

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2230 of 2019

Order reserved on: 1-4-2019

Order delivered on: 8-4-2019

Praveen Chand Shrivastava, S/o Late Shri A.R. Shrivastava, Aged about 39 years, R/o Q.No.3a, Street 73, Sector 06, P.S. Bhilai Nagar, Post Civic Centre, District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Law & Legislature, Mahanadi Bhawan, Atal Nagar, District Raipur (C.G.)
2. High Court of Chhattisgarh, Through the Registrar General, Village Bodri, Bilaspur (C.G.)
3. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Prateek Sharma, Advocate.

For Respondent No.1 / State: -

Mr. S.C. Verma, Additional Advocate General.

For Respondent No.2: Mr. Prafull N. Bharat, Advocate.

For Respondent No.3: Mr. Ashish Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

Sanjay K. Agrawal, J.

1. The petitioner seeks to declare that the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the LJS Rules') as framed by His Excellency the Governor in consultation with the High Court, is unconstitutional and suffers from vice of discrimination and it is manifestly arbitrary and therefore it is liable to be struck down being violative of Articles 14

and 16 of the Constitution of India.

2. The essential facts shorn of all paraphernalia to consider the challenge to the aforesaid constitutional validity of the LJS Rules state as under: -

2.1) The Chhattisgarh Public Service Commission (for short, 'the CG PSC') issued an advertisement on 6-2-2019 inviting applications for recruitment on 39 posts of Civil Judge (Entry Level) in accordance with the LJS Rules indicating the date of preliminary examination to be 7th of May, 2019, in response to that, the petitioner who is working as Assistant Commercial Tax Officer with the Government of Chhattisgarh aspiring to be appointed on the said post and claiming candidature has filed this writ petition stating inter alia that his date of birth is 14-1-1981 and he has completed the age of 38 years on 14-1-2019 which is before 1-1-2020 and thus, even if he is allowed 3 years age relaxation as per the proviso to Rule 7(1)(b) of the LJS Rules, he is ineligible for the post, as his on-line application form has not been accepted due to his ineligibility. It is the further case of the petitioner that the State Government has issued a circular Annexure P-4 on 30-1-2019 granting relaxation in age for five years to the local residents of Chhattisgarh and therefore the petitioner is also entitled for age relaxation in addition to what has been provided in the proviso to Rule 7(1)(b) of the LJS Rules, but his application is not being accepted, whereas the said circular is applicable to all other recruitments except the impugned recruitment and non-inclusion of relaxation in age which is applicable to all other recruitments,

renders the rule violative of Articles 14 and 16 of the Constitution of India. It was also pleaded that in the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the HJS Rules'), different criteria and cut-off have been provided, therefore, it is discriminatory in nature. As such, Rule 7(1) (b) of the LJS Rules deserves to be struck down for want of age relaxation, as the same has not been provided as per the memo dated 30-1-2019.

3. Mr. Prateek Sharma, learned counsel appearing for the petitioner, would submit that non-inclusion of relaxation provision in the LJS Rules makes the Rule unconstitutional, as relaxation in age has been provided to all residents of the State of Chhattisgarh appearing in other recruitments in which the State Government is the recruiting authority and as such, non-inclusion of age relaxation clause at par with other recruitments makes the LJS Rules unconstitutional and fixing cut-off date for fulfillment of age criteria is arbitrary. He would further submit that in the HJS Rules, different cut-off date for age criteria has been adopted in which it has been prescribed that the candidate must have attained the age of 35 years and has not attained the age of 45 years on the first day of January in the year in which applications for appointment are invited. Thus, the Rule is discriminatory in nature and therefore the State be directed to provide age relaxation to the petitioner as being given to other recruitments except the impugned recruitment by the LJS Rules.

4. On the other hand, Mr. S.C. Verma, learned Additional Advocate

General appearing for the State/respondent No.1, would vociferously oppose the submission and submit that the requirement in Rule 7(1)(b) of the LJS Rules that a candidate for Civil Judge (Entry Level) must not have attained the age of 35 years on the first day of January of the next following year in which applications for appointment are invited, is reasonable. He would further submit that the LJS Rules are neither arbitrary nor discriminatory. He would also submit that age relaxation is a matter of policy and therefore the Rule does not suffer from vice of discrimination and thus it cannot be declared ultra vires as such, the writ petition deserves to be dismissed.

