

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Civil Writ Petition No.19172 of 2020

Date of Decision: November 27th, 2020

Arti Sharma and another

...Petitioners

Versus

The Central Administrative Tribunal, Chandigarh Bench, Chandigarh
and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Puneet Gupta, Advocate
for the petitioners.

Mr. Lajwant Virk, Advocate
for U.T. Chandigarh.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Petitioners have challenged the order dated 04.11.2020 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby the original application (O.A.) filed by the petitioners, under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the two letters dated 20.12.2017 (Annexures A-12 and A-13), whereby the official respondents had rejected the claim of the petitioners for declaring them eligible being overage for appointment to the post of Vocational Instructor, stands dismissed.

2. Briefly, the facts are that a Public Appointment Notice was issued by the Government Rehabilitation Institute for Intellectual Disabilities, Chandigarh-respondent No.3 on 24.10.2016 (Annexure A-1) for filling up various posts including 8 posts of Vocational Instructor. Last date for receipt of the online application was 15.11.2016. According to the said

Public Appointment Notice, candidates were required to be below the age of 30 years as on 01.01.2016. It so happened that the Department of Personnel, Chandigarh Administration, issued a letter dated 04.11.2016 (Annexure A-14) stating therein that a decision has been taken to enhance the upper age for first entry into Government service (in direct recruitment) for all technical and non-technical posts in Chandigarh Administration from 18-25 years to 18-37 years on Punjab pattern. In other words, the upper age limit stood enhanced to 37 years. Petitioners applied in pursuance to the Public Appointment Notice for the post of Vocational Instructor. They passed the requisite test and were declared successful.

3. A Public Notice was issued on 13.11.2017 (Annexure A-6), whereby the list of eligible/ineligible candidates was displayed. Both the petitioners found their names in the list of ineligible candidates for the reason that they were found overage. Ten days' time was granted for submitting objections, if any, with regard to eligibility and to clarify the same. Petitioners responded to the same by pointing out that as per the Government Rehabilitation Institute for Intellectual Disabilities, (Group-C) (Non-Ministerial) Post Recruitment Rules, 2016 (hereinafter referred to as '2016 Rules'), for the post of Vocational Instructor, the age limit for direct recruit is between 18-30 years (relaxable in accordance with law with the instructions or orders issued by the Central Government/Chandigarh Administration from time to time). Note to the same mentions that the crucial stage for determining the age shall be the closing date for receipt of applications from candidates to India. On this basis, it was asserted that the date for determining the age limit has wrongly been fixed in the advertisement as 01.01.2016 instead it should have been 15.11.2016, which

was the last date of receipt of the applications. Mention was also made with regard to the letter dated 04.11.2016 (Annexure A-14) issued by the Department of Personnel, Chandigarh Administration, relaxing the upper age limit for first entry into Government service (in direct recruitment) by enhancing the upper age limit from 25 to 37 years on Punjab pattern. On this basis, it was asserted that the upper age limit being now 37 years, petitioners were eligible and, therefore, their names should be included in the list of eligible candidates by removing them from the list of ineligible candidates.

4. When their claim was not decided, they had to approach the Central Administrative Tribunal, which gave a direction to the respondents to consider the representation/reply of the petitioners. The said request of the petitioners, after consideration, was rejected by the respondents, leading to the amending of the original application, whereby they have challenged the decision taken by the respondents declaring them overage.

5. The contentions as raised by the petitioners were rejected by the Central Administrative Tribunal vide order dated 04.11.2020 (Annexure P-1) holding therein that the letter dated 04.11.2016 issued by the Chandigarh Administration enhancing the age limit for first entry into Government service to 37 years would not be *ipso facto* applicable as in the said letter, it was clearly mentioned that the necessary amendments in the service/recruitment rules had to be carried out with the approval of the competent authority. It was also mentioned that the executive instructions cannot override rules, which are framed under Article 309 of the Constitution of India and, therefore, on the date when the advertisement was

issued, the prevalent rules then would be applicable, which provide for the upper age limit as 30 years. It was also mentioned that even if the plea of the petitioners to the extent that the service rules provided for calculating the cut off age to be the last date of receipt of application, petitioners still would be more than 30 years and thus no benefit can be granted to them on that score as well. This order of the Central Administrative Tribunal upholding the action of the respondents and declaring the petitioners ineligible for appointment to the post of Vocational Instructor has been challenged by way of the present writ petition.

