

Sonali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1117 OF 2022**

Sandhya Manohar Waghchoure ...Petitioner
Versus
The State of Maharashtra through its General ...Respondents
Administration Department & Anr

**Mr RV Pai, Senior Advocate, i/b Dushyant S Pagare, for the
Petitioner.**
**Mr Asif Patel, Addl GP, with PG Sawant, AGP, for the Respondent-
State.**

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 4th February 2022**

PC:-

**SONALI
MILIND
PATIL**

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SONALI MILIND
PATIL
Date: 2022.02.05
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1. Leave to amend in terms of the draft amendment tendered, taken on record and marked "X" for identification. Amendment to be carried out within one week from today without need of reverification.
2. We have heard Mr Pai, learned senior counsel for the Petitioner.

3. The challenge in this Petition — although only in a manner of speaking — is to a Government Resolution dated 17th December 2021 No. SRV-2021/C No.61/Office 12. A copy of this is at Exhibit “C” at pages 29 to 30 of the Petition paperbook.

4. We will revert to this very shortly. The Petitioner’s professional ambition is to be appointed an Assistant Public Prosecutor under the State Government.

5. Much of what follows turns on an appreciation of Government policy that is enunciated or reflected in the GR in question. This can be traced to the very peculiar social problems and upheavals that were caused by the COVID pandemic and lockdown from March 2020 onwards.

The Government Resolution seeks to give benefits until 31st December 2022 to candidates who crossed a specified age limit during the period from 1st March 2020 until the date of the GR, 17th December 2021. Thus, three dates emerge as crucial for the operation of the Government Resolution. The first is the date of the GR, 17th December 2021. Its benefits operate from a prior date, 1st March 2020, roughly the onset of the COVID pandemic and lockdown and the ensuing difficulties for a large portion of the Indian populace. The third date is the cut-off date and this is fixed as 31st December 2022. A copy of the original GR in Marathi is appended to this order. A translation obtained from the State Government while this order was being finalized is reproduced below.

*(Translation of a Copy of the Government Resolution dated
17/12/2021 typewritten in Marathi.)*

**Regarding giving
Opportunity to appear
for examination on the
background of Corona.**

Government of Maharashtra
General Administration Department
Government Resolution Number-SRV-2021/M.No.61/
Desk 12,
Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032.
Date : 17th December, 2021.

Reference :- General Administration Department,
Government Resolution No. SRV –
2015/ M. No. 404/ D -12, dated 25th
April, 2016.

Preface :-

As the advertisements in respect of appointment by way of direct recruitment in Government service have not been published on the background of Corona disease, some of the candidates have crossed the maximum age limit during this period and hence, they have lost their Opportunity to appear for the examination. The discussion was held in the Hon'ble Cabinet meeting held on the date 10th November, 2021, in respect of making available an opportunity to such candidates to appear for the Competitive examinations. Accordingly, the aspect of making available such opportunity was under consideration of the Government.

Government Resolution :-

On the background mentioned in the Preface, the following instructions are being issued by this Government Resolution:-

1) **In the cases of those candidates, who have crossed maximum age limit prescribed by the Government for appointment as per the Recruitment Rules of the concerned post or as per the Government Resolution dated 25/04/2016 under reference, during the period from the date 1st March, 2020 till the date of this Government Resolution, due to the reason that the advertisements have not been published from the date 1st March, 2020, in respect of the appointment in Government Service by direct recruitment, on background of Corona disease, an opportunity is being given to them as ‘one time special case’ for the advertisements that would be published for appointment in Government Service by direct recruitment, from the date of this Government Resolution till the date 31st December, 2022.**

2) Even in the cases, in which the advertisements have been published in the near time due to reduction in the spread of Corona disease and the last date to submit application mentioned in the advertisements is after the date of this Government Resolution, an opportunity is being given to appear for examination as ‘one time special case’ to even those candidates, who have crossed the maximum age limit prescribed for appointment as per the Recruitment Rules of the concerned post or as per the Government Resolution dated 25/04/2016 under reference, during the period from the date 1st March, 2020 till the date of this Government Resolution.

3) Even in the cases, in which the advertisements have been published in near time due to reduction in spread of

Corona disease and the last date to submit application mentioned in the advertisements is over before the date of this Government Resolution, however, actual examinations have not been organised, the Maharashtra Public Service Commission or the Selection Committee concerned, should grant permission to make application as **‘one time special case’** to those candidates, who have crossed the maximum age limit prescribed for appointment as per the Recruitment Rules of the concerned post or as per the Government Resolution dated 25/04/2016 under reference, during the period from the date 1st March, 2020 till the date of this Government Resolution, so that they will also get an opportunity to appear for the examination.

The said Government Resolution has been made available on the Maharashtra Government website www.maharashtra.gov.in and its Code No. is 202112171727588807. This Order is being issued by authenticating the same with digital signature.

By the Order and in the name of the Governor of Maharashtra.

(Geeta R. Kulkarni)

Digitally signed by
(Geeta R. Kulkarni) Deputy Secretary,
Government of Maharashtra

Copy to :- *(excluded)*

(Emphasis added)

6. The crucial aspect is that the cut-off date for the age limit of 45 years must have been attained by the date of the GR, i.e. 17th December 2021, for a candidate to avail of the relaxation. Thus, any

person who attained the age of 45 years between 1st March 2020 and 16th/17th December 2021 would get the benefit of this GR.

7. The Petitioner crossed the age of 45 years on 26th December 2021.

8. On 7th January 2022, the Government published an advertisement for the post of a Special Assistant Public Prosecutor from eligible candidates. This included candidates who are eligible under the GR in question. The advertisement rendered ineligible all persons who had crossed 45 years after the date of the GR, i.e., between 18th December 2021 and 7th January 2022.

9. It was in these circumstances that the application presented by the Petitioner was declined.

10. It is important to note that to avail of the GR's relaxation or benefits, the aspirant or candidate should actually have crossed the 45-year age limit between 1st March 2020 and 17th December 2021. This is what the GR plainly says.

11. Mr Pai's submission is two-fold. He first submits that this end date of 17th December 2021 is irrational and has no discernible or cogent nexus to the object of the GR. Logically, the correct cut-off date, he submits, should be the date of the advertisement, i.e. 7th January 2022. There is no intelligible differentia to separate those eligible from those ineligible.

12. He also says that this requirement of a discernible rational nexus and intelligible differentia are the corner stones of all Government policies. Government actions that are susceptible to judicial review must be tested on these criteria.¹

13. There is no quarrel with the propositions that Mr Pai advances. These are now far too well settled over nearly 50 years of jurisprudence to admit of any further controversy or warranting further discussion. But Mr Pai's submission does not fall within those established parameters.

14. In our view, what the submission from Mr Pai really means is that in exercise of our writ jurisdiction we should rewrite a particular term of the GR, and, although he calls this a process of reading down, we should specify some totally different date from that mentioned in the GR, or perhaps even no date at all.

15. We are unable to accept this submission. What date should be fixed for the operation of any particular GR, either as the starting or the ending point, is a matter of government policy.

16. We also believe Mr Pai is quite wrong when he says that in the post of a Public Prosecutor or an Assistant Public Prosecutor, age "makes no difference". It may make no difference to ability. But it certainly makes a significant difference when one considers it from the perspective of the serious implications of financial implications

1 *Ram Krishna Dalmia v Justice SR Tendolkar & Ors*, (1959) SCR 279 : AIR 1958 SC 538; *Union of India v Parameswaran Match Works & Ors*, (1975) 1 SCC 305; *DS Nakara & Ors v Union of India*, (1983) 1 SCC 305.

and seniority that this presents to the State Government in relation to those in its full-time employment. But even if we accept the argument that age makes no difference, this furnishes no reason to interfere.

17. It is not shown to us how any part of the GR is so manifestly arbitrary that it cannot possibly be allowed to stand. A certain view may be preferable. Even if Mr Pai's submission may be better than the one that the State Government has chosen, it is not the remit of the constitutional Court to let the best become the enemy of the good. A writ court will not substitute its own view for that of the government in a matter of policy. Unless a particular government action is found to be ultra vires the Constitution or a statute on settled tests, a writ court will not interfere merely because it is preferable to do so.

18. Indeed looking to the circular we find that the Government has been careful to exclude from all age-bar disqualification for almost the entire period of the lockdown starting from 1st March 2020 and going on to the date of GR in mid-December 2022. Indeed, the GR goes further. For it says that those who have crossed the prescribed age limit during that period can avail benefits of this GR all the way until 31st December 2022, i.e. in further and future advertisement that may be issued even after the date of the GR.

19. For these reasons, we find no merit in the Petition. It is rejected, with no order as to costs.

20. For statistical purposes, the Writ Petition is to be finally numbered within one week from today.

21. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)