

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4035-2022 (O&M)
and other connected cases
Date of decision:24.05.2023
Reserved on :16.05.2023

Satnam Singh and others

Versus

....Petitioners

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Sunny Singla and Ms. Riti Aggarwal, Advocates
for the petitioner(s).

Ms. Tanisha, Advocate
for Mr. K.S.Brar, Advocate
for the petitioner(s)(In CWP-4186-2022).

Mr. H.S.Saini, Advocate
for the petitioner(s) (In CWP-15363-2021 and CWP-17300-2021).

Mr. P.K.S.Phoolka, Advocate
for the petitioner(s) (In CWP-17830-2021).

Ms. Alka Chatrath, Advocate
for the petitioner(s) (In CWP-7254-2020, CWP-7260-2020,
CWP-18028-2020, CWP-3050-2021, CWP-8290-2021 and
CWP-15823-2021).

Dr. Rau P.S.Girwar, Advocate
for the petitioner(s) (In CWP-9371-2020).

Mr. K.K.Dhaliwal, Advocate
for the petitioner(s) (In CWP-15744-2021).

Mr. H.C. Arora, Advocate
for the petitioner No.7 and 11 (In CWP-6938-2021).

Mr. Lakhan Pal Garg, Advocate
for Mr. Jagjit Singh Gill, Advocate
for the petitioner(s) (In CWP-7189-2020).

Mr. Rakesh Sobti and Ms. Malika Sethi Sobti, Advocates

for the petitioner(s).

Mr. Kapil Kakkar, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Additional Advocate General,
Punjab, and Mr. Navdeep Chhabra, Senior Deputy
Advocate General, Punjab.

ANIL KSHETARPAL, J

1. A batch of 63 connected writ petitions (details whereof are given at the foot of the judgment) with the consent of the learned counsel representing the parties is being disposed of by a common order, involving identical issue for adjudication.

2. Learned counsel representing the parties are ad idem that the common issue that arises for adjudication in all the writ petitions is related to relaxation in upper age limit for the direct recruitment to different services in various Departments of the Punjab Government. Pre-dominantly, these writ petitions pertain to the recruitment notice dated 16.12.2021, which was subsequently modified by the corrigendum dated 08.01.2022. Apart from that, some of the writ petitions relate to the recruitment notice dated 30.07.2021 notified for the direct recruitment of the Elementary Trained Teachers; whereas some of the writ petitions are related to the recruitment notice dated 01.04.2021 that invited applications for filling up 750 vacant posts of School Librarians. Initially the various service rules made distinct provisions for determining the upper age limit for the direct recruitment like in Punjab State Education Class III (Primary School Cadre) Service Rules, 1997 (hereinafter referred to as 'the 1997 Rules'), the upper age limit was 42

years for the direct recruitment. Various other rules hold a similar position. However, the State of Punjab notified the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as 'the 1994 Rules'), on 04.05.1994. These rules were made to regulate the recruitment and conditions of service for appointment to the public services and posts in connection with the State of affairs, Rule 20 of 1994 Rules was endowed with overriding effect through the inclusion of a non-obstante provision. Subsequently, the various service rules applicable to the various cadres were amended accordingly. With regard to the recruitment of the Master cadre in the Punjab Education Department for border areas, the Punjab Education (Teaching Cadre Border Area) Group 'C' Services Rules, 2018 were notified and the said rules make reference to Rule 19 of the 1994 Rules. The petitioners universally pray for issuance of a writ in the nature of Mandamus directing the respondents to relax the upper age limit from 37 years to 45 years. They contend that Rule 5 of the 1994 Rules is arbitrary and discriminatory. He further contends that during the period of the COVID-19 pandemic, direct recruitment to the various posts was not kept in a suspended position and it resulted in depriving an opportunity to the petitioners to compete for the civil posts. While alleging discrimination, the petitioners refer to Rule 5 of 'the 1997 Rules', wherein the upper age limit for recruitment was 42 years. They further submit that the Government has taken a conscious decision to provide age relaxation to the Education providers, Education Volunteers, EGS Volunteers, AIE Volunteers and Special Training Resource

(Volunteers) vide decision dated 11.01.2020. Moreover, vide decision dated 04.02.2020, relaxation was given to the contractual employees working under the Punjab Government. It is also contended that for the posts of Assistant Professors and Librarians of the College cadre, a corrigendum recruitment notice was issued to increase the upper age limit to 45 years. They also rely upon the judgments passed in **Sandeep Kumar Sharma vs. State of Punjab 1997 (10) SCC 298**, **Ashok Kumar Uppal vs. State of Jammu & Kashmir, 1998 (4) SCC 179** and **High Court of Delhi vs. Devina Sharma Civil Appeal no.2016 of 2022**. In CWP-15823-2021, the reference has already been made to the Division Bench judgment in **State of Haryana vs. Subhash Chander (DB)** .

3. On the other hand, the learned State counsel, while opposing the writ petitions contends that the relaxation in the upper age limit cannot be claimed as a matter of right. Moreover, the Education providers, Education Volunteers, EGS Volunteers, AIE Volunteers and Special Training Resource (Volunteers) and contractual employees constitute a class in themselves, and therefore, there is no discrimination. Similar is the argument with regard to corrigendum dated 03.01.2021, issued with respect to the recruitment of the Assistant Professors and Librarian, College Cadre. They also rely upon judgment passed in **Vineet Kumar and another vs. State of Punjab and others, 2016 (1) SCT 757** which was upheld by the Division Bench in LPA no.248 of 2016 decided on 04.04.2016. Reliance has also been placed on the judgment of the Supreme Court in **Union of India and another vs.**

Arulmozhi Insiarasu and others 2011 (7) SCC 397 and Dr. Amit Kumar Sidhu and others vs. State of Punjab and others 2016 (1) SCT 205.

4. At this stage, it is appropriate to take note of Rule 5 and 5A of the 1994 Rules, which are extracted as under:-

“5. Age :- (1) No person shall be recruited to the Service by direct appointment, if he is less than eighteen years or is more than thirty seven years of age in the case of technical and non-technical posts on 1st day of January of the year immediately preceding the last date fixed for submission of application by the Commission or the Board, as the case may be:

Provided that where different lower and upper age limits have been specifically prescribed for posts in the Service Rules, these limits shall be made applicable for appointment to such posts;

Provided further that the upper age limit may be relaxed up to forty five years in the case of persons already in the employment of the Punjab Government, other State Government or the Government of India:

Provided further that in the case of candidates belonging to Scheduled Castes and other Backward Classes, the upper age limit shall be such as may be fixed by the Government from time to time.

(2) In the case of ex-servicemen, the upper age limit shall be such as has been prescribed in the Punjab Recruitment of Ex-servicemen Rules, 1982, as amended from time to time.

(3) In the case of appointment on compassionate grounds on priority basis, the upper age limit shall be such as may be specifically fixed by the Government from time to time.

(4) In the case of appointment of a War-Hero, who has been discharged from defence services or para-military forces on account of disability suffered by him or his widow or dependent member of his family, the upper age limit shall be such as may

be specifically fixed by the Government from time to time.

5A. Increase in upper age limit:-

Notwithstanding anything contained in rule 5, on and with effect from the commencement of the Punjab Civil Services (General and Common Conditions of Service) Amendment Rules, 2010, where in any other Service Rules, or in Government instructions, the upper age limit for appointment to any Service or for any category of persons is different from thirty five years, it shall be deemed to have been increased by two years.”

5. Rule 19 of the 1994 Rules enables the Government to relax any of the provisions of the said Rules which reads as under:-

“19. Power to relax:- *Where the Government is of the opinion that it is necessary or expedient to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons:*

Provided that the provisions relating to educational qualification and experience, if any, shall not be relaxed.”

6. It may be noted here that before the year 2010, the upper age limit for the direct recruitment was 35 years which was increased to 37 years by incorporating Rule 5A in the 1994 Rules.

