

216 (2 Cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9007-2017 (O&M)

Date of Decision:01.09.2023

HARIVANSH MEHITA

.....Petitioner

V/s.

STATE OF PUNJAB THROUGH THE SECRETARY, DEPARTMENT OF
HEALTH AND FAMILY WELFARE, PUNJAB AND OTHERS

.....Respondents

CWP-130-2017 (O&M)

JAGDISH RAI AND ANOTHER

.....Petitioners

V/s.

STATE OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE, PUNJAB AND
OTHERS

.....Respondents

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

Present: Mr. S.K. Rattan, Advocate
for the petitioner in CWP-9007-2017.

Mr. H.C. Arora, Advocate,
for the petitioners in CWP-130-2017

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. This order shall dispose of two connected Writ Petitions as the issue involved in both the Writ Petitions is common. In both the petitions the petitioner(s) are seeking direction to appoint them as Multipurpose Health Worker (Male) by granting relaxation of age in terms of the Rules/instructions.

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2. Learned counsel for the petitioner submits that the petitioner was appointed as Tuberculosis Health Visitor (TBHV) at the District Tuberculosis

Centre, Jalandhar under the Revised National Tuberculosis Program, one of the major Programs initiated by the Department of Health and Welfare, Punjab Government. It is stated that the petitioner was performing his duties of TBHV since 13.10.2005. Thereafter, he participated for the post of Multi Purpose Health Worker (Male) vide letter dated 24.11.2016 in terms of the selection process conducted by the Baba Farid University of Health Sciences, Faridkot, as per the directions of the Department of Health and Family Welfare, Punjab. The petitioner was placed in the merit but was not appointed on the ground that he was overage.

3. Learned counsel for the petitioner submits that the petitioner cannot be treated as over age as he was less than 45 years of age.

4. Learned counsel for the petitioner has taken this Court to the provisions of the Punjab Civil Services (General and Common Condition of Service) Rules, 1994 (hereinafter referred to as “Rules of 1994”) to submit that the upper age limit may be relaxed upto 45 years in case of persons already working under various projects of the Department of Health and Family Welfare, Punjab i.e National Rural Health Mission (NRHM) and PHSC. He submits that as he was working with the Society under the RNTCP, he would be entitled for the said age relaxation.

5. It is further submitted that the petitioner had applied for the MPHWH (Male) while working with the NRHM on contract basis. His name is in the merit list but on account of over age, his case has been rejected. The case of the petitioner is that since he was working under the project of Heal

and Family Welfare Department, Punjab, therefore, he is entitled to be given the benefit of the age relaxation upto 45 years.

6. I have considered the submissions of learned counsel for the parties and perused the record available.

7. Rule 5 of Rules of 1994 reads 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 years of age in the case of non-technical posts and thirty three years in the case of technical posts on the 1st day of January of the year immediately preceding the last date fixed for submission of applications by the Commission or the Board, as the case may be, or unless he is within such range of minimum and maximum age limits as may be specifically fixed by the Government from time to time:*

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 Puniab 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.

8. Thus, as per the second proviso of the said Rules, all the persons who are already in employment of the Punjab Government or other State Government or Government of India would be entitled for consideration for age relaxation upto 45 years.

9. It is also brought to the notice of this Court that vide notification dated 28.12.2016 issued by the Department of Personnel, Government of Punjab making amendment in the Rules of 1994 to the extent that in Rule 5, in the second proviso the words “Punjab Government” were substituted with “Punjab Government or any Board, Corporation, Commission or Authority under it”. Thus, persons who are employed with the Punjab Government or any Board, Corporation, Commission or Other organization would also be entitled for age relaxation upto 45 years.

10. A close look of the conditions of appointment of the petitioner reflects that his appointment was made under the Medical Health Department. The conditions of appointment and appointment order has been issued by the representative of the State. Thus, it is the State who appointed the TBHVs under RNTCP or NHRM as the case may be.

11. Various schemes under the Medical Health Department are mentioned and placed on record with replication and on the website of the Department of Health And Family Welfare reflects that the RNTCP is one of

the major Programs under the Health and Family Welfare Department. Therefore, employees working in the said field either through Society formed by the State Government or by any other authority on Contractual basis, would fall within the second proviso of Rule 5 and the Rules of 1994 and would be entitled to be granted benefit of age relaxation for employment upto 45 years of age and there cannot be any other interpretation to the said proviso as the amendment further clarifies that the employees who are working for the affairs of the Punjab Government in Departments, Boards etc. and other authorities, which would include Society, under which the petitioner also has been appointed.

12. This Court also finds that in the advertisement issued for filling up the posts of Medical Officer (MBBS) and Medical Officer (Specialist) placed on record as Annexure P-10, age relaxation has been granted to the candidates who are working under various projects/wings of Health & Family Welfare Department, Punjab i.e. NRHM, PHSC, subject to the condition that the candidate must not exceed maximum age limit of 45 years. Thus, two different yardsticks adopted by the respondents in respect of grant of age relaxation in recruitment of Medical Officers and its subordinate staff is held to be illegal and unjustified. While the relaxation of age is granted to the Medical Officer but the same has been denied to the subordinate staff.

13. In view thereof, the Writ Petition is allowed and the petitioner would be granted age relaxation and if he is found suitable for appointment, he would be considered for appointment. Necessary exercise shall be conducted within two months henceforth.

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14. If the appointments were given to the other persons, the petitioners would be treated to be considered appointed from that date as well, and will be given the seniority according to his placement in merit, however, the benefit of salary shall only be from the date of passing of this order. The earlier period shall be treated as notional.

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15. The law as laid down in CWP-9007-2017 decided hereinabove, would apply *mutatis mutandis* to this case and accordingly this Writ Petition is also allowed in the aforesaid terms.

16. Pending application(s), if any, shall stand(s) disposed of accordingly.

September 1, 2023
Ess Kay

[SANJEEV PRAKASH SHARMA]
JUDGE

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No