5. Mr. Prafull N. Bharat, learned counsel appearing for the High Court / respondent No.2 and Mr. Ashish Shrivastava, learned counsel appearing for the CG PSC / respondent No.3, would adopt the submission made on behalf of the State / respondent No.1.
6. We have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
7. His Excellency the Governor has framed the LJS Rules in exercise of powers conferred by Article 234 read with the proviso to Article 309 of the Constitution of India to regulate the Recruitment and Service Conditions of the Members of Lower Judicial Service, in consultation with the High Court.
8. The set of Recruitment Rules framed under the proviso to Article 309 of the Constitution of India broadly contains the nomenclature of the post, strength of a cadre, the scale of pay attached to the

post, classification, tenure and the requisite qualifications for the post. The requisite qualifications include the required age limits, minimum educational qualifications (both essential and desirable), and where necessary, the nature of experience. While desirable qualifications could be relaxed, there can be no relaxation in essential qualifications prescribed in the rules.

9. Rules made under proviso to Article 309 of the Constitution of India have a statutory force. (See **Raj Kumar and others v. Shakti Raj and others**¹.) So long as the rule framed under Article 309 of the Constitution of India is not duly amended, it is binding on the Government and its action in matter covered by the Rules must be regulated by the said Rules. (See **A.K. Bhatnagar and others v. Union of India and others**².) The rules so framed are solemn rules having binding effect, they have the force of law. (See **Secretary to Government of T.N. v. D. Subramanyan Rajadevan**³.)
10. It is well settled law that rules made under the proviso to Article 309 of the Constitution of India being legislative in character cannot be struck down merely because the courts think that they are unreasonable, they can be struck down only on the grounds upon which a legislature measure can be struck down. (See **B.S. Vadera v. Union of India and others**⁴, **B.S. Yadav and others v. State of Haryana and others**⁵ and **R.L. Bansal and others v.**

1 (1997) 9 SCC 527

2 (1991) 1 SCC 544

3 (1996) 5 SCC 334

4 AIR 1969 SC 118

5 1980 (Supp) SCC 524

Union of India and others⁶.

11. Since the rule making power under the proviso to Article 309 of the Constitution of India is legislative in nature, the test to determine constitutionality of any such provision of such Rules is whether legislature is competent to enact such a provision. The only test that such a rule has to pass is that of Articles 14 and 16 of the Constitution of India. (See **P. Murugesan and others v. State of Tamil Nadu and others⁷**.)

12. Now, the question would be, whether Rule 7(1)(b) of the LJS Rules suffers from any vice of discrimination or it is manifestly arbitrary?

13. Rule 7(1)(b) of the LJS Rules states as under: -

“7. Eligibility. –

(1) No person shall be eligible for appointment to posts in category (a) of sub-rule (1) of Rule 3 unless, he or she: -

(a) xxx xxx xxx

(b) has completed the age of 21 years and has not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited:

Provided that upper age limit shall be relaxable upto a maximum limit of 5 years for candidates belonging to Scheduled Caste, Scheduled Tribe or Other Backward Classes :

Provided further that the upper age limit shall be relaxable upto a maximum limit of 10 years in case of women candidates belonging to each category namely Scheduled Caste, Scheduled Tribe or Other Backward Classes and General:

Provided further that the upper age limit for Government servant whether permanent or temporary, shall be relaxable upto further 3 years in addition to the relaxations available as above.

⁶ 1992 Supp (2) SCC 318

⁷ (1993) 2 SCC 340

Provided further that where a candidate who was eligible in age to apply for appointment in any calendar year in which vacancies were notified as per Rule 5-A and if for some reason recruitment proceeding could not be initiated, such candidate shall be eligible in age to appear in the following recruitment proceedings.

(c) xxx xxx xxx

(d) xxx xxx xxx”

14. Rule 7(1)(b) of the LJS Rules clearly provides that a candidate shall not be eligible for appointment on the post of Civil Judge (Entry Level) unless he or she has completed the age of 21 years and has not completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited and the provisions appended thereto provide for age relaxation to SC, ST, OBC, Government servant, etc..