7. Though in the 1997 Rules the upper age limit for the direct recruitment was 42 years, however, in the 1994 Rules it was reduced to 35 years but subsequently increased to 37 years. In fact, such decision of the Government is in the realm of policy decision, in which the scope of interference is very limited. Furthermore, all the recruitment to the different cadres do not constitute a homogeneous class which will attract Article 16 of the Constitution of India. The contractual employees who

have worked for the Punjab Government have been given relaxation whereas the petitioners have never worked for the Government. Hence, they cannot claim parity on the basis of hostile discrimination. The contractual employees constitute a class in themselves and the petitioners are not identically situated. Similar is the position with regard to the Assistant Professors and Librarians (College Cadre). Undoubtedly, considering the delay in declaring the results due to litigation surrounding the Punjab State Teachers Eligibility Test a decision was made to provide relaxation in the upper age limit, however, this decision was taken under the peculiar circumstances.

8. As regards the argument of the learned counsel representing the petitioners, of non-issuance of the recruitment notice on account of COVID-19 pandemic, it may be noted that matters related to recruitment are exclusively in the domain of the Executive. The Court cannot issue a writ directing the respondents to take a particular policy decision. In the normal circumstances also, the recruitment notices are issued as per the requirement. Sometimes there is a gap of many years in publishing the recruitment notice. However, that in itself cannot be a ground to issue a writ to grant relaxation in the exercise of the powers of judicial review. Each case is required to be decided in the peculiar facts of the case. Undoubtedly, everyone has experienced hardships during the COVID-19 pandemic. However, the aging process of human beings has continued unabated as it is a normal phenomenon. Moreover, the jurisdiction of the Court is limited. The attention of the Court has also been drawn to the

interim order passed on 18.08.2021, while declining permission to the petitioners to provisionally participate in the selection process.

9. This Court has also carefully read the judgment passed by the Supreme Court in **Sandeep Kumar's case (supra)**. In that case, the Government granted relaxation in the requirement of minimum height of the candidate to be selected to the cadre of the Deputy Superintendent of Police, which was the subject matter of challenge in the Courts. Though the high court set aside the relaxation, however, the Supreme Court held that once the Government had thought it fit to afford the marginal relaxation, it would not be appropriate for the Court to interfere. In **Ashok Kumar Uppal's case (supra)**, the dispute that arose for adjudication was with regard to the relaxation in the requirement of passing the typing test for promotion to the post of Senior Scale Stenographers. In view of the retrospective amendment of the Rules, the Government took a decision to grant relaxation. The High Court allowed the writ petition whereas the Supreme Court reversed the judgment and held that such power to relax the rules considering the need of a particular situation or where injustice has been caused should not be interfered with in exercise of the powers of judicial review. In **Devina Sharma's case (supra)**, the Court held as under:-

“27.In the circumstances, we are of the view that there is no merit in the submission which has been urged on behalf of the petitioners before the High Court and the intervenors who have not fulfilled the age requirement of 35 years. Though for a short period of about a year, the High Court had deleted the requirement of a minimum age of 35 years for entry into the High Judicial Service, the High Court has set right the rule so as to bring it into

conformity with the recommendations of the Shetty Commisison. The deletion of the minimum age requirement of 35 years in 2019 may have been guided by the need to attract a larger pool of applicants to DHJS. But the reinstatement of a minimum age requirement of 35 years is a matter of policy. This conforms to the recommendation of the Shetty Commission. Hence, there is no valid basis for this court to hold that the requirement that a candidate for the DHJS should be at least thirty five years of age is invalid. We do not find any merit in the challenge which has been urged on behalf of the appellants to that extent.”

10. However, ultimately in **Devina Sharma’s case (supra)**, the Supreme Court in exercise of the powers under Article 142 of the Constitution of India in order to obviate any further litigation or uncertainty, permitted the High Court, as a one time measure, to allow candidates upto the age of 45 years for participating in the Delhi Higher Judicial Service Examinations (DHJS). This judgment does not lay down as a ratio decidendi that if the Government refuses to grant relaxation, the Court should intervene and provide directions contrary to the well well thought out policy of the Government..

11. The next judgment relied upon by the learned counsel representing the petitioners is the judgment passed in **State of Haryana vs. Subhash Chand 2020 (1) SCT 141**. In this judgment, the appeal was dismissed by the Division Bench in view of the fact that the respondent applied before the instructions were withdrawn by the Govt. In the peculiar facts of the case, the Division Bench refused to interfere in the judgment of the learned Single Bench.

12. On the other hand, in **Vineet Kumar’s case (supra)** the Court while relying upon the judgment passed in **Union of India vs.**

Pushpa Rani and others (2008) 9 SCC 242 held that the Court cannot issue direction to the Government to grant relaxation. In **Arulmozhi Insiarasu's case (supra)** the Supreme Court held that the engagement of the employees as casual labour even for a considerably long duration did not confer any legal right on them for seeking a writ of mandamus for relaxation of the age limit. The relevant discussion is extracted hereunder:-

“16. We may now advert to the second limb of the question in para 13. The issue need not detain us for long as in our view the factual position as obtaining in the present case does not fit in with the fact situation in Nagendra Chandra [(2008) 1 SCC 798 : (2008) 1 SCC (L&S) 348] . In the instant case, indubitably, the respondents were engaged as part-time contingent casual labourers in the office of the Commissioner of Central Excise for doing all types of work as may be assigned to them by the office. Their part-time engagement was need based for which they were to be paid on hourly basis. Though their stand is that many a times they were required to work day and night but it is nowhere stated that they were recruited or ever discharged the duties of a “Sepoy” for which recruitment process was initiated vide public notice dated 14-1-2008 and the Tribunal as also the High Court has directed the appellants to grant relaxation in age-limit over and above what is stipulated in the recruitment rules/advertisement. In view of the stated factual scenario, in our opinion, the engagement of the respondents as casual labourers even for a considerably long duration did not confer any legal right on them for seeking a mandamus for relaxation of age-limit.”

13. Similarly, in **Dr. Amit Kumar Sidhu’s case (supra)** the Court held that the matter related to relaxation of age is the exclusive domain of the Executive but not of judiciary.
14. From the foregoing discussion, it is evident that the Court, in the matters of policy decision, is not expected to direct the Government to frame a particular policy, in a particular manner. The scope of jurisdiction in policy matters is well known and the Courts have been advised by the Supreme Court to desist from the temptation of interference in the policy matters.
15. Keeping in view the aforesaid facts and discussion, finding no merits, all the writ petitions are dismissed.
16. All the pending miscellaneous applications, if any, are also disposed of.

24.05.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE

Sr. No.	Case No.	Petitioners	Respondents
1.	CWP-4350-2022 (O&M)	Rajbir Kaur	State of Punjab and others
2.	CWP-81-2021 (O&M)	Rajni Bala	State of Punjab and others
3.	CWP-935-2021 (O&M)	Pooja	State of Punjab and others
4.	CWP- 1962-2021 (O&M)	Vandna	State of Punjab and others
5.	CWP-3050-2021 (O&M)	Manju	State of Punjab and others
6.	CWP-3278-2021 (O&M)	Charnjeet Kaur Brar and another	State of Punjab and others
7.	CWP- 3977-2022 (O&M)	Hardeep Singh and others	State of Punjab and others
8.	CWP- 4186-2022 (O&M)	Satveer Kaur	State of Punjab and others
9.	CWP-4500-2019 (O&M)	Alka Singla	State of Punjab and others

**CWP-4035-2022 (O&M)
and other connected cases**

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| 10. | CWP- 5400-2021 (O&M) | Mandeep Kaur | State of Punjab and others |
| 11. | CWP-6938-2020 (O&M) | Ranbir Singh and others | State of Punjab and others |
| 12. | CWP-7148-2020 (O&M) | Gaurav Chopra | State of Punjab and others |
| 13. | CWP-7175-2020 (O&M) | Raj Kumar and others | State of Punjab and others |
| 14. | CWP-7189-2020 (O&M) | Neetu Bala and others | State of Punjab and others |
| 15. | CWP-7190-2020 (O&M) | Gurdeep Singh and others | State of Punjab and others |
| 16. | CWP-7223-2020 (O&M) | Mamta Rani | State of Punjab and others |
| 17. | CWP-7231-2020 (O&M) | Rupinder Kaur and others | State of Punjab and others |
| 18. | CWP-7238-2020 (O&M) | Meenu Sharma and others | State of Punjab and others |
| 19. | CWP-7244-2020 (O&M) | Sanjeev Kumar and another | State of Punjab and others |
| 20. | CWP- 7254-2020 (O&M) | Satnam Singh and another | State of Punjab and others |
| 21. | CWP-7260-2020 (O&M) | Gurpreet Singh Guraya and others | State of Punjab and others |
| 22. | CWP-7387-2020 (O&M) | Anju Sharma and others | State of Punjab and another |
| 23. | CWP-7500-2020 (O&M) | Hardeep Singh and others | State of Punjab and others |
| 24. | CWP- 7514-2020 (O&M) | Pawan Kumar and others | State of Punjab and others |
| 25. | CWP- 7645-2020 (O&M) | Vikramjeet Singh and others | State of Punjab and others |
| 26. | CWP-7880-2020 (O&M) | Surjan Singh and another | State of Punjab and another |
| 27. | CWP-8229-2020 (O&M) | Maan Singh and others | State of Punjab and others |
| 28. | CWP- 8290-2021 (O&M) | Parul Pahwa | State of Punjab and others |
| 29. | CWP-8363-2020 (O&M) | Rajesh Kumar and others | State of Punjab and another |
| 30. | CWP-8532-2020 (O&M) | Sukhpal Kaur and another | State of Punjab and others |
| 31. | CWP-8720-2021 (O&M) | Tajinder Kumar and others | State of Punjab and others |
| 32. | CWP-9302-2020 (O&M) | Rajesh Pal | State of Punjab and others |
| 33. | CWP- 9306-2020 (O&M) | Parwinder Kaur | State of Punjab and others |
| 34. | CWP-9371-2020 (O&M) | Asha Garg | State of Punjab and others |
| 35. | CWP-9443-2021 (O&M) | Rupinderpal Kaur | State of Punjab and others |

36.	CWP-14314-2022 (O&M)	Radha Rani	State of Punjab and others
37.	CWP-15241-2022 (O&M)	Devinder Rani and another	State of Punjab and others
38.	CWP- 15363-2021 (O&M)	Jagtar Singh and others	State of Punjab and others
39.	CWP- 15744-2021 (O&M)	Hardeep Singh and others	State of Punjab and others
40.	CWP- 15757-2021 (O&M)	Charanjeet Singh and others	State of Punjab and others
41.	CWP-15783-2021 (O&M)	Narinder Singh and others	State of Punjab and others
42.	CWP-15812-2021 (O&M)	Jagtar Singh and others	State of Punjab and others
43.	CWP-15814-2021 (O&M)	Jagdish Kumar and another	State of Punjab and another
44.	CWP-15823-2021 (O&M)	Yadwinder Singh and others	State of Punjab and others
45.	CWP-15824-2021 (O&M)	Sukhvir Kaur and others	State of Punjab and others
46.	CWP-16872-2021 (O&M)	Bhano Bai and another	State of Punjab and others
47.	CWP-17300-2021 (O&M)	Gurmeet Kaur and others	State of Punjab and others
48.	CWP-17721-2020 (O&M)	Vanita and another	State of Punjab and others
49.	CWP- 17827-2022 (O&M)	Kulbhushan and others	State of Punjab and others
50.	CWP-17830-2021 (O&M)	Payal Garg	State of Punjab and others
51.	CWP-18028-2020 (O&M)	Monika Rani and another	State of Punjab and others
52.	CWP-18738-2020 (O&M)	Hardeep Singh	State of Punjab and others
53.	CWP-19276-2021 (O&M)	Birwant Kaur	State of Punjab and others
54.	CWP-20290-2022 (O&M)	Gurpreet Kaur	State of Punjab and others
55.	CWP-21070-2022 (O&M)	Sukhpal Singh and others	State of Punjab and others
56.	CWP-21086-2021 (O&M)	Sunita Rani	State of Punjab and others
57.	CWP-22395-2021 (O&M)	Beant Kaur	State of Punjab and others
58.	CWP- 22695-2020 (O&M)	Dharamveer	State of Punjab and another
59.	CWP-23675-2022 (O&M)	Dalbir Singh	State of Punjab and others
60.	CWP-23838-2022 (O&M)	Inderjeet Kaur	State of Punjab and others
61.	CWP-29809-2022 (O&M)	Rakesh Kumar	State of Punjab and others

CWP-4035-2022 (O&M)			
and other connected cases		14	2023:PHHC:074634
62.	CWP- 20023-2020 (O&M)	Urmila	State of Punjab and others
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