

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6371 OF 2023

RAJU DHONDIRAM AKRUPE)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.Vijay Nagrani, Advocate for the Petitioner.

Mr.P.G.Sawant, AGP for the Respondent – State.

**CORAM : ABHAY AHUJA AND
M.M.SATHAYE, JJ.**

**DATE : 26 MAY 2023
(VACATION COURT)**

JUDGMENT : (PER ABHAY AHUJA, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of Counsel for the parties.

2. By this Petition, Petitioner is seeking to quash and set aside interim order dated 10th May 2023 passed by the Maharashtra Administrative Tribunal (MAT) in Original Application No.345 of 2023 rejecting Petitioner's interim application in the said Original

Application for age relaxation to participate in the selection process by nomination to a higher post by appearing in the examination which is going to be held on 4th June 2023.

3. Petitioner is working as a Food Safety Officer and his age today, statedly, is 39 years and in order to appear for the Combined Civil Services Preliminary Examination 2023 conducted by Respondent no.4 – Maharashtra Public Service Commission (MPSC) to be held on 4th June 2023, he is seeking age relaxation on the basis of Bombay Civil Services, Classification and Recruitment Rules, 1939 (the “1939 Rules”). Petitioner has also placed reliance on the Government Circular dated 1st November 2003 and the decision of this Court in the case of ***Anil Motilal Nimbhure vs. State of Maharashtra and Others***¹ to submit that the said 1939 Rules though framed prior to independence and before framing of the Constitution of India and despite the provision of Article 395 of the Constitution, are holding the field.

¹ Writ Petition No.6179 of 2007, decided on 7th January 2008

4. It is Mr.Nagrani's case that, Petitioner being a government servant, is entitled to upper age relaxation pursuant to the 1939 Rules, and therefore, even though he has crossed the age limit for general category of 38 years, being 39 years of age, in view of the fact that the said Rules are still holding the field, he is entitled to appear for the examination, which is going to be held on 4th June 2023. Mr.Nagrani has relied upon Rule 7 of the 1939 Rules with respect to qualification in respect of age and education of the candidates for appointment in the Government Service and would submit that Note 3B thereunder carves out an exception in the case of a Government servant, to mean that there shall not be an upper age limit for the Government servant. The said Rule 7 and Note 3B are usefully quoted as under :

"7. Government shall prescribe the qualifications in respect of age and education which shall be required to be possessed by candidate for admission to the Provincial and Subordinate service. The qualifications so far prescribed are stated in Appendices C and D.

Note 3B. The concession granted under these rules to Government Servants that the age limit prescribed therein shall not be applicable to them shall be available only to the following classes of Government servants, namely :-

(1) Permanent Government servants

(2) Temporary Government servants whether officiating in (i) substantive, (ii) deputation or (iii) leave vacancies, if they are in continuous service for not less than six months on the date of their applications.

(Government Notification, Political and Services Department, No.1586/34, dated the 1st December 1943)."

5. Learned Counsel would submit that based on these 1939 Rules, the State Government had issued a Circular dated 1st November 2003 by which it was decided not to grant complete age relaxation to the government servant for selection on the basis of nomination and took decision to grant age relaxation to the extent of upper age limit including the number of years of experience or relaxation up to the age of 45/50 years on the basis of requirement and specialization of posts. He would submit that the said Circular is in breach of the said 1939 Rules as the said Rules of 1939 contemplate complete age relaxation in favour of the government servant, the said 1939 Rules having statutory force.

6. The Petitioner had therefore filed an Original Application before the MAT seeking complete age relaxation for selection on the basis of nomination for in-service candidates based on the Rules of 1939 read with Government Circular dated 1st November 2003 and the decision of this Court in the case of *Anil Motilal Nimbhure vs. State of Maharashtra and Others (supra)* and also for a declaration that not incorporating the upper age limit in the advertisement to in-service candidates is illegal and unconstitutional and also for a further direction to Respondent no.1 – State to adopt and amend the Recruitment Rules dated 8th June 2022 on the basis of Notification dated 16th January 2003 and a direction to the Respondent no.3-MPSC to incorporate the amendment as a qualification under Clause (3) of the Corrigendum Advertisement dated 17th March 2023; and on this basis Petitioner should not be held disqualified on the ground of age bar and he be allowed to participate in the selection process for the post of State Services, Group-A and B pursuant to the advertisement dated 24th February 2023. The applicant also made an application for interim relief to be allowed to appear for the

examination to be conducted on 4th June 2023 which was heard on 10th May 2023 and came to be rejected by the order impugned in the Petition. The relevant paragraphs 5 to 8 of the said interim decision are usefully quoted as under :

