



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.10.2023

Judgment delivered on: 02.11.2023

+ **W.P.(C) 9378/2021 & CM APPL. 29105/2021**

SURENDER KUMAR AND OTHERS

..... Petitioners

Through: Mr.Shivanshu Bhardwaj and
Mr.Rajiv Singh, Advs.

versus

GOVT OF NCT OF DELHI AND OTHERS Respondents

Through: Mrs.Avnish Ahlawat, SC with
Ms.Tania Ahlawat, Mr.Nitesh Kumar
Singh, Ms.Laavanya Kaushik,
Ms.Aliza Alam and Mr.Monish
Sehrawat, Advs. for GNCTD.
Mr.Naresh Kaushik, Mr.Manoj Joshi,
Mr.Anand Singh, Ms.Shikha John and
Mr.Shubham Dwivedi, Advs. for
UPSC

+ **W.P.(C) 9539/2021, CM APPLS. 29545/2021 & 52607/2022**

ARUN KUMAR MAVI AND ORS.

..... Petitioners

Through: Mr.Shivanshu Bhardwaj and
Mr.Rajiv Singh, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Through: Mrs.Avnish Ahlawat, SC with
Ms.Tania Ahlawat, Mr.Nitesh Kumar
Singh, Ms.Laavanya Kaushik,
Ms.Aliza Alam and Mr.Monish
Sehrawat, Advs. for GNCTD.
Mr.Naresh Kaushik, Mr.Manoj Joshi,
Mr.Anand Singh, Ms.Shikha John and
Mr.Shubham Dwivedi, Advs. for
UPSC.



+ **W.P.(C) 9671/2021, CM APPLS. 29845-29846/2021**
DISHANK DHAWAN Petitioner
Through: Mr.Anuj Aggarwal, Adv.
versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mrs.Avnish Ahlawat, SC with
Ms.Tania Ahlawat, Mr.Nitesh Kumar
Singh, Ms.Laavanya Kaushik,
Ms.Aliza Alam and Mr.Monish
Sehrawat, Advs. for GNCTD
Mr.Naresh Kaushik, Mr.Manoj Joshi,
Mr.Anand Singh, Ms.Shikha John and
Mr.Shubham Dwivedi, Advs. for
UPSC.
Ms.Radha Yadav and Mr.B.K.Singh,
Advocates for intervener-Mr.Shitize
Rao in CM. No. 33681/2023.

+ **W.P.(C) 9806/2021**
MS. ANNU YADAV Petitioner
Through: Mr.Ravin Rao, Mr.Nimish Chib,
Mr.Akshit Sawal, Mr.Jatin Rana and
Ms.Tarini Khurana, Advs.
versus

GOVT. OF NCT OF DELHI AND ORS. Respondents
Through: Mrs.Avnish Ahlawat, SC with
Ms.Tania Ahlawat, Mr.Nitesh Kumar
Singh, Ms.Laavanya Kaushik,
Ms.Aliza Alam and Mr.Monish
Sehrawat, Advs. for GNCTD.
Mr.Naresh Kaushik, Mr.Manoj Joshi,
Mr.Anand Singh, Ms.Shikha John and
Mr.Shubham Dwivedi, Advs. for
UPSC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA



J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. W.P.(C) No.9539/2021 (preferred by 08 petitioners); W.P.(C) No.9378/2021 (preferred by 24 petitioners), W.P.(C) No.9671/2021 (preferred by 01 petitioner) and W.P.(C) No.9806/2021 (preferred by 01 petitioner) challenge the common order dated March 25, 2021 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the ‘Tribunal’) in OA No.255/2021, O.A. No.256/2021 and O.A. No.305/2021, whereby the OAs preferred by the petitioners who were working on contractual basis as Assistant Public Prosecutor in Govt. of NCT of Delhi, seeking age relaxation for regular appointment to the post of Assistant Public Prosecutor, were disposed of as under:

“11. We, therefore, dispose of the OAs directing that the Government of NCT of Delhi shall make its stand very clear as to

(a) whether it wants the UPSC to proceed with the selection of candidates for the posts of APP in accordance with the recruitment rules, as they stand now;

(b) or whether it proposes to amend the rules by acceding to the request of the applicants and thereby wants to discontinue the ongoing process.

(c) Either way, it shall be decided by the respondents within four weeks from the date of receipt of a copy of this order, strictly in accordance with the relevant provisions of law.”

2. In brief, vide advertisement No.02/2021 published on January, 2021, the Union Public Service Commission (‘UPSC’, in short) invited applications *inter-alia* for the post of Assistant Public Prosecutor (APP), Directorate of Prosecution, Home Department, Govt. of NCT of Delhi. The maximum age limit for the post in question was 30 years for General Category with the provision of age relaxations of 05 years for SC/ST and 03



years for OBC.

Petitioners, who were appointed in between 2015 till 2020 and were working on contractual basis as APP in the Directorate of Prosecution, Home Department, Govt. of NCT of Delhi became overaged and were unable to apply in response to the said advertisement No.02/2021, since no regular selection process for APP took place in between 2015 and 2021.

The O.A. Nos. 255/2021, 256/2021 and 305/2021 were accordingly preferred by the petitioners before the Tribunal seeking age relaxation which were disposed of vide common order dated March 25, 2021 as noticed above. UPSC decided to proceed and issued Notification dated August 05, 2021, whereby examination date was scheduled for September 19, 2021.

3(i) In the aforesaid background, W.P.(C) No.9378/2021, W.P.(C) No.9539/2021 and W.P.(C) Nos. 9671/2021 have been preferred by the petitioners, challenging the common order dated March 25, 2021 passed in O.A. Nos.255/2021 (Arun Kumar Mavi & Ors. v. Govt. of NCT of Delhi & Ors.), 256/2021 ((Surender Kumar & Ors. v. Govt. of NCT of Delhi & Ors.) and 305/2021 (Dishank Dhawan v. Govt. of NCT of Delhi & Ors.).

