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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 746/2018

NARESH KUMAR & ANR

..... Petitioners

Through: Mr.D.K.Sharma, Advocate

versus

THE HON'BLE REGISTRAR GENERAL

DELHI HIGH COURT

..... Respondent

Through: Mr.Chaitanya Puri, Advocate for
Mr.Rajshekhar Rao, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

24.01.2018

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1. The present petition has been filed by the two petitioners praying *inter alia* for issuing a writ of Mandamus to the respondent/DHC directing that they may be permitted to appear in the Delhi Higher Judicial Service Examination, 2017, by granting them age relaxation.

2. Learned counsel for the petitioners submits that on 23.12.2017, the High Court of Delhi had invited applications from eligible candidates for filling up 11 vacancies by way of direct recruitment in the Delhi Higher Judicial Service, by holding Delhi Higher Judicial Service Examination. Some of the terms and conditions of eligibility are as follows:-

“A candidate shall be eligible to appear in the examination if he/she is (a) a citizen of India; (b) a person who has practised as an Advocate for not less than 7 years; and (c) a person who has attained the age of 35 years but has not attained the age of 45 years as on 1st January, 2017.”

3. The date of birth of the petitioner No.1 is 04.04.1971 and that of petitioner No.2 is 05.08.1971. Admittedly both the petitioners have crossed the age of 45 years, as on 01.01.2017

4. The main thrust of the arguments addressed by learned counsel for the petitioners is that though the petitioners had participated in the examination conducted in the year 2015 by the respondent for the posts in the Delhi Higher Judicial Services, they had not succeeded but had expected that the respondent would publish the vacancies in Delhi Higher Judicial Services in the next year i.e. in the year 2016, which they did not. By the time the subject advertisement has been issued by the respondent, the petitioners have become overage and thus missed the opportunity to apply. For seeking age relaxation, learned counsel for the petitioners places reliance on the judgment of the Supreme Court in the case of '*Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission & Ors.*' reported as (2006) 9 SCC 507.

5. We have perused the aforesaid decision which has been passed in the context of recruitment to the posts of Civil Judges, Junior Division in the State of U.P. The Rules pertaining to the appointment on the subject post have been extracted below from para 18 of the judgment:

“18. The age requirement is contained in Rule 10 which reads as under:

10. Age - A candidate for direct recruitment to the service must have attained the age of 22 years and must not have attained the age of more than 35 years on the first day of July next following the year in which the notification for holding the examination by the Commission inviting Applications, is published.

Provided that the upper age limit shall be higher by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time.

Provided further that where a candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, he shall be deemed to be eligible in age to appear in the next following examination.

Provided also that the maximum number of chances a candidate is permitted to take will be four.”

6. After taking note of the relevant Rules, the Supreme Court crystallized the controversy raised in the captioned case and observed as follows:-

*“21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. **The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement.** If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”(emphasis added)*

7. The underlying emphasis laid in the aforesaid judgment was on the necessity to evolve a mechanism to fill up vacancies of Judges at all levels without any delay. It was in the said context that the Supreme Court had directed all the State Governments, Union Territories and High Courts to provide a fixed time schedule for conducting the examinations on an annual basis so that vacancies arising every year may be filled up promptly. The aforesaid directions issued by the Supreme Court cannot be relied on by the petitioners to approach the court for calling upon the respondent to grant

them any age relaxation for the simple reason that there is no Rule framed in this regard for the subject examination.

8. The advertisement issued by the respondent has itself clearly stated that for being eligible to participate in the subject examination, the candidate must not only be a citizen of India and a person who is practicing as an advocate for not less than seven years, but as on 1st January, 2017, he ought have attained the age of 35 years, but should not have crossed the age of 45 years. Admittedly, both the petitioners have crossed the prescribed age bar and in the absence of any Rule permitting relaxation of age, no such prayer can be entertained.

9. Accordingly, the present petition is dismissed as being devoid of merits.

HIMA KOHLI, J.

REKHA PALLI, J.

JANUARY 24, 2018
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