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

+ **W.P.(C) 9733/2019 & C.M.Applns.40153-54/2019**

SONAL SAROHA

..... Petitioner

Through: Mr. Adarsh K. Tiwari, Mr. Vivek
Kumar Tripathi and Mr. Suresh Pandey,
Advocates

versus

HIGH COURT OF DELHI AND ANR.

.....Respondents

Through: Mr. Rajshekhar Rao, Mr. Chaitanya
Puri and Mr. Siddharth Raval, Advocates for
respondent No.1/DHC
Mrs. Avnish Ahlawat, Standing Counsel
(Services) with Mr. Nitesh Kumar Singh and Ms.
Laveena Arora, Advocate for respondent No.2

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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06.09.2019

1. The petitioner has challenged the *vires* of Rule 14 (c) of the Delhi Judicial Service Rules, 1970 and seeks permission to apply for and appear in the Delhi Judicial Service Examination-2019, advertised by the respondent No.1/Delhi High Court on 31.07.2019.
2. The brief facts of the case are that the petitioner, who states that he has been preparing for several Judicial Service Examinations, had planned to submit an application for participating in the Delhi Judicial Service Examination-2019, on the respondent No.1/Delhi High Court publishing a

Notification on 31.07.2019. The petitioner is aggrieved by the age eligibility prescribed in the said Advertisement, which provides that a candidate would be eligible to appear in the examination if he/she is “(a) a citizen of India; (b) a person practising as an Advocate in India or a person qualified to be appointed as an Advocate under the Advocates Act, 1961; and (c) not more than 32 years of the age as on the 1st day of January, following the date of commencement of the examination i.e. 1st January, 2020.”

3. Learned counsel for the petitioner submits that the date of birth of the petitioner is 21.11.1987 and she will attain the age of 32 years on 21.11.2019, thereby crossing the prescribed age bar of 32 years. He submits that the eligibility criteria laid down by the respondent No.1/Delhi High Court in the Advertisement dated 31.07.2019, is based on Rule 14 of the Delhi Judicial Service Rules, 1970, which stipulates as below: -

“14. A candidate shall be eligible to appear at the examination, if he is: -

a) a citizen of India;

b) a person practicing as an Advocate in India or a person qualified to be admitted as an Advocate under the Advocates Act, 1961;

and c) not more than 32 years of age on the 1st day of January following the date of commencement of the examination.”

4. It is the contention of the learned counsel for the petitioner that the said Rule 14 is arbitrary, devoid of any logic and does not have any nexus with the objects sought to be achieved and is therefore liable to be quashed.

5. *Per contra*, Mr. Rao, learned counsel for the respondent No.1/Delhi High Court submits that the issue raised by the petitioner in the present petition is no longer *res integra* and has already been considered by a

Co-ordinate Bench of this Court in “Gaurav Mehta and Anr. V. High Court of Delhi”, **2014 SCC OnLine Del 1156**. In the said case, the petitioners had laid a challenge to the very same Rule 14 and claimed that it was *ultra vires* and violated their fundamental rights as guaranteed under Articles 14 & 19 of the Constitution of India, as it made them ineligible to appear in the Delhi Judicial Service Examination-2014. Learned counsel submits that prior to the amendment of Rule 14 (c), the age limit was fixed as 30 years, which was subsequently amended vide Notification dated 04.01.2010. He submits that the aforesaid aspect has been re-examined and only thereafter, the age limit has been enhanced by the Legislature from 30 years to 32 years. Therefore, there is no valid reason to enhance the said age limit any further.

6. The challenge laid to Rule 14 was repelled in Gaurav Mehta and Anr. (supra) where the Co-ordinate Bench of this Court had observed as under: -

*“11. Whenever the age limit or cut-off date is fixed under the recruitment Rules, some inconvenience or hardship is invariably caused. However, the age limit or cut off date cannot be challenged for violation of Article 14 of the Constitution of India as it adversely affects some candidates, unless it is per se arbitrary or illogical. **Cut off dates do not offend Article 14 because there cannot be mathematical or logical formula to fix cut off date or age limit. Cut off date or age limits can be challenged if they are irrational, whimsical or capricious. (See: Ramarao v. All India Backward Class Bank Employees Welfare Association, (2004) 2 SCC 76).***

*12. Recruitment Rules by the very nature are required to fix lower and the upper age limit for eligible candidates and also fix the time or date for computing the lower and the upper age limit. It is in this context that the Supreme Court in **University Grants Commission v. Sadhana Chaudhary,***

(1996) 10 SCC 536, observed as under:-

*“21. It is settled law that the choice of a date as a basis for classification 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. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: **Union of India v. Parameswaran Match Works (1975) 1 SCC 305 at p. 579 and Sushma Sharma (Dr) v. State of Rajasthan 1985 Supp SCC 45 at p. 269.).....”***

13. Similarly in **State of Bihar v. Bihar Pensioners Samaj, (2006) 5 SCC 65**, it has been observed, though in a slightly different context, as under:-

“17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.”

14. Applying the said test and legal ratio to Rule 14 (c) which stipulates a candidate should not be more than 32 years

of age as on the first January following the date of commencement of the examination, it has to be held that the stipulation is not violative of Article 14. The cut off date and the age fixed is not arbitrary, irrational or whimsical. Thirty two is a fairly advance age for a person to join the District Judiciary. The reason for fixing first day of January following the date of commencement of the examination as cut off point is obvious. Examinations under the Rules, 1970 are conducted in three stages and take time.”

(Emphasis added)

7. Learned counsel for the petitioner submits that Rule 14 is *per se* arbitrary and illogical and the cut-off date has no rational nexus with the object sought to be achieved by the respondents of having a larger pool of eligible candidates to participate in the examination; nor does it have any direct connection with the tenure of a candidate, who would ultimately be selected as a judicial officer even if he has crossed the age bar of 32 years. He argues that if the cut-off date is fixed as the date on which the application is permitted to be submitted for participating in the subject examination, it will enure to the benefit not only of the petitioner, but several other candidates.

8. We are not persuaded by the submission made by the learned counsel for the petitioner. Any date that may be fixed for age eligibility of the candidates, is bound to adversely affect one set of candidates or the other but that alone cannot be a ground for the Court to intervene. The cut-off date is ordinarily fixed by the Examiner keeping in mind that a reasonable time should be available to conduct the three-tiered examination, as is the case here. The examination for the Delhi Judicial Service entails a preliminary

examination that is scheduled on 22.09.2019, followed by a written examination that is likely to be scheduled in the month of October, 2019 and the last stage is that of conducting the interviews which is ordinarily scheduled within one month from the date the results are declared. In other words, after the Advertisement is issued, it takes little over six months for the examination process to be completed. That being the position, there is just and valid reason for the respondents to have prescribed the age eligibility of the candidates, as set out in Rule 14 (c). Even otherwise, we see no reason to differ with the view expressed by the Co-ordinate Bench in the case of Gaurav Mehta (supra). There is no irrationality or arbitrariness that warrants the said Rule to be declared as *ultra vires*.

9. In view of the aforesaid facts and circumstances, we are of the opinion that Rule 14 (c) of the Delhi Judicial Service Rules, 1970 does not deserve to be tinkered with. As a result, the present petition is dismissed *in limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

SEPTEMBER 06, 2019

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