

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3595 of 2019**

- Dr. Uma Shankar Sahu S/o Shri Sonuram Sahu Aged About 46 Years R/o Ward No. 08, Behind Police Colony, Ambagarh Chowki, Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

----Petitioner**VERSUS**

1. State Of Chhattisgarh Through Its Secretary, Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents**WPS No. 3566 of 2019**

- Jyoti Xalxo W/o Shri Mukti Prakash Ekka Aged About 45 Years R/o Gatadih, Via Sarsiwa, Tahsil Bilaigarh, District Balodabazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

-----Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary Department Of Higher Education , Mantralaya, Mahanadi Bhawan Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents**WPS No. 3578 of 2019**

- Dhanraj Singh Meshram S/o Shri Ganga Ram Meshram Aged About 45 Years R/o Village And Post Khatgaon, Manpur, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

-----Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary Department Of Higher Education, Mantralaya, Mahanadi Bhawan Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents**WPS No. 4127 of 2019**

- Subhash Chandra Agrawal S/o Shri Tarachand Agrawal Aged About 44 Years R/o Village And Post Rampur, Tehsil Kartala, District Korba Chhattisgarh., District : Korba, Chhattisgarh

-----Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Higher Education Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Through Its Secretary, Shankar Nagar, Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents

WPS No. 4826 of 2019

- Vijay Kumar Shrivastava S/o Late Shri Harishankar Shrivastava Aged About 46 Years R/o Village Chikhli, Post Madhopali, Tahsil Sarangarh District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh

-----Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission, Through Its Secretary Shankar Nagar Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents

WPS No. 4850 of 2019

- Ramgopal Patel S/o Shri Jotram Patel aged about 49 years, R/o Village Chikhli, Post Madhopali, Tahsil Sarangarh, District Raigarh C.G.

-----Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary Department Of Higher Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission, Through Its Secretary Shankar Nagar Road, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

-----Respondents.

For Petitioner	:	Mr. Mateen Siddiqui, Advocate
For Respondent-State	:	Ms. Richa Shukla, Government Advocate
For Respondent No. 2/CGPSC :		Shri Vikram Sharma, Panel Lawyer

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, Chief Justice.****22/07/2019**

1. The cause of action projected in all these cases is almost similar. So also are the prayers and grounds raised in support of the reliefs sought for. To have a clear idea, the specimen prayers as raised in WPS No.3566/19 are given below:

“10.1 This Hon'ble may kindly be pleased to declare the condition prescribed in corrigendum Dated 01.02.2019 at important Teep/Note-(i)

incorporated after clause (4)(xii) of the advertisement Dated 18.01.2019, in which the condition is that, after relaxing all the age benefits, the maximum age-limit will not exceed 45 years, is ultra-vires viz-a-viz Article 14 & 16 of the Constitution of India (Annexure-P/1);

10.2 This Hon'ble Court may kindly be pleased to declare the condition mentioned in Rule-8(l)(j) of the Chhattisgarh Educational Services (Collegiate Branch, Gazetted) Recruitment Rules, 2019 being ultra-vires viz-a-viz Article 14 & 16 of the Constitution of India (Annexure-P/2);

10.3 This Hon'ble Court may kindly be pleased to declare the condition of a rider of maximum age-limit of 45 years, mentioned in order Dated 30.1.2019 being ultra-vires viz-a-viz Article 14 & 16 of the Constitution of India (Annexure P/3)

10.4 This Hon'ble Court may kindly be pleased to declare the condition of a rider of maximum age-limit of 45years, prescribed in clause (4)(vi) of the advertisement and also in circular Dated 02.06.2004, issued by the GAD, State of Chhattisgarh, is being ultra-vires viz-a-viz Article 14 & 16 of the Constitution of India (Annexure-P/4);

10.5 This Hon'ble Court may kindly be pleased to direct the respondent authority to further grant the age relaxation prescribed in clause (4)(vi) of the advertisement, thereby granting relaxation in age to the number of years, as Shikshakarmi experience without a rider of maximum age of 45 years;

10.6 This Hon'ble Court may kindly be pleased to direct the respondents to allow the petitioner to submit application-form and further allow to participate in the selection process for the post of Assistant Professor;

10.7 This Hon'ble Court may kindly be pleased to issue any other order or orders, writ or writs, direction or directions as this Hon'ble court may deem fit in the facts and circumstances of the case in favour of the petitioners, in the interest of justice.”

