

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2343 of 2019

Order reserved on: 1-4-2019

Order delivered on: 8-4-2019

Anish Khakha, S/o Shri Marcus Khakha, aged about 42 years,
presently working as Planning Research Assistant, R/o Qtr. No.430,
K/2, Daldal Seoni, Mowa, Raipur, District Raipur (C.G.) PIN 492007
----- Petitioner

Versus

1. Chhattisgarh Public Service Commission, Through its Secretary,
Shanker Nagar Road, Raipur (C.G.)
2. State of Chhattisgarh, Through the Secretary, Government of
Chhattisgarh, Department of Law and Legislative Affairs,
Secretariat, Mahanadi Bhawan, P.S. and Post Rakhi, Atal Nagar,
District Raipur (C.G.)

----- Respondents

For Petitioner:	Mr. Dilman Rati Minj, Advocate.
For Respondent No.1:	Mr. Sachin Nidhi, Advocate on behalf of Mr. Y.C. Sharma, Advocate.
For Respondent No.2 / State: -	Mr. S.C. Verma, Additional Advocate General.

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 constitutional validity of Rule 7(1)(b) of the Chhattisgarh Lower
Judicial Service (Recruitment and Conditions of Service) Rules,
2006 (for short, 'the LJS Rules') has been called in question by the
petitioner herein dubbing the above-stated rule to be suffering from
vice of discrimination and to be manifestly arbitrary as well and
thereby it be declared ultra vires to Article 14 of the Constitution of
India.

2. The essential facts shorn of all paraphernalia to adjudicate 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 aforesaid Rules indicating the date of preliminary examination to be 7th of May, 2019, in response to that, the petitioner who is presently working as Planning Research Assistant in the Department of Scheduled Castes and Scheduled Tribes, Government of Chhattisgarh, submitted his application form through the on-line portal of the CG PSC, but the said on-line portal has refused to accept the petitioner's application on the ground that he does not fulfill the age criteria and he was not allowed to submit the form.

2.2) The facts that have been brought out by the petitioner to question the constitutional validity of the above-mentioned Rule and to strike down the Rule is that, his date of birth is 22-7-1976 and according to Rule 7(1)(b) of the LJS Rules, the candidate should not exceed the age limit of 35 years on the first day of January of the next following year in which applications for appointment are invited. Thus, according to him, the age limit is to be calculated on the basis of the said i.e. Rule 7(1)(b) of the LJS Rules and according to him, with all permissible relaxation, the candidate should not exceed the age of 43 years after availing all the concessions as on 1-1-2020, but the maximum age limit is counted

from the first day of January in which according to Rule 7(1)(b) of the LJS Rules, he would not be eligible for submitting his application form. It is the further case of the petitioner that Rule 7(1)(b) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 (for short, 'the HJS Rules') provides 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 and according to the said Rule, he is eligible to appear in the examination. As such, Rule 7(1)(b) of the LJS Rules is in conflict with Rule 7(1)(b) of the HJS rules and therefore it suffers from vice of discrimination and also it is manifest arbitrary and thus, it is liable to be struck down as ultra vires.

3. Mr. Dilman Rati Minj, learned counsel appearing for the petitioner, would submit that Rule 7(1)(b) of the LJS Rules providing cut-off date of the first day of January of the next following year in which applications for appointment are invited, is violative of Articles 14 and 16 of the Constitution of India, as such, it is discriminatory as well as arbitrary and therefore it is liable to be struck down. He would further submit that in the HJS Rules that have been framed in exercise of powers conferred by Article 233 read with the proviso to Article 309 of the Constitution of India, the cut-off date provided for eligibility is the first day of January in the year in which applications for appointment are invited, as such, there is no point in prescribing different cut-off dates for Civil Judge (Entry Level) and the person to be recruited under the HJS Rules, therefore, it is a case of

discrimination and as such, Rule 7(1)(b) of the LJS Rules with the words “on the first day of January of the next following year in which applications for appointment are invited” be declared as ultra vires by striking it down.

4. On the other hand, Mr. S.C. Verma, learned Additional Advocate General appearing for the State/respondent No.2, 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 prescription of cut-off date principally, is a matter of policy and merely because the HJS Rules provide differently, Rule 7(1)(b) of the LJS Rules cannot be dubbed as arbitrary. As such, the writ petition deserves to be dismissed.
5. Mr. Sachin Nidhi, Advocate, appearing on behalf of Mr. Y.C. Sharma, learned counsel for the CG PSC / respondent No.1, would adopt the submission made on behalf of the State / respondent No.2.
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

1 (1997) 9 SCC 527

2 (1991) 1 SCC 544

3 (1996) 5 SCC 334

which a legislature measure can be struck down. (See B.S. Vadera v. Union of India and others⁴, B.S. Yadav and others v. State of Haryana and others⁵ and R.L. Bansal and others v. Union of India and others⁶.) 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.)

11. 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?

12. 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:

4 AIR 1969 SC 118

5 1980 (Supp) SCC 524

6 1992 Supp (2) SCC 318

7 (1993) 2 SCC 340

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.

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”

13. 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..

14. The question for consideration would be, whether prescription of cut-off date for fulfillment of age criterion provided in Rule 7(1)(b) of the LJS Rules for the post of Civil Judge (Entry Level) suffers from vice of discrimination / arbitrariness?