15. In order to consider the plea so raised at the Bar, it would be appropriate to consider the legislative history leading to promulgation of the aforesaid Rule.

16. The Union Government in the Ministry of Law, Justice and Company Affairs, in view of the directions of the Supreme Court in the matter of All India Judges Association v. Union of India (Review)⁸ appointed First National Judicial Pay Commission, popularly known as “Shetty Commission” under the Chairmanship of Hon'ble Mr. Justice K.J. Shetty. One of the terms of the reference was as under: -

“To examine and recommend in respect of minimum qualifications, age of retirement, method of recruitment etc., for Judicial Officers. In this contest, the relevant provisions of the Constitution and directions of Supreme Court of India in Judges Association case and other

8 (1993) 4 SCC 288

cases may be kept in view”.

17. The Shetty Commission submitted its report on November 11, 1999 along with qualifications for recruitment etc., including minimum and maximum age for entry into the lowest rung of the Judicial Service. The Commission after noticing various recommendations of the Law Commission, the existing Recruitment Rules of the various States, interaction with the Associations of the Judicial Officers and others concerned, concluded in paragraph 8.43 that the age of candidates for recruitment to a Judicial Service at the level of Civil Judge (Jr. Divn.) must be below 35 years and the recommendations are as under: -

“8.40. While recommending the maximum age for recruitment of Civil Judges (Jr. Divn.), it is necessary to bear in mind the maximum age suggested by the Commission for direct recruitment of District Judges. There, we have indicated that the candidates should be between 35 and 45 years. Therefore, it is not proper to prescribe any age beyond 35 for selection to Civil Judges (Jr. Divn).

8.41. Generally, persons with uninterrupted education would be able to graduate themselves at 21 years and complete the three years law degree course by 24 years. If we insist three more years of practice as a pre-condition for recruitment, then, they would be completing that period by 27 years. But this may be possible only for urban students. The rural students will have their own inherent disadvantage. We have, therefore, to give some more margin while fixing the maximum age.

8.42. Secondly, every year, there is no recruitment to the Civil Judge (Jr. Divn.) cadre. Advocates may have to wait for the advertisement for a couple of years after completing the three years Bar practice.

8.43. Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of twenty five year of service.

8.44. We accordingly suggest to all States and High

Courts to fix 35 years as the maximum age for eligibility for selection to the cadre of Civil Judges (Jr. Divn.) with relaxation by 3 years for SC/ST candidate.”

18. The report of the Shetty Commission came to be considered before the Supreme Court in the matter of **All India Judges Association v. Union of India**⁹ in which Their Lordships of the Supreme Court considering the recommendations of the Shetty Commission to do away with three years standing at the Bar for entry into Judicial Service of a State at the level of Civil Judge (Jr. Divn.), in para 32 of the judgment, observed as under: -

“In All India Judges' Assn. Case (1993 (4) SCC 288 at p. 314) : (1993 Lab IC 2321 at P. 2343) this Court has observed that in order to enter the judicial service, an applicant must be an Advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an Advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in All India Judges' case direct the High Courts and the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years.”

19. Thus, Their Lordships directed the High Courts and the State Governments to amend their rules to enable a fresh law graduate to

9 (2002) 4 SCC 247

be eligible to compete and enter the Judicial Service. Some of the recommendations were accepted with modifications and directions issued accordingly. The others were accepted as recommended or suggested. In para 37 of the said judgment, Their Lordships observed as under: -

“Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted”.

20. It appears that in accordance with the suggestions and the recommendations, the LJS Rules have been framed in which the maximum age has been prescribed that the candidate must not have completed the age of 35 years on the first day of January of the next following year in which applications for appointment are invited. As such, the age prescribed by the Rules is in accordance with the recommendations of the Shetty Commission as accepted by Their Lordships of the Supreme Court in the above-stated case (supra) and by appending the provisos, sufficient and adequate age relaxation to SC, ST, woman and Government servant has been provided. Last proviso was inserted by notification dated 14-8-2007 providing age relaxation to those candidates, who pursuant to notification of vacancies, recruitment proceeding could not be initiated. As such, prescription of age limit for appearing in Civil Judge (Entry Level) is based on the recommendations of the Shetty Commission duly accepted by Their Lordships of the Supreme Court in All India Judges Association v. Union of India⁹ (supra).