(ii) Neema Noor Mohd. who was a party in O.A. No.256/2021 but was not impleaded as a petitioner in W.P.(C) No.9378/2021 filed an intervener application CM. APPL. No.31669/2021, which was allowed vide order dated September 15, 2021.

(iii) Also, an impleadment application (CM. APPL. No.31036/2021) was preferred on behalf of Mr.Aman Gaurav which was also allowed vide order dated September 13, 2021 in W.P.(C) No.9378/2021.

(iv) An impleadment application (CM. APPL. No.33681/2021) preferred in W.P.(C) No.9671/2021 by one Mr.Shitize Rao, who appeared in the said



exam, was allowed vide order dated July 06, 2023. The applicant opposed the prayer for grant of age relaxation sought by the petitioners in the respective writ petitions.

(v) Further, W.P.(C) No.9806/2021 stands preferred by Ms.Annu Yadav, who was also working as contractual APP. She initially preferred an impleadment application before the Tribunal in O.A. No.256/2021 but since the same could not be listed before the Tribunal, she preferred W.P.(C) No.1856/2021, which was dismissed as withdrawn with liberty to approach the Tribunal vide order dated February 11, 2021. In the meantime, the matters in OA Nos.255/2021, 256/2021 and 305/2021 stood reserved and a common order was passed on March 25, 2021 by the Tribunal and, as such, she preferred W.P.(C) No.9806/2021.

4. It is pertinent to note that vide order dated September 01, 2021, petitioners in W.P.(C) No.9378/2021 (Surender Kumar & Ors. v. Govt. of NCT of Delhi & Ors.) were permitted to appear on provisional basis in the aforesaid examination for recruitment for APPs scheduled by the UPSC, subject to final outcome of the writ petition. Relevant excerpts of the order dated September 01, 2021 may be reproduced for reference:

“4. In the meanwhile, the petitioners will be permitted to appear in the examination [which is referred to hereinabove], albeit, on provisional basis subject to the final outcome in the writ petition.

4.1. It is made clear that, in case, the petitioners were to fail in the writ petition, they would not be permitted to claim any equity merely on account of the fact that they have been allowed to take the examination.”

Similar orders were passed in W.P.(C) No.9539/2021 (Arun Kumar Mavi & Ors. v. Govt. of NCT of Delhi & Ors.) on September 03, 2021 and W.P.(C) No.9671/2021 (Dishank Dhawan v. Govt. of NCT of Delhi & Ors.)



on September 06, 2021, permitting the petitioners therein to appear in the aforesaid examination. Petitioner Ms.Annu Yadav in W.P.(C) No.9806/2021 was also permitted to appear in the aforesaid examination vide order dated September 07, 2021.

5. It may further be noticed that pursuant to result declared by UPSC, only 12 petitioners are stated to have qualified the written examination and were permitted to appear in the interview. The present writ petitions remains relevant only with respect to the aforesaid 12 candidates (i.e. Arun Kumar Mavi, Deepak Saini, Parmod Kumar, Ashwani Kumar Solanki in W.P.(C) No.9539/2021 and Dhruv Malik, KM.Rekha, Vijay Dagar, Arvind Dahiya, Neema Noor Mohd., Satyajeet Kumar Singh and Ronak Kumar in W.P.(C) No.9378/2021 and Annu Yadav in W.P.(C) No.9806/2021 tabulated as under:

W. P. (C)No.	Candidate Name	Date of Joining	Date of Birth	Length of contractual Service	Age
9378/2021	Dhruv Malik (Petitioner No. 4)	25.04.2019	10.05.1990	1 year 9 months	30 years 9 months
	KM Rekha (Petitioner No. 11)	17.07.2020	06.07.1988	6 months 15 days	32 years 6 months
	Vijay Dagar (Petitioner No. 13)	17.07.2020	22.11.1986	6 months 15 days	34 years 2 months
	Arvind Dahiya (Petitioner No. 15)	12.12.2014	29.04.1987	6 years 1 month	33 years 9 months
	Neema Noor Mohd. (Petitioner No. 25)	12.12.2018	26.09.1987	2 years 1 month	33 years 4 months
	Satyajeet Kumar Singh (Petitioner No. 21)	17.07.2020	21.07.1990	6 months 15 days	30 years 6 months
	Ronak Kumar (Petitioner No. 23)	17.07.2020	04.09.1990	6 months 15 days	30 years 4 months
9539/	Arun Kumar	21.12.2018	11.06.1987	2 years 1	33 years 6



2021	Mavi (Petitioner No.1)			month	months
	Deepak Saini (Petitioner No. 3)	27.12.2018	11.11.1986	2 years 1 month	34 years 2 months
	Parmod Kumar (Petitioner No. 4)	12.12.2014	15.08.1981	6 years 1 month	39 years 5 months
	Ashwani Kumar Solanki (Petitioner No. 5)	17.07.2020	22.06.1985	6 months 15 days	35 years 7 months
9806/2021	Annu Yadav	17.07.2020	31.12.1987	6 months 15 days	33 years 1 month

The result of the interview in respect of the aforesaid candidates has been further kept in a sealed cover and was produced before the Court for perusal since the selection process is subject to the outcome of the writ petitions preferred by the petitioners. The writ petitions finally remain relevant only in respect of few petitioners out of aforesaid 12 candidates, who have finally qualified the interview.

6. Counsel for the petitioners has clarified that petitioners Deepak Saini and Arun Kumar Mavi in W.P.(C) No.9539/2021, belonging to reserved category are also entitled to age relaxation permissible to the said category in addition to the age relaxation sought on the basis of service rendered as contractual APP. The issue regarding the eligibility of said petitioners on the basis of outside Delhi OBC Certificates is further stated to have been separately challenged before the Tribunal and the same is not a subject matter in the present writ petition.

Contentions on behalf of all the petitioners in W.P.(C) No.9378/2021, W.P.(C) No.9539/2021, W.P.(C) No.9671/2021, W.P.(C) No.9806/2021 except Objector Shitize Rao in W.P.(C) No.9671/2021

7. Learned counsels for the petitioners submit that after 2015, UPSC invited applications for direct recruitment for the post of Assistant Public Prosecutor on regular basis only on January 22, 2021 after a gap of 06 years.



During this period, the petitioners were eligible to participate in the direct recruitment process but due to non-conduct of the examination, they stood deprived of opportunity to participate in the direct recruitment process, since they had crossed maximum age limit in terms of the recruitment rules. It is pointed out that maximum age limit for the post in question is 30 years for General Category with the provision for age relaxation for specified categories.

8. It is urged that the benefit of age relaxation in cases where the exams were not conducted for years together has been affirmed in the past by various courts and reliance is placed upon *Bhola Nath Rajak & Ors. v. Jharkhand & Ors.*, (2014) 2 AIR Jhar R 638, *Sachin & Ors. v. CRPF & Anr.* and *Anurag Sharma & Ors. v. CRPF & Anr.*, W.P.(C) No.90/2023 & 301/2023 decided on January 20, 2023 by High Court of Delhi. Further, relying upon OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 issued by Govt. of NCT of Delhi, Services Department, it is urged that the contractual employees are entitled to age relaxation to the extent of the service rendered by them on contract basis. The issue of providing age relaxation in terms of the aforesaid OM is also stated to have been considered by this Court in *Syed Ahmar Ali Hashmi v. Union Public Service Commission & Ors.*, W.P.(C) No.5231/2020.

Reference is also made to the Status Report/short reply dated February 05, 2021 filed by respondents No.1 and 2 before the Tribunal, wherein it was admitted that OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 and OM No.F.19(11)/2015/S-IV/2021-2025 dated July 10, 2019 have been issued by the Services Department, Govt. of NCT of Delhi regarding



relaxation in the upper age limit to the contractual employees working under GNCTD for regular appointment on direct recruitment basis.

It is emphasized that vide OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019, it had been decided that the contractual employees working against teaching posts and administrative posts would be eligible for one-time relaxation in the upper age limit, upto maximum of 05 years. Further, the quantum of age limit would be subject to number of years spent in the department on contract basis provided, they have worked at least 120 days in a particular academic year in case of teaching posts and 180 days in case of administrative posts. Relevant excerpts of the OM read as under:

“3.1 The contractual employees working against teaching posts will be eligible for one-time relaxation in the upper age limit up to maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 120 days in a particular academic year.

3.2 The contractual employees working against all other administrative post, will be eligible for one-time relaxation in the upper age limit up to maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 180 days in a particular academic year.”

It is also pointed out that with regard to the appointment of the contractual APPs, the said OM was forwarded to UPSC.

9. Relying upon the judgment in ***Union Public Service Commission v. Dr.Jamuna Kurup & Ors., Civil Appeal Nos.2294-2329/2008*** decided by Hon’ble Supreme Court of India on February 21, 2008, it is contended that the Hon’ble Apex Court dismissed the appeal against the order passed by learned Single Judge directing that those writ petitioners who had crossed 35 years would be entitled to the benefit of age relaxation corresponding to the



number of years they had worked as contractual Medical Officers (Ayurved) under the Corporation and should be treated as eligible with reference to age requirement.

10. It is vehemently submitted that the view to grant age relaxation to the concerned employees for the entire duration of the contractual service also stands affirmed in ***Delhi Subordinate Services Selection Board & Anr. v. Preeti Rathi & Ors.***, W.P.(C) 1641/2011 in para 14 as under:

“14. Even in the matters whether cases of ad hoc/casual/ contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/ casual basis the incumbent was within the age limit and was not average. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for having worked for this period, in that case also they would fall within the prescribed age limit.”

Contentions on behalf of Intervener/Objector Shitize Rao in W.P. No.9671/2021

11. Learned counsel for the Intervener/objector-Shitize Rao submitted that applicant had applied for the post of contractual APP as advertised by the Govt. of NCT of Delhi on October 15, 2019 without seeking any age relaxation. It is contended by learned counsel for intervener that if the petitioners who were employed as contractual APPs are not given age relaxation for the period they were employed on contract, Shitize Rao has a chance for qualifying the merit list. However, in case the contractual APPs are given age relaxation and considered for regular appointment on qualifying the interview, Shitize Rao and other suitably placed candidates who have not availed any age relaxation stand deprived of an opportunity of



being selected for regular post of APP based upon their merit. It is contended that the petitioners have deliberately not filed on record the advertisement dated October 15, 2019 on the basis of which they were appointed on contractual basis afresh and the same provided that the applicants would neither have any right or claim of regular service on the basis of contractual appointment of Assistant Public Prosecutor in Directorate of Prosecution, nor their service will be counted, if they are selected on regular basis.

It is further submitted that all the petitioners were overage on the cut-off date i.e. February 11, 2021 and had not rendered continuous service as there was a break of two days on every extension granted to the petitioners.