6. It is the contention of learned counsel for the petitioners that the advertisement/Public Appointment Notice dated 24.10.2016 (Annexure A-1) deserves to be quashed for the reason that it provides for calculating the upper age limit of the candidates as 01.01.2016, which is contrary to the statutory rules governing the service, which provides that the date for calculating the age would be the last date of receipt of the applications. In the light of the said fact, the advertisement cannot sustain. It has also been asserted that the last date for receipt of the applications as per the Public Appointment Notice dated 24.10.2016 was 15.11.2016. Prior to this last date of receipt of the applications, a decision was taken by the Chandigarh Administration to increase the upper age limit for first entry into Government service in direct recruitment by enhancing the same to 37 years instead of 25 years. A letter to this effect was issued on 04.11.2016 (Annexure A-14) by the Department of Personnel, Chandigarh Administration. Since this letter dated 04.11.2016 had come into existence prior to the last date of receipt of the applications, the upper age limit stood

automatically increased to 37 years for the candidates. The effect whereof would be that the petitioners become eligible for consideration for appointment to the post of Vocational Instructor. He, thus, contends that the order passed by the Central Administrative Tribunal dismissing the original application (O.A.) of the petitioners cannot sustain and deserves to be set aside. Prayer has also been made for declaring the petitioners eligible for appointment to the post of Vocational Instructor.

7. We have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the records of the case including the impugned order dated 04.11.2020 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

8. The first and foremost argument, which has been raised by the counsel for the petitioners is that as per the statutory rules governing the service i.e. Government Rehabilitation Institute for Intellectual Disabilities, (Group-C) (Non-Ministerial) Post Recruitment Rules, 2016 (Annexure A-10), the crucial date for determining the age limit of a candidate shall be the closing date for receipt of the applications and, therefore, the Public Appointment Notice dated 24.10.2016 (Annexure A-1) deserves to be set aside being violative of the statutory rules. This contention of the counsel for the petitioners cannot be accepted as even if instead of 01.01.2016, the date as fixed as per the Public Appointment Notice for determining the age limit, is taken as 15.11.2016, the last date for receipt of the applications from the candidates, the petitioners admittedly would be over the age of 30 years, which was the age fixed in the

Public Appointment Notice.

9. The second contention and the issue, which has been raised by the counsel for the petitioners is that prior to the last date of receipt of the applications i.e. 15.11.2016, a decision has been taken by the Chandigarh Administration to enhance the age limit for first entry into Government service i.e. direct recruitment from 18-25 years to 18-37 years for recruitment of all technical and non-technical posts and, therefore, with the increase in the upper age limit from 25 to 37 years, petitioners would become eligible but this contention also cannot be accepted in the light of the fact that the decision, which has been taken by the Chandigarh Administration although has been conveyed vide letter dated 04.11.2016 but it *ipso facto* is not applicable being an executive instruction when the statutory rules governing the service hold the field. The settled proposition of law is that the executive instruction will not overrule/override the statutory rules framed under Article 309 of the Constitution. It is an admitted position that the 2016 Rules governed the appointment to the post of Vocational Instructor. As per the said rules, the upper age limit prescribed is 30 years. If that be so, letter 04.11.2016 issued by the Department of Personnel, Chandigarh Administration, would not by itself be applicable with regard to the enhancement of the upper age limit for recruitment to the post of Vocational Instructor. More so, when the letter dated 04.11.2016 itself requires the carrying out of the necessary amendment in the service/recruitment rules and that too with the approval of the competent authority.

It is not in dispute that the competent authority had neither

accepted the said letter nor has the necessary amendments in the service/recruitment rules been carried out. Rather the specific stand of the official respondents before the Central Administrative Tribunal is that after the issuance of the letter dated 04.11.2016, the competent authority, on consideration, has taken a decision that the existing recruitment process where the posts have been advertised, need not be disturbed and the process for amendment of rules be initiated for future recruitment.

10. In the light of the above, the challenge to the order dated 04.11.2020 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, would not success as the said order is based upon proper appreciation of the facts and law.

11. Finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 27th, 2020
Puneet

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes