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

+ **W.P.(C) 16518/2023 & CM APPL. 66610/2023**

SOCIETY FOR HOLISTIC APPROACH AND DEVELOPMENT

..... Petitioner

Through: Dr. Anup Kumar Mishra, Advocate.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, SC, GNCTD
with Mr. N.K. Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

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Date of Decision: 21st December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present Public Interest Litigation (“PIL”) has been filed challenging the process of recruitment of Probation Officers vide Vacancy Notice/Advertisement No. 04/23 dated 20th November, 2023 on the ground that the same is not in consonance with the Recruitment Rules laid down as per the Gazette No. 323 dated 9th November, 2021 and the Delhi Probation of Offenders Rules (Amended) 2019.

2. It is submitted that as per Gazette No. 323 dated 9th November, 2021, the Delhi Probation of Offenders Rules (Amended) 2019 were amended whereby the age limit for the post of Probation Officer was stipulated as “not less than 25 years and not more than 40 years of age” at the time of first



appointment (exclusive of period of training) in the case of Junior Probation Officers; and “not less than 30 years and not more than 40 years of age” at the time of first appointment in the case of Senior Probation Officers. However, in the Advertisement published by respondent no. 4 i.e. Delhi Subordinate Services Selection Board (“DSSSB”), the required age limit for the post of Probation Officer (Grade B) has been stipulated as “not exceeding 30 years”.

3. Thus, it is contended that there is a drastic contradiction between the Recruitment Rules as published vide Gazette No. 323 dated 9th November, 2021 and the Advertisement dated 20th November, 2023 published by the respondent no. 4, as the age limit for the post of Probation Officer has been limited to 30 years, instead of age limit of 25-40 years. Further, the grade pay is reduced to Rs. 4,200/- instead of Rs. 4,800/-.

4. Having heard learned counsel for the petitioner, this Court is not inclined to entertain the present PIL. By the present PIL, the petitioner is essentially challenging the recruitment process as well as the selection criteria as specified in the Advertisement Notice published by respondent no. 4/DSSSB. Challenge to a selection process by contesting the selection criteria cannot be subject matter of a PIL. It is no gainsaying that a PIL is maintainable only when fundamental rights of the people are shown to be violated. The purpose of PILs is to protect basic human rights of the disadvantaged and is for the benefit of the poor and the underprivileged, who are unable to come to Court due to some disadvantage.

5. A process of selection for recruitment carried out by Government Authorities cannot be allowed to be challenged by way of PIL, as laying down the selection criteria and the required qualifications is within the



domain of the Appointing Authority. If any individual is aggrieved by any criteria for recruitment, he or she has full authority to challenge the same in appropriate legal proceedings.

6. Holding that a PIL is not maintainable in service matters and that in service matters only the non-appointees can assail the legality of the appointment procedure, Supreme Court in the case of ***Girjesh Srivastava and Others Versus State of Madhya Pradesh and Others***¹, has held as follows:

“XXX XXX XXX

15. In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* [(1998) 7 SCC 273: 1998 SCC (L&S) 1802] a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held: (SCC p. 281, para 18)

“18. ... If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

16. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.* [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] this Court held that **in service matters only the non-appointees can assail the legality of the appointment procedure** (see SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra* [(2005) 1 SCC 590] by pointing out that despite the decision in *Duryodhan Sahu* [(1998) 7 SCC 273: 1998 SCC (L&S) 1802], PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in *Duryodhan Sahu* [(1998) 7 SCC 273: 1998 SCC (L&S) 1802] (SCC p. 596, para 16).

¹ (2010) 10 SCC 707



18. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.* [(2004) 3 SCC 349] (SCC at p. 358, para 16).

19. In a recent decision of this Court delivered on 30-8-2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto* [(2010) 9 SCC 655], it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable (see SCC para 15).

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(Emphasis Supplied)

7. Likewise, holding that with regard to service jurisprudence, PILs are not entertained, Supreme Court in the case of ***Vishal Ashok Thorat and Others Versus Rajesh Shrirambapu Fate and Others***², has held as follows:

“XXX XXX XXX”

40. Although, the learned counsel for the parties have made elaborate submissions on the validity of Rule 3(iii) proviso, Rule 3(iv) proviso and Rule 4 but in the facts of the present case, where the writ petitioner i.e. Respondent 1 was held by the High Court not competent to challenge Advertisements Nos. 2 and 48 of 2017, the High Court committed error in proceeding to examine the validity of the 2016 Rules. The challenge to the 2016 Rules in the background of the present case ought not to have been allowed to be raised at the instance of the writ petitioner. Respondent 1, who did not participate in the selection and the High Court had specifically rejected the entitlement of Respondent 1 to challenge Advertisements Nos. 2 and 48 of 2017, as held in para 49 of the judgment [*Rajesh v. State of Maharashtra*, 2018 SCC OnLine Bom 17538], permitting him to challenge the validity of the Rules in reference to the same advertisements is nothing but indirectly challenging something which could not be challenged directly by Respondent 1. The High Court in the facts of the present case, where Respondent 1 was not allowed to challenge the advertisements or the select list should not have been allowed to challenge the 2016 Rules insofar as the selection in question was concerned. The writ petition filed by Respondent 1 was not styled or framed as PIL. It is well settled that with regard to service jurisprudence, PIL are not entertained.

41. In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra* [*Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465 : (2013) 2 SCC (Civ) 658 : (2013) 2 SCC (L&S) 296], this Court has reiterated that PIL should not be entertained in

² (2020) 18 SCC 673



service matter. In para 15 the following has been laid down : (SCC p. 477)

“15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned.
(Vide *Duryodhan Sahu v. Jitendra Kumar Mishra* [*Duryodhan Sahu v. Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802] , *Dattaraj Nathuji Thaware v. State of Maharashtra* [*Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590] and *Neetu v. State of Punjab* [*Neetu v. State of Punjab*, (2007) 10 SCC 614] .)”

XXX XXX XXX”

(Emphasis Supplied)

8. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed along with the pending application.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 21, 2023

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