It is pointed out that the Objector had last chance to apply and be considered for said post as he was aged 29 years 26 days on the cut-off date and would be overage for future vacancies. It is vehemently contended that the objector would be deprived of his rights guaranteed under Article 14, 19 and 21 of the Constitution of India even after fulfilling all the eligibility criteria for appointment to the post of APP, if the age relaxation is granted to the petitioners in routine without amendment of Recruitment Rules. Reliance is further placed upon *Dr. Ami Lal Bhat v. State of Rajasthan and Others*, AIR 1997 SC 2964, *Kaushal Kishore v. State of U.P.* (Supreme Court), Writ Petition (Criminal) No.113/2016, *Director General, Doordarshan Prasar Bharti Corporation of India & Anr. v. Smt. Magi H Desai.*, Civil Appeal No.1787/2023 (Supreme Court), *Ganesh Digamber Jambhrunkar v. State of Maharashtra*, SLP (C) No. 2543/2023, D.O.D. 12.09.23 and *P.D Gupta (P.D Gupta v. Ram Murti)*, 1997 (7) SCC 147. Written submissions have been further placed on record.



Contentions on behalf of the respondents

12. Neither counter affidavit nor written submissions have been filed on behalf of GNCT of Delhi though the writ petitions have been opposed.

Respondent No.3/UPSC in the counter affidavit filed on record took a stand that UPSC being a constitutional body established under Article 315-323 of the Constitution of India is mandated to perform its functions in accordance with applicable laws and rules governing the issue. It is further submitted by learned counsel for UPSC that in the instant case, the requisition had been received in the UPSC to conduct recruitment/selection to the post of APP, based on the requisition from the intending department i.e. GNCTD. Accordingly, UPSC issued the advertisement on January 22, 2021 with closing date of submission of online application on February 11, 2021. The terms and conditions of the eligibility of the candidates as governed by the Recruitment Rules, provided for “**Education (EQ A)** A Degree in Law of recognized University or equivalent (Equivalent may be treated as LLB); **Experience (EQ B)** Three years of experience at the bar; and **Desirable** experience as Government Advocate”. It is pointed out that the petitioners sought the relaxation of the eligibility condition regarding maximum age, in respect of service rendered by them on contract basis as APP in Govt. of NCT of Delhi, which was not accepted by the Tribunal. The grievance of the petitioners is stated to be primarily against GNCT, Delhi and not against the UPSC. It is contended that age relaxation requires amendment of Recruitment Rules and the policy decision regarding the relaxation of age cannot bind UPSC which conducts the exam at national level. Reference is also made to order dated March 25, 2021 passed in OA



NO.256/2021 on an application preferred by Annu Yadav for impleadment whereby the Tribunal declined to interfere and observed as under in para 9 to 11:

“9. Though the posts are in the service of the Government of NCT of Delhi, the selection is entrusted to the UPSC, a body constituted under the Constitution of India. Once the selection process is entrusted to it, the UPSC is strictly guided by the recruitment rules. Though the State Governments may be too willing or eager to accommodate the demands of the candidates for relaxation of qualification or age limits, the UPSC does not recognize such gestures. It should be nothing short of an amendment to the recruitment rules.

10. Another aspect is that even if the recruitment rule is amended, the changed criteria would become relevant with reference to the selections that are made thereafter, on application of the principle that the selection process cannot be altered halfway through. The UPSC is strictly guided by the recruitment rules that are in force, as of now. Even if the Government amends the rules, particularly in the context of age limits, that would be of no use to the present notification. Therefore, the entire issue is now squarely in the court of Delhi Administration, whether or not to permit the selection process in pursuance of the advertisement issued by the UPSC or to take any further steps if it is willing to accommodate the request of the applicants. The Government has to take decision in this behalf and communicate it to the UPSC. Though the learned counsel for the respondents sought to rely on certain precedents, we are of the view that the facts of the present case do not permit of any alteration of the rules, particularly the one pertaining to age limits, through administrative orders. Though the learned counsel for the respondents sought to rely on certain precedents, we are of the view that the facts of the present case do not permit of any alteration of the rules, particularly the one pertaining to age limits, through administrative orders.

11. We, therefore, dispose of the OAs directing that the Government of NCT of Delhi shall make its stand very clear as to:

- (a) whether it wants the UPSC to proceed with the selection of candidates for the posts of APP in accordance with the recruitment rules, as they stand now;*
- (b) or whether it proposes to amend the rules by acceding to the request of the applicants and thereby wants to discontinue the ongoing process.*



(c) Either way, it shall be decided by the respondents within four weeks from the date of receipt of a copy of this order, strictly in accordance with the relevant provisions of law.

There shall be no order as to costs.”

Findings

13. We have given considered thought to the contentions raised.

Admittedly, in the present case, the process of recruitment was initiated after 2015 on January 22, 2021, after a gap of about six years. Out of the petitioners, who were permitted to appear in the written examination, only 12 qualified for the interview. Further, as informed by learned counsel for UPSC who had shared the results in sealed cover, only few of the aforesaid qualified candidates have made to the merit list. The aforesaid 12 candidates were employed on contractual basis in between 2014 and 2020 and the length of contractual service ranges from about 06 years 01 month to 06 months and 15 days. The contractual appointments are neither illegal nor irregular as they were made considering the exigencies and shortage of APPs, which is a well known fact and a judicial notice of the same can be taken.

14. The contention raised on behalf of intervener/objector Shitize Rao is that grant of relaxation in age to the contractual employees for participation in the regular recruitment process, prejudices the other eligible candidates, who meet out the Recruitment Rules, as they may not be finally placed in the merit list, in case of selection of the contractual candidates being granted age relaxation and gaining a higher merit position. As such, it is contended that the ‘age relaxation’ granted to contractual APPs without amendment of Recruitment Rules vitiates the constitutional guarantee of equality under Article 14 of the Constitution of India.



15. At the outset, it may be noticed that vide several settled judicial pronouncements, the contractual employees have been enabled to participate in the recruitment process by giving age relaxation with respect to the upper age limit, for the period the contractual employees had been in service with the department.

