

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION Nos.22972, 23103, 31716, 31739, 31768, 32300, 32335,
32393, 32537, 32597, 32806, 32876, 33036, 33056, 33067, 33231,
33259, 33275, 33295, 33311, 33346, 33520 and 34681 of 2018
COMMON ORDER:

As the issue raised in these writ petitions is one and the same, all the writ petitions are disposed of by this common order.

Heard learned counsel appearing for the respective parties.

The petitioners are working as Medical Officers on contract basis in Ayush Department since more than a decade. The respondents have followed the recruitment procedure and issued recruitment Notification and all the petitioners have responded to the said Notification during 2008-09 and after undergoing regular selection process, they were all appointed as contract Medical Officers in Ayush Department. The petitioners further submitted that all the petitioners are fully eligible and qualified and they were selected after verifying the nomenclature and the rest of the recruitment process was followed by respondents at the time of their appointment as medical officers. The petitioners further submitted that for more than a decade, the respondents have not issued any recruitment Notification and the respondents have issued recruitment Notification No.1/A/2018 on 28.08.2018. As per the said Notification, the upper age limit is fixed as 43 years in respect of OCs and 47 years in respect of SCs/STs/BCs. The petitioners further submitted that the petitioners have crossed the upper age limit as prescribed by the respondents in the Notification and the petitioners further contended that the State Government

has issued G.O.Ms.No.190, dated 08.08.2017, wherein in exercise of power conferred under proviso to Article 309 of the Constitution of India, the Government of Telangana had issued *Ad hoc* Rule, wherein the upper age limit prescribed as per State and Subordinate Service Rules or in the Special or *Ad hoc* Rules, the maximum age prescribed in the above said Rules be extended by 10 years i.e., from 34 years to 44 years for a further period up to 26.07.2019. The petitioners contended that since the State Government has framed *ad hoc* Rule in exercise of Article 309 of the Constitution of India, the same benefit be extended to all the petitioners by enhancing the upper age limit from 43 to 44 to OCs and from 47 to 48 years in respect of SCs/STs/BCs by duly extending the benefit of *ad hoc* Rule framed in G.O.Ms.No.190 dated 08.08.2017.

The petitioners further contended that as per Rules issued in G.O.Ms.No.67 dated 14.03.2005, the upper age limit prescribed for the post of Medical Officer in the Department of Ayush is 41 years for OCs, and 45 years in respect of SCs/STs/BCs. Hence, the benefit under G.O.Ms.No.190 i.e., *Ad hoc* Rule should be extended in favour of the petitioners as the said *Ad hoc* Rule was framed in exercise of its power under Article 309 of the Constitution of India. The petitioners further submitted that since all the petitioners are working since more than 10 years on contract basis as Medical Officers, the benefit of contract service be extended in favour of the petitioners and the cases of the petitioners be considered for appointment to the post of Medical Officer on regular basis pursuant to Notification No.1/A/2018 dated 28.08.2018.

The petitioners further contended that the respondents ought to have relaxed the age criteria at least to the extent of contract service rendered by them and the benefit of contract service ought to have been deducted from the age as prescribed by the respondents and the service rendered on contract basis should have been considered at the time of relaxing age for appointment to the post of Medical officers.

Learned Government Pleader appearing for respondents has submitted that the Selection Committee constituted pursuant to Notification has taken a decision to strictly follow G.O.Ms.No.318 dated 28.08.2008 and decided not to extend the benefit of G.O.Ms.No.190 dated 08.08.2017 in favour of candidates, who have responded to Notification No.1/A/2018 dated 28.08.2018 and contends that the upper age limit in respect of Medical Officers of Ayush Department is enhanced from 41 years to 43 years and from 45 to 47 years in respect of SCs/STs/BCs vide G.O.Ms.No.318 dated 28.08.2008. Since two years relaxation was accorded vide G.O.Ms.No.318 dated 28.08.2008, wherein the upper age limit has been extended in respect of OCs up to 43 years and in respect of SCs/STs/BCs up to 47 years, the Selection Committee, in its wisdom, has decided not to extend the benefit of G.O.Ms.No.190 dated 08.08.2017 and contends that the cases of the petitioners have been rejected and there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions, is of the considered view that it is for the State Government to take a final call whether the *Ad hoc* Rule which was issued in exercise of proviso

to Article 309 of the Constitution of India is to be applied in present Notification No.1/A/2018 dated 28.08.2018 and the State Government must examine the fact that the petitioners were appointed on contract basis pursuant to Notification issued way back in 2008 and the State Government has to consider the services rendered by the petitioners on contract basis and take a decision as to whether the petitioners deserve any consideration for relaxing the upper age limit over and above what has been contended in Notification No.1/A/2018 dated 28.08.2018. All the petitioners have participated in the selection process and it is for the State Government to take a decision to relax the upper age limit in favour of petitioners, who were appointed on contract basis way back in 2008 and the State Government also has to take into consideration the fact that all the petitioners have put in more than a decade of service on contract basis.

Therefore, this Court is of the considered view that this writ petition can be disposed of directing the State Government to take a decision as to whether the petitioners are entitled for the benefit of relaxation of upper age limit by duly taking into account the fact that the petitioners have rendered more than ten years of service on contract basis and pass appropriate orders. The State Government must also examine specifically the applicability of G.O.Ms.No.190, dated 08.08.2017, in respect of Medical Officers likely to be recruited pursuant to Notification No.1/A/2018 dated 28.08.2018 as to enhancing the upper age limit up to 44 years as it was done in terms of G.O.Ms.No.190 dated 08.08.2017 as the said *Ad hoc* Rule was issued in exercise of power available under Article

309 of the Constitution of India. It is always open to the State Government to further relax the upper age limit by taking into account the contract service rendered by the Medical Officers for the last more than ten years.

With the above observations, the writ petitions are disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

22-02-2019

Prv



