

\$~14

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

+ **W.P.(C) 9683/2019 and CM APPL. 39998/2019 (stay)**

SHANTI RANJAN

..... Petitioner

Through: Dr. K.S. Chauhan, Mr.Ravi Prakash,
Mr.R.S.M. Kalky and Mr.Ajit Kumar
Ekka, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr.Siddharth Khatana, Senior Panel
Counsel for R-1.

Mr.Rajat Aneja, Advocate for R-2.

Mrs Avnish Ahlawat with Ms.
Laveena Arora and Mr. Nitish Singh,
Advocates for GNCTD, Delhi.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE A.K.CHAWLA

ORDER

%

06.09.2019

Dr. S. Muralidhar, J.:

1. Aggrieved by the rejection of his candidature for the Delhi Higher Judicial Service (DHJS) in the exam of 2017, the Petitioner who belongs to the Scheduled Caste (SC) seeks quashing of the notice dated 10th July, 2019 issued by the High Court for conducting the DHJS Examination 2017. The further relief sought is for a direction to the High Court to consider the Petitioner's candidature for interview pursuant to Rule 22 of the Delhi Higher Judicial Service Rules, 1970 (DHJS Rules) and the Office

Memorandum (OM) dated 8th December, 1971 issued by the Department of Personnel and Training (DoPT), Government of India.

2. The short ground on which the above reliefs are sought is that the High Court ought to have provided for age relaxation for SC candidates. Admittedly, at the time that the Petitioner took the exam, he was above the maximum age of eligibility in terms of Rule 9 (3) of the DHJS Rules, which requires a direct recruit candidate to have attained 35 years but not have exceeded 45 years, on the first day of January of the year in which the applications for appointment are invited.

3. The case of the Petitioner is that the rejection of his candidature for the reason that he was above the maximum age of eligibility is contrary to Rule 22 of the DHJS Rules, which states that reservation of posts for SC and Scheduled Tribe (ST) shall be in accordance with the orders issued by the Central Government from time to time. It is contended that the High Court ought to have followed the aforementioned OM dated 8th December, 1971 issued by the DoPT, in terms of which the maximum age limit prescribed for appointment to a service/post should be increased by 5 years in the case of candidates belonging to SC and ST.

4. The admitted position is that in the notification dated 23rd December, 2017 issued by the High Court for the DHJS examination 2017, no age relaxation for SC and ST candidates was provided. However, the Petitioner was able to sit for the written exams in view of an interim order dated 21st February, 2018 passed by this Court in Writ Petition (Civil) 1665 of 2018

(*Pawan Kumar v. Union of India*). The said interim order reads thus:

“Issue notice. Mr. Dev P. Bhardwaj, Advocate accepts notice on behalf of Union of India; Mr. Rajshekhar Rao, Advocate appearing for Delhi High Court accepts notice; and, Ms. Avinash Ahlawat, Advocate accepts notice on behalf of Lt. Governor.

Counter affidavits shall be filed within three weeks.

The applicant/petitioner questions the omission to provide for relaxation to SC/ST candidates in line with the Central Government’s circulars/notifications. Petitioner relies on Rule 22 of the Delhi Higher Judicial Services Rules, 1970 which refers to the Central Government’s circulars with respect to reservation policies to be adopted by the High Court establishment with regard to recruitment and promotion of Judicial Officers and Higher Judicial Service Officers. The High Court apparently had formed an opinion that in the absence of any express provision for relaxation for any category (including reserved category candidates) such relaxation cannot be permitted. It is urged on behalf of the Petitioner that the meaning and purport of Rule 22 is to incorporate, as and when necessary, all the policies of the Central Government through the various circulars concerning recruitment and other matters relating to SC/ST candidates. Therefore, with respect to extent of reservation and other terms, in the absence of any indication in the Rules (in the present case Delhi Higher Judicial Service Rules), the position spelt out in the circulars/Government orders is to prevail. In support of this submission, several judgements of the Supreme Court including the latest judgement by the Constitution bench in *Rohtas Bhankar vs. Union of India*, (2014) 8 SCC 872 are relied upon.

After considering the issue, this Court is of the opinion that as an interim measure and in the interest of justice, the applicant/petitioner and other like situated candidates should be permitted to apply for in the SC/ST quota provisionally, provided they fulfil the extended age qualification (45+5 years).

This order shall not however be considered as creating any equities at the stage of final decision of the petition.

List on 9th April, 2018.”

5. Consequent upon the above interim order, the Registrar General of this Court published the following notice:

“In continuation of this Court’s Notices dated 23.12.2017 & 15.02.2018, it is hereby notified that the age relaxation upto 5 years has been provided to the Scheduled Caste and Scheduled Tribe candidates in Delhi Higher Judicial Service Examination 2017 in terms of orders dated 21.02.2018 passed in writ petition (civil) No. 1665/2018 titled ‘Pawan Kumar vs. Union of India & Ors.’.

It is also notified that the last date for creating new log in for online registration/for filling online application form of Delhi Higher Judicial Service Examination – 2017 and/or making payment through debit card/internet banking has been extended till 01.03.2018 (11.59 PM).”

6. As a result of the above notice, the Petitioner, who incidentally was not a party to the aforementioned petition by Pawan Kumar, applied for and successfully completed the preliminary and final written exams. However, Pawan Kumar, who had filed the writ petition, did not qualify even in the preliminary examination and accordingly the Writ Petition (Civil) 1665/2018 was dismissed as infructuous on 26th March 2019 by the following order:

“This-Court had by an interim order permitted the petitioner to compete in the examination for selection to the Delhi Higher Judicial Service (DHJS) in accordance with the rules. His grievance is that the age relaxation required by the instructions of the Department of Personnel and Training (DOPT) were not

incorporated in the appropriate instructions and notifications covering the DHJS recruitment rules. The petitioner had relied on the Constitution Bench judgment in ***Rohtas Bhankhar v. Union of India 2014 (8) SCC 872***.

In the light of these submissions, the Court had permitted the petitioner and like candidates to compete in the preliminary examination. Apparently, the petitioner did not qualify in the preliminary examination. As a consequence, the claim in the petition cannot be granted and the question urged has been rendered moot. In the circumstances, the petition is dismissed as infructuous.

The issue is, however, left open”.

7. The Petitioner, having cleared the preliminary and main written exams, appeared for the viva voce. His candidature was rejected for the reasons stated in the note No.3 appended to the final list of selected candidates which reads thus:

“In view of the orders dated 26.03.2019 passed in W.P. (C) No. 1665/2018 titled Pawan Kumar vs. Union of India & Ors., the candidature of Mr. Shanti Ranjan (Roll No. 10) has been rejected.”

8. Dr. K.S. Chauhan, learned counsel appearing for the Petitioner, placed reliance on the decision of the Constitution Bench of the Supreme Court in ***Rohtas Bhankar v. Union of India (2014) 8 SCC 872*** to urge that the High Court ought to have provided for age relaxation in the notification for the DHJS Examination 2017.

9. The Court has perused the said decision. In the first place, it dealt with issue “whether it was permissible for the authorities to fix lesser number of

qualifying marks for reserved candidates in the matter of promotion” in the context of the Central Secretariat Service Section Officers' Grade/Stenographers' Grade B (Limited Departmental Competitive Examination) Regulations, 1964. The Constitution Bench of the Supreme Court answered the question in the affirmative after upholding the validity of the constitutional amendment that inserted Article 16 (4A) and a proviso to Article 335 of the Constitution inserted by a 2000 amendment which read as under:

“Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”

10. Therefore, the issue in ***Rohtas Bhankar*** was specific to relaxed standard in the context of qualifying marks and not relaxation of age. The said decision is, therefore, not of assistance to the Petitioner.

11. In fact, the Instructions to candidates appearing in the DHJS Examination 2017 also provided for such relaxed standard for SC, Scheduled Tribe (ST) and physically handicapped (PH) candidates. The relevant portion of Part II of the Instructions read thus:

“(4) Preliminary Examination shall be of the duration of two hours carrying 150 marks (with 25% negative marking for each wrong answer) and will consist of 150 multiple objective type questions each carrying 1 mark. Minimum qualifying marks in the Preliminary Examination shall be 50% for General Category candidates and 45% for reserved category candidates i.e. SC,

ST and PH categories.

(7) A candidate shall be eligible to appear in the viva voce only in case he secures 50% marks in the written examination i.e. the aggregate of both parts (Preliminary and Main (Descriptive)) in the case of General Category Candidates and 45% marks in case of reserved category candidates i.e. SC, ST and PH Category.

(8) There shall be viva voce carrying 250 marks. A candidate of General Category must secure a minimum of 50% marks and a candidate of reserved category must secure a minimum of 45% marks in viva voce to be eligible for being recommended for appointment to the service.”

12. Therefore, while the DHJS Rules do envisage a relaxed qualifying standard as far as minimum pass marks are concerned for SC, ST and PH candidates, they do not provide for any age relaxation. The relevant rule is Rule 9 of the DHJS Rules which reads thus:

“9. The qualifications for direct recruits shall be as follows:

(1) must be a citizen of India.

(2) must have practised as an Advocate for not less than seven years.

(3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.

13. The candidates applying were informed through the Frequently Asked Questions (FAQs) appended to the Instructions that: “No age relaxation is admissible to candidate of any category.”

14. Specific to the question of age relaxation in the context of the DHJS Rules, there are three Division Bench (DB) decisions of this Court. The first of these decisions is ***P.K. Bhasin v. Union of India 1991 (4) SLR 480***. One of the questions decided there was whether in view of Rule 22 of the DHJS Rules, relaxation of the age limit would be permissible in respect of an SC/ST candidate. The Court answered the question in the negative and held that since a specific Rule 9 (3) existed, there was no scope to invoke Rule 22 to provide for relaxation in the upper age limit. It was held that the aforementioned OM of the DoPT would have no applicability. On facts, the Court did not disturb the candidature of two ST candidates who had qualified because of the understanding of the High Court, but was of the view that it had acted beyond its administrative competence in notifying such age relaxation ‘without undertaking amendment of the recruitment rules.’ The Court stated that it had ‘no hesitation in saying that under the existing rules, there could be no variation from the upper age limit of 45 years as provided by Rule 9 and that general Rule 22 would not cover this matter.’

15. The same question came up for consideration in ***Rajpal Singh v. Hon’ble Delhi High Court*** (decision dated 13th July, 2017 in Writ Petition Civil 4885/2007). Following the decision in ***P.K. Bhasin*** (*supra*), this Court held that no age relaxation is possible under the Rules.

16. For the third time, in a judgement dated 9th December, 2009 in Writ Petition (Civil) 13736/2009 (***Vinod Kumar Mantu v. Union of India***), this Court, following the above two decisions, held likewise. In that case, the

Petitioner had tried to argue that since the Allahabad High Court had granted age relaxation, this Court should proceed to do likewise. After noticing the above two decisions, this Court held as under:

“In view of the foregoing discussion, it is clear that the High Court on the administrative side considered the matter and did not bring about any alteration in Rule 9(3) of the DHJS Rules. The said Rule 9(3) specifically stipulates the upper age limit to be 45 years on the first day of January of the year in which the applications for appointment are invited. There is no provision for relaxation of the upper age limit in the DHJS Rules. Therefore, no parity can be claimed by the Petitioner with the instructions issued by the High Court of Judicature at Allahabad, on which he was relying upon.”

17. It appears that when the interim order in *Pawan Kumar (supra)* was passed, the above decisions could not be brought to the notice of the DB. It was nevertheless made clear in the said interim order that at the stage of the final decision in the petition, it would not create equities. In any event, it has been clarified by the DB in *Pawan Kumar (supra)* by an order dated 26th March, 2019 that the issue is left open.

18. For the aforementioned reasons, the Court finds no merit in this petition. None of reliefs prayed for can be granted. The petition and the pending application are dismissed.

S. MURALIDHAR, J.

A. K. CHAWLA, J.

SEPTEMBER 6, 2019

pa