



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.356 OF 2022

Sagar Satish Patil

Age: 35, Occu: Advocate,
R/o. Patil Building, Mill Road,
Kala Mandir, Nanded.

..Petitioner

Versus

1. **The State of Maharashtra**

Through Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai – 400 032.

2. **Maharashtra Public Service Commission**

Through the Secretary
5th, 7th and 8th Floor, MTNL Bldg., Near
Cooperage Ground, Cooperage
Mumbai – 400 001.

3. **The Registrar (General)**

High Court of Bombay
Fort, Mumbai.

..Respondents

Mr. Sandeep Dere for the Petitioner.

Dr. Milind Sathe, Senior Advocate appointed as Amicus

Mr. N. C. Walimbe, Addl. G. P. a/w Mr. A. R. Metkari, AGP for
Respondent No.1 (State).

Mr. Shekhar Jagtap a/w Ms. Sairuchita Chowdhary & Mr. Ishan Paradkar
i/by J. Shekhar Associates for Respondent No.2 (MPSC)

Mr. Rahul Nerlekar for Respondent No.3 (High Court)

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 19th JANUARY 2024

JUDGMENT: (per Jitendra Jain, J.)

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

2. By this Petition under Article 226 of the Constitution of India, the Petitioner has prayed for following relief :

(a) that this Hon'ble be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing the Respondents to relax the age criteria pursuant to the advertisement no.270 of 2021.

3. **Brief facts are as under :-**

- (i) On 23rd December 2021, Respondent No.2-MPSC issued an advertisement No.270 of 2021 for the post of Judicial Magistrate First Class (JMFC). As per the said advertisement, the age limit for open category was fixed at 35 years as on 23rd December 2021.
- (ii) The Petitioner, has completed age of 35 years on 24th November 2021 and therefore was age barred to apply for the post of JMFC since he was ineligible candidate for JMFC-2021 examination.
- (iii) On 17th December 2021, the Respondent No.1-State issued a Government Resolution relaxing the age for direct service recruitment as a one time measure on account of pandemic.
- (iv) On 3rd January 2022, the Petitioner made a representation to Respondent No.3-Registrar General High Court requesting that the Government Resolution of 17th December 2021 be made applicable

to him. Similar representation was made by the Petitioner to Respondent Nos.1 and 2 seeking age relaxation. However, the same was not granted and therefore the present petition is filed seeking age relaxation so that the Petitioner would be eligible to apply for the said post.

4. **Submission of the Petitioner :-**

The Petitioner relying on the decision of the Supreme Court in the case of **Malik Mazhar Sultan and Anr. vs. Uttar Pradesh Public Service Commission and Ors.**¹ contended that had Respondent No.2 adhered to the time-frame for issuing the advertisement as per the said decision then he would be eligible for applying to the JMFC post and since same was not followed by the Respondents, the impugned action is contrary to the decision of the Supreme Court. The Petitioner further submitted that on conjoint reading of Articles 234 and 309 of the Constitution of India, the Government Resolution dated 17th December 2021 issued by Respondent No.1 is to be made applicable and thereby benefit of age relaxation should be granted. The Petitioner also relied upon the Maharashtra Judicial Service Rules, 2008 and more particularly Rule 4 to contend that since the appointing authority is the Governor, the Government Resolution issued in the name of Governor should be made applicable to his case. The Petitioner also relied upon

1 (2008) 17 SCC 703

Article 16 of the Constitution of India and submitted that since other citizens are given the benefit of Government Resolution dated 17th December 2021, he is seeking equal opportunity as mandated by Article 16 of the Constitution of India and therefore is justified in seeking age relaxation benefit. The Petitioner, therefore, prayed for seeking age benefit relaxation to be eligible for applying for the post of JMFC.

5. **Submissions of the Amicus-curiae:-**

Dr. Sathe, learned senior counsel appointed by the Court to assist submitted that the Petitioner is already age barred in November 2021 because as on the date of advertisement he had already cross the age of 35 years. The learned senior counsel also submitted that Respondent No.2 has conducted JMFC examination in the year 2019, 2020 and 2021 also. The learned senior counsel further relied upon the decision of the Supreme Court in the case of **State of Bihar & Anr. vs. Bal Mukund Sah and Ors²**. and contended that insofar as the judicial service is concerned it would be governed by the Judicial Service Rules and no other authority has the power to relax the age. The learned senior counsel further submitted that Government Resolution dated 17th December 2021 does not apply to the post of judicial services and furthermore even if it is applied then same is not applicable to the Petitioner since it deals with Government Resolution dated 25th April

2 (2000) 4 SCC 640

2016 for not conducting the competitive examination for recruitment in Government service during the period 1st March 2020 till 17th December 2021. This is so because in the instant case, Respondent No.2 had conducted the examination for the post of JMFC in the year 2019, 2020 and 2021. The learned senior counsel further submitted that there is no provision to relax the age bar under the Maharashtra Judicial Service Rules, 2008 and therefore the prayer sought for cannot be granted. The learned senior counsel also relied upon the decision in the case of **Hirandra Kumar vs. High Court of Judicature At Allahabad and Anr.**³ and the decision in the case of **High Court of Kerala vs. Reshma A. and Anr.**⁴ and submitted that the time schedule laid down by Supreme Court in **Malik Mazhar Sultan** (supra) is only re-commendatory but what would prevail would be Judicial Service Rules.