2. Heard Mr. Mateen Siddiqui, learned counsel for the petitioners, Mr. Ashish Shrivastava, learned Standing Counsel for Chhattisgarh Public Service Commission and Ms. Richa Shukla, learned Deputy Government Advocate representing the State, at length.
3. The crux of the case is that the petitioners were desirous of participating in the selection for appointment to the post of Assistant Professors (relevant disciplines). Annexure-P/1 is the Advertisement issued on 18-1-2019, where the maximum age stipulated was 35 years. Later, a corrigendum notification was issued on 30-1-2019, *vide* Annexure-P/3, whereby some relaxation was provided to the domiciles of Chhattisgarh State holding that there will be age relaxation in their case up to 40 years. It is pointed out that age relaxation was provided under some other heads as well i.e. in the case of ST/SC/OBC, providing 5 years of relaxation, besides stipulating that in the case of persons who were working as 'Shiksha Karmis', the entire tenure of their functioning as 'Shiksha Karmis' will be set-off or given credit to and age relaxation to the said extent will be provided. However, a rider was also added therein to the effect that the maximum age under all the different heads of relaxation shall never exceed 45 years.
4. The grievance of the petitioners is that the petitioners, having crossed the maximum stipulated age limit, were virtually prevented from participating in the selection process and that there was no rationale in stipulating the maximum age or for fixing a ceiling for age relaxation as 45 years. It is stated that since the notification specifically stipulated that the application preferred by the persons, who were born prior to 1974, will not be considered, the software

installed by the selection agency would not accept the applications and hence the petitioners could not apply for the post, which made them to approach this Court, challenging the rider as mentioned above.

5. Learned counsel for the petitioners points out that there is no rhyme or reason for stipulating the maximum age and that higher the age factor, higher will be the skill and acumen of the teachers concerned. It is also stated that if persons with higher age are appointed, it will be advantageous to the State as well, insofar as they might not be getting the requisite qualifying years of service so as to make them eligible for getting pension; in turn suggesting that the State need not pay any pension at all in such cases, thus, indirectly helpful to bring down the financial burden of the State.
6. The next submission is that, higher age is prescribed in different States; such as 60 years in Jharkhand, 62 years in Uttar Pradesh, 45 years in Madhya Pradesh and 55 years in Bihar. This being the position, there is no rationale on the part of the State of Chhattisgarh to apply the rider that the maximum age limit shall be 45 years and hence the challenge. It is also brought to the notice of this Court that this rider is applicable as per the relevant rules only to the posts of Librarian, Sports Officer and Assistant Professors. That apart, the selection for direct recruitment was pursued only twice i.e. in the year 2003 and 2013 for the post of Assistant Professors during a span of 23 years from 1995 to 2018 and hence no sufficient opportunity was there before crossing the age limit.
7. During the course of hearing, it was brought to the notice of this Court that the last date stipulated in Annexure P/1 notification for submitting application as on 5-3-2019; but it was altered in the subsequent corrigendum notification, stipulating the last date as 12-3-2019. When the petitioners contend that they did not apply as they could not make an application because the software setting to reject their application having borne prior to 1974, it remains the fact

that none of the petitioners had approached this Court prior to the last date of 12-3-2019, stipulated in Annexure P/1- corrigendum notification dated 01-02-2019, seeking for appropriate prayers/ interim reliefs.