21. It is well settled law that once statutory rules have been framed, the appointment shall be only in accordance with the rules. The

executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law. (See J & K Public Service Commission, and others v. Dr Narinder Mohan and others¹⁰.)

22. The statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor. It is well settled that the superior courts while exercising their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post. (See Sanjay Kumar Manjul v. Chairman, UPSC and others¹¹.)

23. It is also well settled that fixing the age limit classification/ categorisation/relaxation is primarily for the Legislature or for the statutory authority charged with the duty of framing the terms and conditions of service. Age relaxation for the direct recruitment, if to be granted, would be a matter for the Government to prescribe in the relevant Rules; and beyond what has been prescribed, cannot be claimed as a matter of right.

24. The Supreme Court in the matter of Jamaluddin v. State of J. and K. and others¹² while dealing with the question of age relaxation in the Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967, held as under: -

10 (1994) 2 SCC 630

11 (2006) 8 SCC 42

12 AIR 2012 SC 291

“15. In the present case the advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time. That age limit applied to all the candidates. There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them. The earlier resolution of the Full Court of the High Court passed in February 1982, will therefore, have to be read as providing only for the quantum and not for any age relaxation. If there is no age relaxation in the Rules, the same cannot be brought in by any judicial interpretation. In the circumstances we do not find any error in the judgment of the Single Judge or that of the Division Bench.”

25. In the matter of Malik Mazhar Sultan and another v. U.P. Public Service Commission and others¹³, Their Lordships of the Supreme Court have refused to grant the benefit of age relaxation to the appellants therein beyond the period as provided in the concerned rules and have held as under: -

“21. ... 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. ...”

26. Thus, on the aforesaid legal position, it is quite vivid that the petitioner who is over aged as per Rule 7(1)(b) of the LJS Rules cannot claim relaxation dehors the LJS Rules as a matter of right to what has not been provided in the LJS Rules and merely because the Rules do not provide for age relaxation as per the Government circular dated 30-1-2019 (Annexure P-4) which the State has granted to other candidates appearing in other recruitments, the LJS Rules cannot be dubbed as arbitrary, as the prescription of relaxation of age is the responsibility and function of the rule making authority and Article 14 of the Constitution of India has no

13 (2006) 9 SCC 507

application. The impugned Rule cannot be branded as arbitrary on the ground that some further relaxation ought to have been provided by the rule making authority at par with the circular dated 30-1-2019. It is the exclusive legislative wisdom of the rule making authority to grant relaxation and to determine, to what extent relaxation can be granted, particularly in the instant case, the Rule appears to have been framed on the basis of the recommendations of the Shetty Commission noticed herein-above which have been accepted by Their Lordships of the Supreme Court in All India Judges Association v. Union of India⁹ (supra) and the provisos appended to Rule 7(1)(b) of the LJS Rules already provide for sufficient age relaxations in favour of SC, ST, OBC, women, Government servant, etc.. It is not the case that in the LJS Rules no age relaxation has been provided to any class of person for the subject post. Therefore, the Rule cannot be declared as unconstitutional for want of further age relaxation not being provided in the Rules apart from what has been provided and we hereby repel the challenge made to the LJS Rules noticed above. Where the Rules framed under Article 309 of the Constitution of India are for general good, but cause hardship to an individual, the same cannot be a ground for striking down the Rules. (See R.N. Goyal v. Ashwani Kumar Gupta and others¹⁴.)

27. We have to next consider the challenge of prescription of cut-off date for fulfillment of age criteria with reference to the HJS Rules. We have already repelled the identical submission raised by the petitioner therein in W.P.(S) No.2343/2019 (Anish Khakha v.

14 (2004) 11 SCC 753

Chhattisgarh Public Service Commission and another), particularly in view of the principle of law laid down by Their Lordships of the Supreme Court in the matter of Hirandra Kumar v. High Court of Judicature at Allahabad and another¹⁵, as such, we need not to dwell herein further in view of the challenge already been rejected in that writ petition.

28. Concludingly, we do not find any good ground to entertain the writ petition to declare Rule 7(1)(b) of the LJS Rules as unconstitutional or ultra vires to Articles 14 and 16 of the Constitution of India. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Soma