6. **Submission of Respondent No.2 and 3 :-**

Respondent No. 2 submitted that they had sought clarification on this issue from Respondent No.3 and the response was received that no such relaxation can be given since the Government Resolution dated 17th December 2021 is not applicable for the post of judicial service. The learned counsel for Respondent No.2 adopted the submission made by the *amicus curiae* and sought dismissal of the petition. The learned

3 (2020) 17 SCC 401

4 (2021) 3 SCC 755

counsel for Respondent No.3 relied upon the Affidavit-in-reply filed to oppose the petition and also adopted the submission made by the *amicus curiae* and Respondent No.2 and prayed for dismissal of the Petition.

7. **Submission in Rejoinder of the Petitioner :-**

The Petitioner, in rejoinder distinguished the decision in the case of **Hirandra Kumar (supra)** on the ground that what was challenged before the Supreme Court was Rule 10 of Uttar Pradesh Higher Judicial Service Rules, 1975 and there were no exceptional circumstances like in the present case on account of pandemic. Therefore the ratio of the decision in the case of **Hirandra Kumar (supra)** is not applicable. Insofar as the decision of the Supreme Court in the case of **Reshma A. (supra)** is concerned. It was submitted that even on the date of advertisement, the candidates were over-age, whereas in the case of the Petitioner if the advertisement would have been published in accordance with the time-schedule provided in the case of **Malik Mazhar Sultan (supra)** then the Petitioner would have been eligible on the date of advertisement and therefore even this decision in the case of **Reshma A. (supra)** is not applicable to the facts of the Petitioner.

8. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition.

9. **Analysis and conclusion :-**

The Petitioner's primary case appears to be based on Government Resolution 17th December 2021 issued by Respondent No.1 to pray for age relaxation to appear for JMFC exam. In our view, the said Circular is made applicable only to recruitment under Maharashtra Civil Service Rules which contains an enabling provision for age relaxation. Insofar as the recruitment of judicial officers is concerned, the same is governed by the Maharashtra Judicial Service Rules, 2008 which does not have any enabling provision to relax the age. It is settled position that insofar as the judicial recruitment is concerned, the Rules applicable for other Government employees are not applicable, but they are governed only by the Maharashtra Judicial Service Rules, 2008. Therefore, in our view, the reliance placed by the Petitioner on the said Government Resolution to plead age relaxation while seeking recruitment in judicial service is concerned is to be rejected.

10. Article 234 of the Constitution of India provides that persons other than District Judges shall be appointed by the Governor of the State in accordance with Rules made in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Article 309 of the Constitution of India provides that subject to the provision of the Constitution, Acts of the appropriate Legislature may regulate the

recruitment and conditions of service of persons appointed to public services and post in connection with the affairs of the Union or of any State. In our view, the Petitioner is not justified in placing reliance on Article 309 to contend that Government Resolution dated 17th December 2021 ought to be made applicable to judicial services. Article 309 of the Constitution of India expressly provides that same is subject to the provisions of the Constitution. Therefore, it is Article 234 which governs the appointments of persons other than District Judges and same would be in accordance with the Rules framed after consultation with the State Public Service Commission and the High Court exercising jurisdiction in relation to such State. Pursuant to Article 234 of the Constitution of India, the Maharashtra Judicial Service Rules, 2008 has been framed. As per Rule 3(A)(c) age on the date of publication of advertisement in the case of advocates with 3 years practice should not be more than 35 years. Proviso to said Rule, relaxes age limit in respect of candidates belonging to the communities recognized as backward by the Government for the purpose of recruitment. The said proviso is not applicable to the Petitioner's case since the Petitioner does not belong to the communities recognized as backward by the Government for the purpose of recruitment. The Petitioner has applied under the open category. In the Maharashtra Judicial Service Rules, 2008 there is no provision or Rule to relax the age for recruitment. Therefore, the

Petitioner is not justified in seeking age relaxation since same would be contrary to the Judicial Service Rules. We now propose to deal with the precedents cited before us by the parties.

11. In the case of **State of Bihar & Anr. vs. Bal Mukund Sah (supra)**, the issue before the Supreme Court was whether provision of Bihar Reservation of Vacancies in Post and Services Act, 1991 would be applicable to the subordinate judiciary and whether Section 4 of the said Act in its application to the subordinate judiciary would be *ultra vires* Articles 233 and 234 of the Constitution of India. The Supreme Court answered the said question in paragraph Nos.28 and 29 and observed that Article 309 is of a general nature dealing with regulation of recruitment and condition of service of persons serving in the Union or a State and the said Article is expressly made subject to other provisions of the Constitution. The Supreme Court further observed that recruitment and appointment to the post of Presiding Officers of the Courts subordinates to the High Courts would be governed only by Articles 233 and 234 of the Constitution of India. The Rules framed under Article 234 is after consultation with the High Court and Article 233 lays thrust on the High Court exercising control over the candidates who ultimately get selected as Judges of the lower judiciary. The Supreme Court observed that consultation of the Government with the High Court

under Article 234 of the Constitution of India is entirely of a different type as compared to his consultation with the Public Service Commission about procedural aspect of the selection. The Supreme Court observed that Articles 233 and 234 of the Constitution of India represent a well knit and complete scheme regulating the appointments at the apex level of the District Judiciary. The Supreme Court thereafter held that section 4 of the Bihar Act as unconstitutional. In our view, the said decision squarely applies to the Petitioner's case insofar as the contention of the Petitioner to seek benefit of the Circular and Article 309 is concerned. Applying the ratio of the said decision, the Petitioner is not justified in seeking age relaxation by relying on Article 309 of the Constitution of India. In paragraph No.45 of the said decision, the Supreme Court after analyzing Articles 309, 235, 233 and 234 observed that there is a clear intention of the Constitution makers that so far as question of recruitment and appointment to vacancies in the cadre of District Judges and subordinate judiciary is concerned neither legislature nor the Governor de hors any consultation with the High Court can have any independent say. It is further held that Article 234 ousts the legislative power for making suitable enactment on the topic covered by it. At the end it concluded that Articles 233 and 234 have their full-sway not being inhabited by any outside independent interference to be made by the Governor under proviso to Article 309 or by the State

legislature in the that connection. In our view, ratio of this decision squarely applies to negate the contention of the Petitioner to make the GR applicable to his case.

12. The decision of the Bombay High Court in the case of **Krantikumar Kishanrao Kaulwar and Anr. vs. Maharashtra Public Service Commissioner and Anr.**⁵ also goes against the Petitioner inasmuch as this Court observed that benefit of age relaxation to economically backward class for open category cannot be given for recruitment for post of Civil Judge, Junior Division and Judicial Magistrate, First Class in the absence of any decision by High Court Administration to amend the Rules pursuant to provision of the Constitution. What is sought to be canvassed by the Petitioner is also squarely covered against the Petitioner by the said decision.

13. The decision of the Supreme Court relied upon by the Petitioner in the case of **High Court of Delhi vs. Devina Sharma**⁶ is also not applicable to the facts of the present Petitioner since in the case before the Supreme Court, no examination was conducted during pandemic, whereas in the State of Maharashtra, recruitment process for judicial officers was held in 2019, 2020 and 2021. Furthermore on a complete reading of the decision of the Supreme Court in the case of

5 (2020) 2 Mah LJ 543

6 Civil Appeal No.2016 of 2022

Devina Sharma (supra) it is clear that same was based on a concession made by the counsel appearing for the Petitioner and therefore the said decision does not have any precedent value.

14. The Supreme Court in the case of **Hirandra Kumar (supra)** is also relevant. The issue before the Supreme Court was that as a result of Rules 8 and 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975, a candidate who has crossed the age limit prescribed between the date of last recruitment and the present recruitment was debarred from appearing in the competitive exam. The High Court permitted the candidate to appear in the preliminary exam, but the result was directed to be kept in sealed envelope. In paragraph No.11.5, the Supreme Court clarified that the directions in **Malik Mazhar Sultan and Anr. (supra)** are only general directions issued to all High Courts to hold recruitment every year subject to the Rules of each High Court. The Supreme Court further observed that this general directions do not vest any enforceable right in a candidate. Therefore the reliance placed by the Petitioner in the case of **Malik Mazhar Sultan and Anr. (supra)** to seek age relaxation on the ground that if the time-schedule given by **Malik Mazhar Sultan and Anr. (supra)** decision would have been adhered to by the Respondents then he would not be age barred is also to be rejected. The Supreme Court further observed that validity of the Rule cannot be

made to depend on the basis of individual hardships which inevitably arise in applying a principle of general application a Court in exercise of the power of judicial review does not take over that function for itself. In our view, the ratio of this decision squarely applies to reject the contention of the Petitioner insofar as the age relaxation is sought based on the decision in the case of **Malik Mazhar Sultan and Anr. (supra)** is concerned.

15. In **High Court of Kerala vs. Reshma A. and Anr.**, the above clarification made by the Supreme Court in the case of **Hirandra Kumar (supra)** was further reiterated in paragraph no.41 and argument that the direction in **Malik Mazhar Sultan and Anr. (supra)** will prevail over the provisions contained in the Rule was rejected. The Supreme Court in paragraph no.76 expressly rejected the contention of the Petitioner that on account of pandemic the recruitment process was delayed and the Petitioner should be given benefit of covid pandemic. Rejecting the said contention, the Supreme Court observed that a candidate as no vested to right to appointment nor in equity they are entitled to only on the ground that the selection is delayed because of covid and the recruitment has to be in accordance with the Rules. In our view, the submission of the Petitioner to make Government Resolution dated 17th December 2021 applicable on account of pandemic is squarely answered by the Supreme Court against the Petitioner.

16. To conclude, the Petitioner is not entitled for age relaxation by relying upon Government Resolution dated 17th December 2021. The Writ Petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)