(i) In *Syed Ahmar Ali Hashmi v. Union Public Service Commission & Ors.* (supra), the petitioner therein was working as Junior Forensic/Assistant Chemical Examiner (Documents) with GNCT of Delhi. Further, respondent no. 1 issued an advertisement for filling of certain posts for Senior Scientific Officer (Document), Forensic Science Laboratory, Home Department, Govt. of NCT of Delhi and the age limit was provided as not exceeding 30 years. The petitioner therein being overage sought the benefit of age relaxation and placed reliance upon **OM No. F.19(11)/2015-S-IV/1751-1756 dated June 11, 2019 issued by GNCT of Delhi** which provided that contractual employees working against all other administrative posts to be eligible for one-time relaxation in upper-age limit upto maximum period of five years. The contentions of the respondents were two-fold. Firstly, that the OM dated June 11, 2019 was applicable only to contractual employees working as teachers and for contractual employees working against all the administrative posts (which are Group B and C posts), whereas the post in question i.e. Senior Scientific Officer (Documents) was a scientific/technical Gazetted Group 'A' Post and same is governed only by recruitment rules.

The Division Bench observed that OM dated June 11, 2019 in no manner drew any distinction between Group 'A' post on one side and Group 'B' and 'C' posts on the other side and it was not mentioned in the OM that age relaxation for contractual employees is to be granted only in case of



Group 'B' & 'C' posts.

The second contention of respondents was that the benefit of age relaxation can be granted to only those candidates who are working against same posts for which direct recruitment has been initiated. The court referred to the advertisement in question and observed that the age relaxation is provided for the contractual employees who are working in the "same department" and not to contractual employees who are working only against the "same post" of Senior Scientific Assistant (Documents) and held the contention of respondents to be without any basis. The court further allowed the writ petition and directed UPSC to extend the benefit of age -relaxation of five years to the petitioner while considering his application for the post of Senior Scientific Officer (Documents).

The aforesaid judgment squarely applies to the facts and circumstances of the present case wherein the case of the petitioners is even on better footing having worked on contractual basis against the same post of APP in Govt. of NCT of Delhi.

(ii) In *UPSC v. Dr. Jamuna Kurup & Ors.* (supra), the respondents therein were engaged as Medical Officers (Ayurved) by Municipal Corporation of Delhi (MCD) on contractual basis till regularly selected candidates were made available by UPSC. In 2004, UPSC advertised 45 posts of Ayurvedic Vaid and prescribed that the age limit of candidates should not exceed 35 years. The advertisement inter-alia also provided that the upper age limit is relaxable for employees of MCD upto five years. The stand of the petitioners was that the age relaxation was meant to be for regular employees and 'not for contractual employees' and, hence, the respondents, being contractual employees, were illegible for age relaxation.



The High Court granted the relief of age relaxation to respondents and the same was upheld by the Apex Court observing that in absence of any restrictive definition of the word, “employees” in the Delhi Municipal Corporation Act, 1957 or in the advertisement issued by UPSC, it would include both permanent or temporary, regular or short-term, contractual or *ad-hoc*. All persons employed by MCD, whether permanent or contractual come under the ambit of term “employees of MCD” and therefore contractual employees like the respondents were entitled to benefit of age relaxation.

(iii) In ***DSSSB v. Preeti Rathi & Ors.*** (supra), respondents No.1 and 2 were working in Municipal Corporation of Delhi as primary teachers on contractual basis and were granted benefit of age relaxation by Tribunal for recruitment to the post of primary teachers subsequently initiated, since they were within age limits at the time of joining the post on contractual basis. The order of the Tribunal was challenged and the primary contention of the petitioners was that judgment delivered by this Court in ***Sachin Gupta v. DSSSB, 152 (2008) DLT 378 (DB)*** as relied by respondents was not applicable to respondents, since therein the age relaxation was granted to candidates who had completed Elementary Teachers Education (ETE) diploma Course in years 2006 to 2008 whereas the respondents had cleared ETE course in 2001. The Division Bench upheld the order of Tribunal and reference was made to amended Recruitment Rules and advertisement issued by petitioners, wherein the age limit of 27 years was said to be relaxable upto 45 years of age in respect of departmental candidates. Reliance was further placed upon the judgment of Apex Court in ***Dr. Jamuna Kurup*** (supra) and it was observed that recruitment rules nowhere defined the expression



‘departmental candidates’ and therefore the same has to be assigned a natural connotation. A departmental candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD. Hence, respondents working in MCD as contractual primary teachers were entitled to be treated as departmental candidates for the purpose of appointment to the post of primary teacher on regular basis when they are already working in the same post on ad-hoc basis for last 10 years.

(iv) In *Sachin & Ors. v. CRPF & Anr.* (supra), the petitioners therein preferred writ petition seeking relaxation of upper age limit for appearing in examination for recruitment to the post of Head Constable (Ministerial) in CRPF-2022. The grievance of the petitioners therein was that since no recruitment was conducted for past 5-6 years, the petitioners became overaged and had crossed maximum prescribed age limit in the advertisement i.e. 18 to 25 years. The Division Bench observed that petitioners have been deprived to seek recruitment in CRPF for no fault of theirs, due to non-conduct of examination by CRPF and therefore are entitled to age relaxation of those years in the upper age limit. Reliance was also placed upon decision of Hon’ble Apex Court in *High Court of Delhi v. Devina Sharma, Civil Appeal No.2016/2022* wherein the respondents had sought relaxation in upper age limit for appearing in DJSE and DHJSE-2022 on the ground that the examination was not conducted for two recruitment years 2020 and 2021 due to Covid-19 Pandemic.

(v) In *Bhola Nath Rajak & Ors.* (supra), Jharkhand Public Service Commissioner issued an advertisement in 2013 inviting applications for the post of Civil Judge (Junior Division) (Munsif) wherein the upper age limit was fixed at 35 years. The petitioners approached the High Court with a



prayer that since the examination for appointment to the post of civil Judge (Junior Division) was last held in 2008, the cut off date for calculating the maximum age limit of 35 years ought to have been fixed as January 31, 2009 instead of January 31, 2013. The High Court, after noticing ***Dr. Ami Lal Bhat v. State of Rajasthan*, (1997) 6 SCC 614, Sanjiv Kumar Sahay v. State of Jharkhand, 2008 (2) JLJR 543 and Subodh Kumar Jha v. State of Jharkhand, (2005) 3 JLJR 622** allowed the writ petition and observed that by the reason of delay in holding the examination, the writ petitioners along with similarly placed candidates who have completed the maximum age of 35 years should not be disqualified from appearing in the examination and modified the cut-off date from December 10, 2013 to January 31, 2009.

(vi) The relaxation of age was also considered by the Hon'ble Apex Court in the case of ***University of Delhi and Ors. v. Delhi University Contract Employees Union and Ors.*, MANU/SC/0214/2021** wherein UGC had imposed a ban on filling up of non-teaching post in all institutes/universities and affiliated colleges. In 2011, UGC allowed University to fill 255 posts of Junior Assistants after sufficient changes in Recruitment Rules. The University accordingly amended Recruitment Rules and an advertisement was published in 2013 inviting application for posts of Junior Assistants ('JA', for short) in University. During the period of ban from 2003-2013, several appointments were made on contract basis, out of which 300 Junior Assistants were the members of the respondent union. A writ petition was preferred by respondent union seeking regularisation of services of members of union after age relaxation. The said writ petition was dismissed by learned Single Judge. Pursuant to the advertisement, Junior Assistants employed on contractual basis also participated and were given the benefit of age



relaxation. Aggrieved by the order of dismissal an LPA was preferred before the Division Bench which was allowed and the University was directed to design and hold an appropriate test for selection in terms of Notification. The Apex Court while disposing the appeals preferred by the University held that contractual employees in the light of decision rendered in *State of Karnataka & Ors. v. Uma Devi & Ors., (2006) 4 SCC 1* cannot claim the relief of regularisation. However, since they had completed more than 10 years of services on contract basis, a window of opportunity must be given to them to compete with the available talent through public advertisement. Further it was observed that a separate and exclusive test for the contractual employees would not meet the purpose. Therefore, the benefit of age relaxation with respect to upper age limit be given to all contractual employees and in addition to that those employees who were engaged in the year 2011 were given the benefit of 10 marks in the ensuing selection process, while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given.

16. Reference may further be made to Office Memorandum No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 and Office Memorandum No.F.19(11)/2015/S-IV/2021-2025 dated July 10, 2019 issued by Govt. of NCT of Delhi, relied by the petitioners which provided for relaxation in age limit to contractual employees working under Govt. of NCT of Delhi at the time of regular appointment:

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
SERVICES DEPARTMENT – (BRANCH-IV)
7TH LEVEL, B-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI-110002**



NO.F.19(11)/2015/S-IV/1751-1756

Dated: 11/06/2019

OFFICE MEMORANDUM

Sub: Relaxation in upper age limit to the contractual employees working under Government of NCT of Delhi at the time of regular appointment on direct recruitment basis.

The issue with regard to suitable relaxation in upper age limit to contractual employees, as a onetime measure, in Direct Recruitment has been examined in the light of various judicial pronouncements, DOPT guidelines, the opinion of Additional Solicitor General and in consultation with Finance Department and Law Department of GNCTD.

2. The Competent Authority is pleased to order all Head of Departments to fill-up the posts as per the recruitment rules and contractual employees hired against those posts may be given age relaxation as per the the following modalities to be adopted on uniform basis for in respect of contractual employees under Government of NCT of Delhi.

- I. The contractual employees working against teaching posts will be eligible for one time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 120 days in a particular academic year.
- II. The contractual employees working against all other administrative posts, will be eligible for one time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 180 days in a particular year.
- III. The contractual employees, working at the time of applying for direct recruitment, shall only be considered eligible for relaxation in upper age limit.
- IV. The contractual employees would be considered eligible for relaxation in upper age limit only for the department in which they are working.
- V. The contractual employees, who have already availed one time age relaxation, granted by the respective department, would not be eligible under the scheme.
- VI. Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as Ineligible for the benefit of relaxation in upper age limit.



VII. *The contractual employees may seek “age – relaxation certificate” from the department where they are working on contract basis. The department concerned, after examination of application, in accordance with the above modalities, shall issue the certificate by clearly Indicating the quantum of age relaxation, the contractual employee is eligible for. The Certificate shall be issued under the signature and seal of HoD concerned.*

3. *This issues with the approval of Competent Authority.*

Sd/-

SPECIAL SECRETARY (SERVICES)”

**“GOVERNMENT OF NCT OF DELHI
SERVICES DEPARTMENT (BRANCH-IV)
DELHI SECRETARIAT, 7TH LEVEL: B-WING, J.P. ESTATE,
NEW DELHI**

No.F.19(11)/2015/S-IV/2021-2025

Dated: 10/07/2019

Sub: *Relaxation in upper age limit to the contractual employees working under Government of NCT of Delhi at the time of regular appointment on direct recruitment basis-regarding.*

Time and again all Principal Secretaries/Secretaries/HODs have been advised to take proactive measures to fill up all the vacancies, including promotional and direct recruitment quota vacancies, by holding of DPC meetings and sending requisitions to the respective recruiting agencies, like UPSC and DSSSB.

Requirement of filling up the vacancies in a time bound manner to ensure adequate and sufficient staff against the sanctioned posts under the Government needs no further emphasis. The Services Department has recently issued policy guidelines, with the prior approval of the Competent Authority, vide OM dated 11.6.2019, to extend relaxation in upper age limit to the Contractual employees working in the Government of NCT Delhi at the time of their regular appointments on direct recruitment basis.

*All departments, Boards, Corporations, PSUs/Autonomous Bodies etc. under the Govt. of NCT Delhi are advised to take necessary steps accordingly, inter-alia, for extending age relaxation in upper age limit to the contractual employees while filling up the vacancies on direct recruitment basis as per the **Standard Operating Procedure** as mentioned below:*

1. The clause of relaxation in upper age limit to the contractual employees in accordance with OM dated 11 .6.2019 be invariably



indicated while sending requisitions for direct recruitment quota vacancies.

2. Further, the contents of the above referred OM dated 11.6.2019, be brought to the notice of all contractual employees working under the concerned Principal Secretaries/Secretaries/HODs.

3. The contractual employees working against teaching posts will be eligible for one-time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 120 days in a particular academic year.

4. The contractual employees working against all other administrative posts, will be eligible for one-time relaxation in upper age limit upto maximum period of 5 years. The quantum of age relaxation will be subject to number of years spent in the department on contract basis provided, they have worked for at least 180 days in a particular year.

5. The contractual employees, working at the time of applying for direct recruitment, shall only be considered eligible for relaxation in upper age limit.

6. The contractual employees would be considered eligible for relaxation in upper age limit only for the department in which they are working.

7. The contractual employees, who have already availed onetime age relaxation, granted by the respective department, would not be eligible under the scheme.

8. Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible for the benefit of relaxation in upper age limit.

9. The department concerned after examination of application, in accordance with the above modalities, shall issue the certificate by clearly indicating the quantum of age relaxation, the contractual employee is eligible for. The Certificate shall be issued under the signature and seal of HoD concerned.

10. Age relaxation Certificates on the application of eligible contractual employee shall be urgently and promptly issued by the HOD concerned in accordance with modalities stipulated vide OM dated 11.6.2019, to enable the contractual employee to avail the benefit of age relaxation in recruitment/regular appointment against direct recruitment quota vacancies.

All Principal Secretaries/Secretaries/HODs are advised to ensure that functioning of the department does not suffer for want of regular employees against the sanctioned strength of posts at various level in the department.

This issues with approval of Competent Authority.



Sd/-
SPL. SECRETARY (SERVICES)"

17. Office Memorandum dated June 11, 2019 and July 10, 2019 referred to above were duly issued with the approval of the competent authority for extending relaxation in upper age limit to the contractual employees working in the Govt. of NCT of Delhi. The Standard Operating Procedure in terms of aforesaid guidelines clarify that the one-time relaxation in upper age limit would be upto maximum period of five years as a one-time relaxation subject to number of years spent in the department on contract basis. Further, such employees should have worked for at least 120 or 180 days in a particular academic year depending upon whether the same pertains to the 'teaching post' or 'other administrative posts'. The relaxation in upper age limit is further confined only in respect of the department in which the contractual employees had been working. It also specifies that the contractual employees who had already availed one time age relaxation granted by respective department, would not be eligible under the scheme. The age relaxation is further not to be extended in respect of the employees whose services were terminated due to unsatisfactory work during their contractual employment.

18. It is pertinent to observe that depending upon exigencies, the government has a right to appoint employees on contract basis/casual labour along with set of regular employees who form a separate class. The process of regular employment is mandated and envisaged under the Rules but due to unforeseen circumstances or the policy of the government, at times, the process of regular employment may be delayed. It is well settled that such regular vacancies cannot be filled except by way of regular recruitment on



permanent basis and the contractual employees cannot be regularized as settled by the Hon'ble Apex Court in *Uma Devi* (supra).

Whenever a candidate who is appointed by adopting a due selection procedure on a contractual employment, there is a legitimate expectation of participating in the regular recruitment process undertaken for filling up of the posts. Wheresoever, such a selection process is delayed or not undertaken by the State/Department, there is an inherent prejudice to such contractual candidates who become overage by the time the recruitment process is initiated, though there may not be express promise by the State for any such relaxation. The State definitely gains in case such contractual employees with appropriate experience, having worked in the department, are given a fair opportunity to compete with other candidates in an examination conducted by UPSC/State Public Service Commission. It may be difficult to accept the contention raised on behalf of the intervener/objector Shitize Rao that such age relaxation to the contractual employees working in the department, would *per se* perpetuate an illegality or is in violation of Article 14 of the Constitution of India. It needs to be kept in perspective that though strictly speaking there may not be a legal right to conferred on such contractual employees but the memorandum/policy issued by the State/Department providing for age relaxation has a legal validity and cannot be ignored by the department/exam conducting agency.

19. It may further be observed that Clause (1) of Article 320 provides that it shall be the duty of the Union Public Service Commission and State Public Service Commission to conduct examinations for appointment to the service of Union and service of State respectively. Clause (3) of Article 320 further



enumerates that UPSC or State Public Service Commission, as the case may be, shall be consulted in respect of the matters mentioned in sub-clause (a) to (e) referred therein.

It is not the case of UPSC that policy directive in respect of OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 and OM No.F.19(11)/2015/S-IV/2021-2025 dated July 10, 2019, referred to above, were not issued by the competent authority or was in violation of any regulations. The aforesaid memorandums providing for relaxation of age were issued with the objective that contractual employees may not be adversely impacted on account of non-holding of examination by the department/State within a reasonable period of time. The said policy is in vogue and has not been withdrawn by the Govt. of NCT of Delhi. The aforesaid memorandums issued by Govt. of NCT of Delhi fulfill the test of legitimacy, suitability, necessity and balancing the values and fall within the domain of Executive.

In view of above, we do not see any reasons to interfere in the realm of the aforesaid memorandum/policy notified vide OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 and OM No.F.19(11)/2015/S-IV/2021-2025 dated July 10, 2019 by the Govt. of NCT of Delhi and the same do not offend Article 14, 16 or 21 of the Constitution of India.

20. The case of the petitioners stands squarely covered under the policy. The burden lay on the concerned department to invariably indicate the clause of relaxation in upper age limit to the contractual employees while sending requisition for direct recruitment of vacancies to UPSC, which is the concerned recruitment agency. The failure of the department as well as UPSC to notify the advertisement in terms of said OMs cannot be read



adversely against the petitioners, who were duly entitled to age relaxation in terms of aforesaid OMs dated June 11, 2019 and July 10, 2019 notified by the Govt. of NCT of Delhi. Further, the department concerned in terms of the said OMs was bound to issue the certificate to the petitioners by indicating the quantum of age relaxation. UPSC was bound with the memorandum/policy directions, which stood issued by the Govt. of NCT of Delhi with the approval of the competent authority. The equity in favour of petitioners outweighs, as they cannot be termed to be irregularly or illegally appointed against the contractual vacancies. Having gained sufficient experience while working as contractual APPs, any deficiency in age relaxation stands compensated by the valuable experience gained by them. The contentions raised on behalf of the objector/intervener Shitize Rao as well as the respondents are without any merit.

21. The authorities relied on behalf of objector Shitize Rao are distinguishable in the facts and circumstances and may also be briefly noticed:

(i) In *Ami Lal Bhat v. State of Rajasthan* (supra), the issue before the Court was that whether a rule-making authority can fix a cut-off date with reference to the calendar year for determining the maximum age of a candidate who is to be considered for direct recruitment to a service under the State of Rajasthan. The cut-off date therein was fixed by State of Rajasthan under different rules to various services as 1st of January following the year in which the applications are invited. The stand of the affected candidates was that the cut-off date which is uniformly fixed under all the Service Rules of the State of Rajasthan is arbitrary or unreasonable and the same should be fixed with reference to the last date in making the application



form. The contention was negated by the Hon'ble Apex Court observing that the fixing of a cut-off date for determining the maximum or minimum age for a prescribed post is not *per se* arbitrary and within the discretion of rule making authority. Further, such date cannot be fixed with mathematical precision and in such a manner as would avoid hardship in all conceivable cases. Further, in the case of Dr.Rajeev Mathur in CA No.2691 of 1991, it was contended that vacancy had occurred in September, 1987 but was advertised only in January, 1988 and in the meanwhile Dr.Mathur had become overage on 1st January of the following year. As such, it was submitted that the vacancies should be advertised soon after they are determined without any delay and a benefit of age relaxation should be given to persons who are adversely affected. Drawing reference to Rule 8(A) and 11(A) of the Rajasthan medical (Collegiate Branch) Rules, 1962, it was held by the Apex Court that Rule 8(A) does not cast any obligation on the appointing authority to issue an advertisement within any specific time for recruitment to such a vacancy. So long as such an advertisement is issued within a reasonable time, and there is no *malafide* delay, the action of the appointing authority in issuing the advertisement cannot be challenged simply because the maximum age qualification is fixed with reference to a fixed date. It was also observed that the power of relaxation is required to be exercised in public interest in a given case or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission and there cannot be any wholesale relaxation just for the reason that the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any *malafides* in



connection with any delay in issuing an advertisement.

It is pertinent to note that in the present case, the issue for consideration is distinguishable since petitioners seek the age relaxation in terms of OM No.F.19(11)/2015/S-IV/1751-1756 dated June 11, 2019 and OM No.F.19(11)/2015/S-IV/2021-2025 dated July 10, 2019 as the recruitment did not take place over six years.

(ii) In ***Kaushal Kishore v. State of U.P.*** (supra), the Hon'ble Apex Court primarily dealt with fundamental right enshrined under Article 19 of Constitution of India and held that the rights granted under Article 19 and Article 21 can be enforced against persons other than the State or its instrumentalities. The authority is not applicable in the facts and circumstances of the present case.

(iii) In ***Ganesh Digamber Jambhrunkar v. State of Maharashtra*** (supra), Hon'ble Apex Court held that working for long period did not give any acquired right to the petitioners who were appointed in Shri Guru Govind Singh Institute of Engineering and Technology to seek absorption or regularisation. The petitioners therein had sought the relief of regularization primarily on the basis of length of service rendered in the institute. The ratio laid down has no relevance to the facts in present case, wherein the issue relates to relaxation of age and not regularization.

(iv) In ***Doordarshan Prasar Bharti Corporation of India & Anr. v. Smt. Magi H Desai*** (supra), the respondent claimed contractual services rendered by her to be counted as qualifying services for grant of retiral/pensionary benefits. The Hon'ble Supreme Court held that merely because some other departments might have such schemes, the respondent shall not be entitled to the same benefit in absence of any scheme in the department in which the



respondent rendered her services. The aforesaid proposition is not relevant to the facts and circumstances of the present case.

(v) *P.D Gupta v. Ram Murti* (supra) also deals with professional conduct of Advocates and is not directly relevant to issue under consideration.

22. In the facts and circumstances of the case, we are of the considered opinion that in order to facilitate the contractual employees to participate in the recruitment process in conformity with OM dated June 11, 2019 and July 10, 2019, the respondents are bound to consider and grant the age relaxation to the petitioners as a 'one-time measure'. UPSC is accordingly directed to release the result of the candidates after considering the age relaxation in terms of aforesaid OMs and subject to the petitioners' satisfying the other terms and conditions of the advertisement. Writ Petitions preferred by the petitioners are accordingly disposed of. The objections raised on behalf of the intervener Shitize Rao are dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

NOVEMBER 02, 2023/v/sd