15. In order to consider the plea so raised at the Bar, it would be appropriate to notice the relevant judgments qua the issue.

16. In the matter of State of Bihar v. Ramjee Prasad⁸, the prescription of cut-off date was questioned as being arbitrary and ultra vires to Article 14 of the Constitution of India. Their Lordships of the Supreme Court rejecting the contention held as under: -

⁸ (1990) 3 SCC 368

“8. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.** It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational.”

17. Similarly, in the matter of Dr. Ami Lal Bhat v. State of Rajasthan⁹,

Their Lordships of the Supreme Court while considering Rule 11(1) of the Rajasthan Medical Services (Collegiate Branch) Rules, 1962 prescribing the cut-off date on the first day of January following the last date fixed for the receipt of applications, held that the fixation of a cut-off prescribing maximum or minimum age requirements for a post is in the discretion of the rule making authority, and observed as under: -

“5. ... In the first place the fixing of a cut-off date for determining the maximum or 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 any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As

⁹ (1997) 6 SCC 614

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.”

18. Likewise, in the matter of Union of India v. Sudhir Kumar Jaiswal¹⁰, Their Lordships of the Supreme Court rejecting the plea that the prescription of cut-off is arbitrary and ultra vires in respect of recruitment to the Indian Administrative Service/Indian Foreign Service which was fixed as 1 August of every year, held as under: -

“5. As to when choice of a cut-off date can be interfered was opined by Holmes, J. in *Louisville Gas & Electric Co. v. Clell Coleman* [277 US 32 : 72 L Ed 770 (1927)] by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. What was observed by Holmes, J. was cited with approval by a Bench of this Court in *Union of India v. Parameswaran Match Works* [(1975) 1 SCC 305 : AIR 1974 SC 2349] (in paragraph 10) by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.

6. The aforesaid decision was cited with approval in *D.G. Gouse and Co. v. State of Kerala* [(1980) 2 SCC 410 : AIR 1980 SC 271]; so also in *State of Bihar v. Ramjee Prasad* [(1990) 3 SCC 368] ...

7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void ...

8. ... As to why the cut-off date has not been changed despite the decision to hold preliminary examination, has been explained in paragraph 3 of the special leave petition. The sum and substance of the explanation is that preliminary examination is only a

10 (1994) 4 SCC 212

screening test and marks obtained in this examination do not count for determining the order of merit, for which purpose the marks obtained in the main examination, which is still being held after 1st August, alone are material. In view of this, it cannot be held that continuation of treating 1st August as the cut-off date, despite the Union Public Service Commission having introduced the method of preliminary examination which is held before 1st August, can be said to be "very wide off any reasonable mark" or so capricious or whimsical as to permit judicial interference."

19. Likewise, in the matter of Union of India v. Shivbachan Rai¹¹, the Supreme Court has held that prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy, and it was observed as under: -

"6. ... Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation. ..."

20. In the matter of Council of Scientific and Industrial Research v. Ramesh Chandra Agarwal¹², the Supreme Court while holding that State is entitled to fix a cut-off date and such a decision can be struck down only when it is arbitrary, observed as under: -

"29. "State" is entitled to fix a cut-off date. Such a

11 (2001) 9 SCC 356

12 (2009) 3 SCC 35

decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2-5-1997 was the date fixed as the cut-off date in terms of the Scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr. Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.

30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The Court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date."

21. Finally and very recently, Their Lordships of the Supreme Court revisited the law on the subject in the matter of Hirandra Kumar v. High Court of Judicature at Allahabad and another¹³ and while upholding Rule 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975, which prescribes that a candidate for direct recruitment must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January next following the year in which the notice inviting applications is published, held as under: -

"21. The legal principles which govern the

determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to conclusion of a violation of Article 14 of the Constitution.”

22.Their Lordships further held as under: -

“27. ... Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.”

23.Their Lordships finally upheld the constitutional validity of Rule 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975. The said Rule is pari materia to Rule 7(1)(b) of the LJS Rules which has been questioned in this writ petition.

24.In view of the aforesaid legal position, it is quite vivid that the determination of cut-off date is essentially a matter of policy and it is for the rule making authority to undertake that job while formulating the rules and this Court cannot in exercise of the power of judicial review, substitute its view for the rule making authority and as such, the Court cannot interfere with it. As such, we do not find force in the submission of learned counsel for the petitioner that Rule 7(1)(b) of the LJS Rules is manifest arbitrary.

25.We also do not find force in the submission of learned counsel for the petitioner that the HJS Rules prescribe for a different cut-off date i.e. the candidate 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, it is discriminatory and violative of Article 14 of the Constitution of India.

26. Their Lordships of the Supreme Court in Hirandra Kumar (supra) clearly held that a case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres and observed as under: -

“28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfillment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS.

29. For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial comparison of the Higher Judicial Service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres.”

27. The principle of law laid down by Their Lordships in Hirandra Kumar (supra) squarely applies to the facts of the present case. The prescription of cut-off for age criteria in the LJS Rules and the HJS Rules are with reference to distinct requirement in the respective rules. Therefore, we do not find any merit in the challenge to the constitutional validity of Rule 7(1)(b) of the LJS Rules and therefore it cannot be struck down as ultra vires to

Articles 14 and 16 of the Constitution of India. Consequently, we decline to entertain the writ petition, it is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

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