8. Another important aspect to be noted is that, even according to the petitioners, the 'maximum age' stipulated by different States differ from each other. Be that as it may, the fact remains that there is a stipulation of 'maximum age' in different States and the maximum age need not be the same in all States. There cannot be any uniformity in this regard as it depends upon the varying requirements of each State. More so, as goes the adage: “***Sauce for the goose may not be the sauce for the gander***”. The State of Chhattisgarh is not prevented from taking a policy decision as to the maximum age to be reckoned for the purpose of appointment of Assistant Professors by direct recruitment. Since no tenable ground is raised to call for interference with regard to the rider imposed in the notification stipulating the maximum age, this Court finds it difficult to interfere with the notification issued.
9. As regards the petitioner in the case of WPC 4127/2019, he being a candidate in the unreserved category, and having no service as a 'Shiksha Karmi', is admittedly not eligible for any other concession, except that he is eligible to get relaxation upto 40 years, being a domicile of the State of Chhattisgarh. The petitioner in the said case has conceded that he has crossed the age of 40 years and as such, he is beyond the maximum age relaxation of 40 years provided in Annexure P/1.
10. The legal position has already been made clear by the Apex Court as per the decisions reported in **Union of India and others v. Shivbachan Rai**¹ (Para-6) & **Delhi Subordinate Services Selection Board v. Praveen Kumar**² (Para-8), as sought to be relied on by the learned standing counsel for the Public Service Commission. We find it appropriate to extract the relevant paragraphs

1 (2001) 9 SCC 356

2 (2017) 11 SCC 283

as part of the judgment for easy reference and they are reproduced below:

(Union of India's case)

“6. The only question that we are required to consider is whether the Rules framed under the proviso to Article 309 of the Constitution and dated 29-03-1985 whereby age relaxation up to 5 years is permitted in the case of government servants can be considered as arbitrary or unreasonable. 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. In any case, the Rules of 1976 have been replaced by the Rules of 1985 which govern direct recruitment to the post of Assistant Director in the present case. One has, therefore, to look to the Rules of 1985 in order to decide the eligibility of the respondent for the post of Assistant Director. We, therefore, do not agree with the finding of the Tribunal that the Rules of 1985 insofar as they prescribe the extent of relaxation of age limit, are arbitrary or unreasonable. This is also not a case where promotional avenues are being closed partially or fully. The post in question was to be filled by direct recruitment and not by promotion. Therefore, there could be no grievance on that score by the respondent.”

(Delhi Subordinate Services Selection Board's case)

8. The High Court in *Sachin Gupta case*³ also accepted the well-recognised principle that it is the employer's prerogative to decide the age-limit and academic suitability of candidates which they wish to employ and so long as the same are not contradictory to the academic eligibility as prescribed by the NCTE Act, any challenge to the same, merely because it renders some candidates ineligible, ought to be rejected. Fixing of such age-limit for a given post is a matter of policy as held by this Court in *Union of India v. Shivbachan Rai*⁹.

³ *Sachin Gupta v. Delhi Subordinate Services Selection Board*, 2008 SCC OnLine Del 989

⁹ (2001) 9 SCC 356

11. In view of the precinct declaration of law, as aforesaid, and since there cannot be any interference with regard to the policy matters and further since no legally tenable ground is brought to the notice of this Court calling for interference, we are of the view that the writ petitions are not liable to be entertained.

12. Mr. Mateen Siddiqui, learned counsel for the petitioners submits that there is however a provision to grant 'relaxation' as envisaged under Rule 22 of the Chhattisgarh Educational Service (Collegiate Branch, Gazetted) Recruitment Rules, 2019. A true extract of the said Rules, as notified in the Gazette of the State, is given as part of Annexure P/2. The said Rule is reproduced below:-

“22.Relaxation.- Nothing in these rules shall be construed to limit or abridge the power of the Governor to deal with the case of any person to whom these rules may apply in such manner as may appear to it to be just and proper:

Provided that the case shall not be dealt with in any manner less favorable to him than that provided in these rules.”

On going through the said Rule, we find that it only speaks about the powers of the Governor to deal with the case of any person, on a case to case basis for 'just and proper' reasons. We do not find any merit in the writ petitions. They are dismissed accordingly. We however make it clear that the dismissal of these writ petitions will not bar the way of the petitioners, if any petitioner is eligible to get the benefit of Rule 22 of the Rules as noted above.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge