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

.....

CWP No.5672 of 2021

Date of decision: March 31st, 2021

Vinod Kumar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

.....

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

.....

Present: Mr. Sunil Kumar Nehra, Advocate for the petitioner.

Mr. Samarth Sagar, Additional Advocate General, Haryana for respondents No.1 and 2.

Mr. Gobind Tanwar, Advocate for Mr. Kanwal Goyal, Advocate for respondent No.3.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has sought the indulgence of this Court for the issuance of a writ in the nature of certiorari quashing Advertisement No.3 of 2021 (Annexure P-4) to the extent of its not providing the age relaxation to the aspirants, belonging to the Economically Weaker Sections (here-in-after referred to as 'the EWS'), for the posts, except the post of the Deputy Superintendent of Police (for short 'the DSP'), advertised thereby as well as the notification dated 03.02.2021 (Annexure P-9) so far as it does not provide the age relaxation to the candidates of the said category for the other posts while granting this benefit

to them for the posts of the Police and Prisons Personnel and he has further prayed for the issuance of a writ in the nature of mandamus directing the respondents to grant relaxation of 5 years in the maximum age to the candidates belonging to the EWS category for the other posts as well and also directing respondent No.3-the Haryana Public Service Commission (here-in-after referred to as 'the HPSC') to accept his application-form for the posts advertised vide Annexure P-4 and to treat him as eligible for the same and to allow him to participate in the recruitment process.

2. Shorn and short of unnecessary details, the averments as canvassed by the petitioner in this petition, are that he belongs to the EWS category as reflected in the Certificate dated 13.08.2020 (Annexure P-1). Vide notification dated 25.02.2019 (Annexure P-2), the Government of Haryana provided for the reservation for the persons of the EWS category in the direct recruitment to civil posts and services which was, subsequently, modified vide the notification dated 27.01.2020 (Annexure P-3). On 26.02.2021, the HPSC issued Advertisement No.3 of 2021 (Annexure P-4) for filling-up the posts of Haryana Civil Service (Executive Branch) [here-in-after referred to as 'the HCS (EB)'] and Allied Services. Out of the total 48 posts advertised for the HCS (EB), 4 posts have been kept reserved for the persons belonging to the EWS category of Haryana. The last date for submission of the online applications is 02.04.2021.

3. The petitioner has, further, averred that as per the age limit prescribed in the said Advertisement (Annexure P-4), the candidates (except for the post of the DSP) should not be less than 18 years and not more than

42 years on or before 1st January, 2021. However, the relaxation of 5 years in the maximum age limit has been provided to the candidates belonging to Scheduled Castes/Scheduled Tribes, Backward Classes, wives of military personnel who are disabled while in the military service, widowed or legally divorced woman provided she has not re-married, judicially separated women residing separately for more than two years, unmarried women, Ex-Servicemen, disabled persons covered under the Rights of Persons with Disabilities Act, 2016 and to the persons, who have already worked or are working in any Department, Board or Corporation of Haryana Government and also in the High Court etc. but no such benefit has been extended to the candidates of the EWS category for the posts advertised thereby except for the post of DSP whereas this benefit had been extended to the candidates of the said category while advertising the posts of Police Personnel vide Annexure P-6. On the prescribed date, i.e 01.01.2021, his age was 42 years, 10 months and 30 days and thus, he is overage by 11 months approximately. Earlier, the Economically Backward Persons in General Category (EBPGC) were given the benefit of reservation but the same was withdrawn after the said benefit had been granted to the persons belonging to Economically Weaker Sections and now, vide the notification Annexure P-9, the age relaxation has been provided to the candidates of the EWS category for the posts of Police and Prison Departments only which shows that the said benefit has, inadvertently, not been extended to the candidates of the said category, applying for the other posts.

4. Respondents No.1 and 2 filed the affidavit of Mr. Vijayendra

Kumar, the Principal Secretary to the Government of Haryana, General Administration Department, wherein he has deposed that there is no parity between the various posts of the HCS (EB) and the post of DSP as these are governed by separate sets of Service Rules, i.e. the Haryana Civil Service (Executive Branch) Rules, 2008 (here-in-after referred to as 'the Rules of 2008') and Haryana Police Service Rules, 2002 (here-in-after referred to as 'the Rules of 2002') respectively and as per the Rules of 2002, the State Government is empowered to provide age relaxation to the EWS candidates for the post of DSP only whereas the same relaxation cannot be provided to the candidates of the said category for the posts of HCS (EB) as there is no similar provision in the Rules of 2008 empowering the Government to relax the eligibility criteria in this regard.

5. I have heard learned counsel for the petitioner, learned State counsel as well as learned counsel for respondent No.3-HPSC in the present petition, at the preliminary stage and have also perused the file thoroughly.

6. Learned counsel for the petitioner has pointed out that vide Annexure P-7, i.e. the copy of the Instructions issued by the Chief Secretary to Government, Haryana on 05.02.2015, the relaxation of 5 years in upper age limit had been extended to the candidates of EBP GC besides those belonging to the Special Backward Classes Category and thereafter, vide 103rd Amendment in the Constitution of India as made on 12.01.2019 (Annexure P-10), Clause 6 has been inserted in Article 16 whereby the State has been empowered to make provision for the reservation of posts for the persons belonging to the EWS category and in pursuance thereof, the

Government of Haryana issued the letter/instructions dated 05.06.2019 withdrawing the reservation as granted earlier to the EBP GC and he has contended that now, the State Government has issued the impugned notification Annexure P-9 extending the benefit of relaxation in the upper age limit to the candidates of EWS category only qua the posts of Police and Prisons Personnel while denying the same for the posts of the rest of the Departments/services despite the fact that such benefit had been extended to the candidates of EBP GC earlier and the HPSC has notified the impugned Advertisement Annexure P-4 in consonance with Annexure P-9 whereas vide Annexure P-6, i.e. the copy of the Advertisement No.4 of 2020 notified by the Haryana Staff Selection Commission on 30.12.2020 for inviting applications for direct recruitment to the posts of Group 'C' in the Police Department, the candidates of EWS category have been granted relaxation of 5 years in the upper age limit and hence, the impugned Notification Annexure P-9 and also the Advertisement Annexure P-4, being arbitrary as well as discriminatory, are liable to be quashed to the extent so far as the same deprive the persons of the EWS category, aspiring for their selection for the other Government jobs except Police and Prison Personnel, of the said benefit. To buttress his contentions, he has placed reliance upon *Jayrajbhai Jayantibhai Patel Vs. Anilbhai Jayantibhai Patel and others,* *2006 (8) SCC 200.*

7. However, learned State counsel as well as learned counsel for the HPSC have argued that the recruitment and service of the members of the HCS (EB) and the Police Department are governed by separate sets of

the Rules and the different upper age limits for entry into the said services have been prescribed therein keeping in view the peculiar nature of the duties required to be performed by them and therefore, the said benefit of relaxation in the upper age limit cannot be claimed by the candidates of the EWS category for the posts, other than the posts of the Police and Prisons Departments, as a matter of right on the basis of parity.

8. Undisputedly, the recruitment and conditions of the service of the persons appointed to the HCS(EB) are governed by the Rules of 2008 wherein Rule 12 (2) (a) provides that:-

“(2) No person shall be allowed to sit in the examination-

*(a) who is less than twenty-one years or more than forty years of age or **such age limit as may from time to time be fixed by Government for entry into service, on or before the first day of January next preceding the last date appointed by the Commission for the submission of applications:***

Provided that the age limit for a person belonging to the Scheduled Castes, Scheduled Tribes or Backward Classes shall be such as may be fixed by Government from time to time.”

