

10.05.2023
Sl. No.20(DL)
srm

W.P.A. No. 9702 of 2023

Ganga Hazra (Jana)

Vs.

The State of West Bengal & Ors.

Mr. Goutam Banerjee,
Ms. Chumki Das Bairagya

....for the Petitioner.

Ms. Chaitali Bhattacharya,
Mr. Suvhendu Roy Choudhury

...for the State-respondents.

The Court does not find any reason to direct the Sub-Divisional Officer, Arambagh, Hooghly, who is the Member Secretary of the ASHA Selection Committee to condone the petitioner's age so that she is eligible to participate in the recruitment process.

As per the pleadings, it appears that the upper age limit for candidates was fixed at 40 years. The petitioner crossed the age limit by 5 years.

The law is well settled that over age cannot be either relaxed or condoned by the authorities or by the Court, unless the rules specifically provide so. The discretion to relax the age bar, even if the rules permit, must be exercised sparingly and in very exceptional cases.

It is left to the authority to decide in appropriate cases as to whether the relaxation would be given or not. In the decision of **Shri Amrik Singh and others vs. Union of India and others** reported in (1980) 3 SCC 393, the Hon'ble Apex Court held that the discretionary power has to be exercised judiciously and not in a routine manner.

In the Decision of *The State of Jammu and Kashmir & ors vs. Shaheenna Masarat & anr.* decided in *Civil Appeal No.4991 of 2012*, the Hon'ble Apex Court held as follows:-

“Further, the Division Bench was of the opinion that there will be no uniformity in selection of Re-Ts in the State. The scheme would be rendered unconstitutional as being violative of Articles 14 and 16 of the Constitution of India. Therefore, the High Court construed the provision relating to upper age limit as mandatory. We approve the conclusion of the Division Bench. Appointments to public posts should be strictly in accordance with Articles 14 and 16 of the Constitution of India. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities. Construing the provision relating to upper age limit as directory would be conferring unbridled power in the executive to choose persons of their choice by relaxing the age beyond 35 years. In such case, the provision would have to be declared as unconstitutional. Therefore, we are of the opinion that 35 years is the upper age limit for appointment as Re-T. The 2nd Respondent who has crossed 35 years on the cut-off date was not eligible for appointment. The High Court has correctly directed the appointment of the 1st Respondent as Re-T”

The Courts have time and again held that unless and until the recruitment notice or the rules provide condonation of age bar or allow the authorities to exercise discretion with regard to condonation of age bar under special circumstances, the writ court cannot, on its own, extend the age limit in case of a candidate who has crossed the age limit at the time of filing the application. The Courts further held that relaxing the upper age limited would be contrary to the provisions of Articles 14 and 16 of the Constitution.

Under such circumstances, the writ petition is dismissed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)