“5. Considered the submissions of both the learned Counsel and the learned C.P.O. Age relaxation is to be given in the Rules. The Government can take a policy decision to grant age relaxation to the persons in Government service or not to provide the same. The Rules of 1939 does not say anything about selection by nomination because at the relevant time the mode of selection by nomination was not introduced. The avenue of appointment by nomination was made available in Government service Post Independence. Thus, it is necessary to consider what is the policy adopted by the State Government, as on today through its legislation of the Recruitment Rules. It is not necessary to look into the Circular dated 1.11.2003. By the Rules of 1986 the State of Maharashtra with a view to regulate upper age limit for recruitment by nomination in Class-I, Class-II, Class-III and Class-IV posts in Maharashtra Civil Services framed the rules. In the said Rules, there is no mention of providing age relaxation to the Government servants. Moreover, the Rules of 1939, even after considering Rule 7, clearly states that no relaxation is to be given in age and relaxation of age is an exceptional case for which reasons in each case are to be separately recorded. Thus, the submissions of the learned C.P.O. that the Government has provided age relaxation to the persons in Government service for some post in some cadre, but such provisions is made in the Recruitment Rules of those respective cadres are correct and accepted. The Recruitment Rules dated 13.9.2013 and the Recruitment Rules dated 8.6.2022, which are framed by the State of

Maharashtra for the recruitment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group A) are very clear. It is rightly pointed out by the learned C.P.O. that Rule 4 in both the Rules state about the appointment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group A) by nomination. In the earlier Recruitment Rules dated 13.9.2013, the age relaxation up to 50 years were provided in the case of the candidates already in Government service and in the later Recruitment Rules of 8.6.2022, in Rule 4, in case of appointment by nomination to the same post, age limit provided is 38 years in case of general candidates and 43 years in case of persons belonging to reserved category. The provision which was made earlier of age relaxation up to age of 50 years to Government servants is absent in the Recruitment Rules dated 8.6.2022. The Recruitment Rules dated 8.6.2022 is framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India and in supersession of all the existing rules, orders or instructions issued earlier. Thus, there is no doubt that for the purpose of recruitment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group A), as on today only the Rules of 2022 are to be looked into. When no age relaxation is provided to the candidates in service which was provided earlier, it is undoubtedly a conscious legislation which is to be adopted.

6. *Thus, prima facie, no case is made out by the applicant to grant permission to appear for the examination which is going to be held on 4.6.2023.*

7. *In view of the above, the prayer of the applicant for grant of interim relief is rejected.*

8. *S.O. to 14.6.2023.”*

7. Mr.Sawant, learned AGP relied upon the order of the MAT and opposed the Petition. He would submit that the 1939 Rules do not apply to the case of the Petitioner, and therefore, Petition ought to be dismissed.

8. We have heard Mr.Vijay Nagrani, learned Counsel for the Petitioner and Mr. P.G.Sawant, learned AGP for the Respondent-State and with their able assistance we have perused the papers and proceedings and considered the rival contentions.

9. As can be seen, the MAT has rejected the interim application observing that the 1939 Rules do not say anything about selection by nomination because at the relevant time, the mode of selection by nomination was not introduced, as the same was made available post independence, as a policy of the State Government. We have perused the 1939 Rules and agree with the observation of the MAT that the said Rules are silent about selection by nomination. We note that the Rules of 1986 of the State of Maharashtra which regulate the upper age limit for recruitment by nomination in the Class I to Class IV posts in Maharashtra Civil

Services do not mention any age relaxation to be provided to government servants. We have noted from the Recruitment Rules dated 13th September 2013 and the Rules dated 8th June 2022 for the recruitment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group A) that both these sets of Rules provide for appointment to this post by nomination in exercise of powers conferred by proviso to Article 309 of the Constitution of India and in supersession of all the existing rules, orders or instruments issued earlier in this behalf. Therefore, the 1939 Rules would not apply to the above Rules. For the same reason, Petitioner's argument that by virtue of Note 3B to Rule 7 of the 1939 Rules, concession of age relaxation could be applied to permanent government servants, would not hold water, as Petitioner's case pertains to selection on the basis of nomination. If that be so, it is not necessary for us, at this stage, to comment on the Circular dated 1st November 2003 or on the decision of this Court in the case of *Anil Motilal Nimbhure vs. State of Maharashtra and Others (supra)* particularly keeping in mind that the Original Application is still pending and listed on 14th June

2023 for the reliefs stated above. Even otherwise, on a plain reading, Note 3B is not really a carve out, to mean that there shall not be an upper age limit for the government servant, but that the concession in the category of government servants would be applicable only to the classes mentioned therein.

10. It is settled that service law is rule based. The relationship between the employer and the employee in a public service and the terms and conditions governing such relationship are generally contained in statutory provisions or Rules. It is fundamental that in relation to law relating to public employment, almost every aspect thereof is governed mostly by statutory rules and unless there is a rule permitting relaxation of age etc., the same cannot be permitted. None of the applicable Rules above provide for any age relaxation in respect of this post for general candidates. Even the Recruitment Rules dated 8th August 2002 which provide for recruitment for the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group A) framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India

in supersession of all the existing rules, orders or instructions issued earlier, as held by the Tribunal to be applicable to the case of the Petitioner, do not permit the relaxation of age limit beyond the period of 38 years. No case is, therefore, made out by the Petitioner to persuade us to take any other view. No interference, therefore, is called for in the order of the Tribunal.

11. The Petition is dismissed. Rule stands discharged. No costs.

(M.M.SATHAYE, J.)

(ABHAY AHUJA, J.)

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VILAS
KHATATE

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by ARTI VILAS
KHATATE
Date: 2023.05.30
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