A bare reading of the above-mentioned Rule makes it crystal clear that the age limit for entry into the said service can be modified or altered by the State Government from time to time. Vide the impugned

instructions/notification Annexure P-9, the upper age limit for the posts of all Groups A, B, C and D has been fixed as 42 years while providing age relaxation for the categories enumerated in para 2 (ii) therein which shows that the relaxation of 5 years in upper age limit is available to the candidates of the EWS category for the posts of Police and Prisons Personnel only and as specifically mentioned in the beginning para therein, these instructions have been issued in supersession of all the instructions already issued by the Government regarding fixation of the lower and upper age limit for entry into the Government Service or to compete for regular recruitment and also regarding the grant of relaxation in the upper age limit under various circumstances, as listed at Annexure-A and the earlier instructions contained in Annexure P-7 extending the benefit of 5 years' relaxation in the upper age limit to EBP GC Category find mention at Sr. No.28 in the said Annexure-A meaning thereby that the afore-discussed instructions, as circulated vide Annexure P-7, have been ordered by the State Government to be superseded after taking a conscious decision in respect thereof.

9. Moreover, the Apex Court has recently made the following observations in para 14 of the judgment handed down in **Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others etc.,** **2020(6) Scale 292 :-**

“.....So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for

providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

The afore-cited observations squarely cover and are, therefore, fully applicable to the case of the petitioner and in the light of the same, it is quite explicit that this Court should not direct the respondents for providing age relaxation to the candidates of EWS Category for the posts for which it is not so notified in the impugned Advertisement (Annexure P-4).

10. The observations as made by Hon’ble Supreme Court in **Jayrajbhai Jayantibhai Patel** (supra) do not further the cause of the petitioner to substantiate his claim in the present petition as the facts and circumstances of the matter in hand are apparently distinct and different from those of the referred above. In the afore-mentioned case, the matter related to the dispute regarding the election of the President of Anand Municipality because at the time of convening the meeting for the said purpose, two of the participant Councillors had been arrested by the police and therefore, it was observed that the detention of the said Councillors a few minutes before the election meeting was a relevant factor which ought

to have been taken into consideration by the Presiding Officer to decide whether to continue with the election or to postpone it and the High Court had not committed any error of law and/or jurisdiction in setting aside the election of the appellant as the President of the said Municipality whereas, it is not so in the present case.

11. Learned counsel for the petitioner has also referred to the depositions, as made by the Principal Secretary to Government, Haryana in his said affidavit, to the effect that there is a special provision, i.e. Rule 20 in the Rules of 2002, which provides for the grant of age relaxation to the EWS candidates in the matter of recruitment to the post of the DSP only whereas no such relaxation can be provided to the EWS candidates for the posts of HCS(EB) as there is no similar provision in the Rules of 2008 empowering the State Government to relax the eligibility criteria in this regard and he has contended that as per the proviso appended to Rule 12(2)(a) of the Rules of 2008, the State Government may fix the age limit for a person belonging to the Scheduled Castes, Scheduled Tribes or Backward Classes but however, vide the impugned instructions/Notification Annexure P-9, the candidates of several other categories, as mentioned at Serial No. (iii) to (x) in para 2(ii) therein, have been extended the benefit of 5 years' relaxation in the upper age limit and it being so, the respondent-State is estopped from taking the plea that the said benefit cannot be extended to the persons, belonging to the EWS category, aspiring to apply for the posts other than those of Police and Prisons Personnel.

12. Again, this contention does not hold much water because Rule

34 in the Rules of 2008 reads as under:-

“34. In respect of all matters not specifically mentioned in these rules, the member of the Service shall be governed by such general rules as may have been or may hereafter be framed by Government under the provisions of the Constitution of India in this respect.”

A bare reading of the above-said Rule makes it explicit that in case, the said Rules are silent on any particular point, the member of the service is to be governed by the general rules as might have been or might thereafter be framed by the Government under the provisions of the Constitution of India in this respect. The Rules of 2008 are silent on the point of extending the benefit of age relaxation to the persons belonging to the categories other than those as mentioned in the said proviso to Rule 12(2)(a).

