. In the second advertisement which was issued one year after the first one ordinarily the appointing authority could have similarly fixed a date a few days prior to the date of issue of the advertisement; but as noted earlier, in the first advertisement the applications were invited from male candidates only; perhaps realising that

there was no reasonable basis for confining the recruitment to male candidates only it was decided to throw open the recruitment to eligible female candidates also and in pursuance of the said decision the second advertisement was issued on 19th September, 1998. In such circumstances the appointing authority while issuing the second advertisement fixed the same cut-off date as in the first. If this had not been done then there would have been a difference in date by which the eligibility qualification pertaining to age was to be complied by male and female candidates. Such action would have exposed the authorities to criticism of discrimination. In the circumstances no exception can be taken to the action of the authority fixing the same cut-off date in both the advertisements."

27. The outer limit or the last date for submission of the application was 03.11.2015. Eligibility as to age is fixed with reference to the date fixed in the notification and not on the date of notification or earlier. Therefore, the petitioners, who seek for selection to the post notified should satisfy that they were well within the age, 40 years or relaxable period of five years. Admittedly, as on 03.11.2015, the date fixed for determining the eligibility, as to the age applicable to the post i.e. 40 years, with five years relaxation, the petitioners had crossed 40 years of age.

28. In the light of the decisions and discussion, we hardly see any irrationality, arbitrariness or unreasonableness in the recruitment rules. Going through the material on record, we do not find that the petitioners have made out a case for interference, with the order impugned in this writ petition. Therefore, the order made in O.A.Nos.310/01440 & 1464/2015, dated 10.08.2016, by the Central Administrative Tribunal, Madras Bench is sustained.

29. Before parting with the case, we would like to note that to protect the interest of both the parties, they were directed to appear in the examination on 25.09.2016. By filing a common counter affidavit, it is stated by the respondents that Dr.Pon Muthurani, petitioner in W.P.No.33404 of 2016, has secured only 10 marks, out of 70 marks in the written examination and got failed. In the overall ranking, she was in 196th position, among 199 candidates, who attended the written examination and therefore, she was not called for the interview.

30. Insofar as Dr.J.Nina Priya, petitioner in W.P.No.33405 of 2016, she has secured 32.5 marks, out of 70 marks in the written examination and stood in 35th position, out of 199 candidates, who appeared for the examination. Therefore, she was permitted to take up the interview and secured 20 marks, out of 30 and totally, secured 52.5 marks. Since the last candidate under the OBC category secured 56.5 marks, she was not selected to the said post. Therefore, both the petitioners are not selected to the said post.

In the result, both the writ petitions fail and accordingly they are dismissed. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

asr

Sub Assistant Registrar

To

1. The Secretary
Government of India
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GPO Complex, INA, New Delhi - 110 023
2. The Director General
Central Council for Research in Siddha
Department of AYUSH
Ministry of Health & Family Welfare
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3. The Registrar
Central Administrative Tribunal
Chennai - 104

+2 ccs to Mr.R.S.Anandan, Advocate, S.R.No.3230, 3231
+1 cc to Mr.K.Gunasekar, Advocate, S.R.No.3539

W.P.No.33404 of 2016
and
W.M.P. Nos.28839 and 28840 of 2016

RR(CO)
SSM(07/03/2019).