13. Undisputedly, Haryana Civil Services (General) Rules, 2016 (hereinafter referred to as “the Rules of 2016”) have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and Rule 22 in these Rules prescribes the age for entry into the Government Service and Clauses (b), (c) and (d) thereof provide for the relaxation in upper age limit of the persons belonging to the categories as specified therein and are as under:-

“(b) The upper age limit of forty two years shall be extended by five years in the case of person belonging to one or more of the following:-

(i) Scheduled Castes/Scheduled Tribes;

(ii) Backward Classes;

(iii) Wives of military personnel who are disabled while in military service;

(iv) Widowed or legally divorced women;

(v) Judicially separated women residing separately for more than two years from the date as prescribed for the purpose of age for candidates of other categories.

(c) The upper age limit prescribed for appointment to any service or post shall relaxed in favour of ex-serviceman to the extent of his military service added by three years provided-

(i) he has rendered continuous military service for a period of not less than six months before his release; and

(ii) he was released otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.

(d) The differently abled persons, viz, deaf, dumb, blind and orthopaedically handicapped, shall be given age concession of ten years over and above the upper age limit prescribed for direct recruitment to the post against which they can suitably be employed.

In Annexure P-9, the categories as mentioned in the above-cited Clauses (b), (c) and (d) of Rule 22 have been included and para 3 therein also provides as under:-

“3. Until necessary amendment is made in the rules by the Finance Department, these instructions shall be applicable with immediate effect instead of the provision which exists in Rule 22 of the Haryana Civil Services (General) Rules, 2016.”

The above-discussed Rules of 2016 as well as the contents of para 3 in Annexure P-9 sufficiently explain the inclusion of several other categories, besides the categories of SC/ST and BC as mentioned in the proviso appended to Rule 12(2)(a) of the Rules of 2008 and also of those categories which have not yet been included in the existing Rule 22 of the Rules of 2016, in the impugned instructions/notification Annexure P-9, for granting the benefit of the relaxation in upper age limit for entry into the Government service .

14. As regards the plea of estoppel, it has been held by the Apex Court in **State of Rajasthan and another vs. Surendra Mohnod and others, 2014(14) SCC 77** that *“there can be no estoppel against law”*.

Similar observations were made by Hon’ble the Supreme Court in **Jalandhar Improvement Trust vs. Sampuran Singh, AIR 1999 SC 1347.**

In view of these observations, it can be safely held that the plea of estoppel cannot be resorted to in respect of the legal provisions/rules/regulations framed by the Competent Authorities in exercise of the powers conferred upon them for the said purpose. Hence, the afore-referred explanation, as put-forth by the Principal Secretary to the Government of Haryana in his said affidavit, does not suffice at all to brush aside the entire above-

discussed provisions made in the relevant Rules or to throw the same to the winds.

15. Lastly, learned counsel for the petitioner has referred to Annexure P-12, i.e. the copy of Advertisement No.10 of 2019-20 notified by the Gujarat Public Service Commission for inviting applications for the various posts of Gujarat Administrative Services and has contended that the benefit of relaxation of 5 years in the upper age limit has been extended therein to the candidates of EWS category besides the other categories and therefore, the petitioner should also be allowed to apply for and participate in the selection process to be conducted for the posts advertised vide Annexure P-4.

16. Again, this contention is not tenable at all because so far as the reservation of the posts for the persons belonging to EWS category for the purpose of their appointment, as envisaged under 103rd Amendment of Constitution of India, is concerned, neither the impugned Advertisement Annexure P-4 nor Notification Annexure P-9 violate the same in any manner by depriving the candidates of the EWS category from their said right. As regards the relaxation in the prescribed upper age limit, the same can, by no stretch of imagination, be taken to be a fundamental right of any citizen and rather, it squarely falls within the four corners of the term “concession” and the State/Government, being the employer, is well within its rights to take policy decision, in its own wisdom and prudence, to extend or withdraw any concession granted to a particular class or category of persons. It being so, Annexure P-12 is of no avail to the petitioner to seek the benefit as claimed

in this petition.

17. As a sequel to the fore-going discussion, it follows that the instant petition is sans any merit and hence, it deserves dismissal. Resultantly, the same stands dismissed accordingly.

March 31st, 2021.
Parmar/sandeep/neetu

(MEENAKSHI I. MEHTA)
JUDGE

NOTE:

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether Reportable?</i>	<i>Yes/No</i>