



CWP-12155-2000 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(213)

**CWP-12155-2000 (O&M)
Date of Decision : August 27, 2024**

Daljeet Singh

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S. Patwalia, Advocate, with
Mr. Abhishek Masih, Advocate, for the petitioner.

Mr. T.P.S. Chawla, Sr. Deputy Advocate General, Punjab.

Mr. Vijay Pal, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-20500-2001

As prayed for, the application is allowed.

CWP-12155-2000

1. In the present writ petition, the challenge is to the appointment of respondent No.3 on the post of Labour- cum- Conciliation Officer (class III).

2. As per the facts mentioned in the petition, the respondents had issued an Advertisement in the newspaper seeking application for filling the post of Labour- cum- Conciliation Officer. As per terms and conditions of the advertisement, the upper age limit to compete for the post in question

**CWP-12155-2000 (O&M) 2**

was 35 years and in service, Government employees who were physically handicapped were to be granted relaxation for a period of 10 years i.e. the upper age limit for such candidates as on 01.01.1999 was 45 years.

3. The petitioner also applied for the post in question along with other candidates and upon scrutiny of the application, it was found that as on 01.01.1999, the petitioner was overage i.e. 47 years and 2 months old hence, the petitioner was not considered eligible to compete for the post in question. Along with the petitioner, there were two other candidates, who were also over the age of 45 years as on 01.01.1999 but still all of them were provisionally called for interview on 17.08.2000. Thereafter, keeping in view the notification dated 17.08.2000 (Annexure R-1/T) of the Government of Punjab, the petitioner was found ineligible so as to be selected for the post in question being overage.

4. Learned counsel for the petitioner submits that the petitioner was allowed to compete for the post in question but ultimately, the petitioner was declared over age and respondent No.3 has been selected, which action of the respondents is arbitrary and illegal as the petitioner was entitled for 10 years relaxation being a Government employee keeping in view the maximum age of appointment to the post in question i.e. 45 hence, the petitioner should have been treated eligible qua the age.

5. Learned counsel for the petitioner further submits that Rule 17 of the Punjab Labour (Class-II) Services Rules, 1982 grants the power to the Government to relax the age beyond 45 years and therefore, even beyond the age of 45 years, the respondents could have relaxed the age criteria qua the petitioner who was already working and had 19 years of service to his

**CWP-12155-2000 (O&M) 3**

credit, which power to relax was not enforced by the State so as to consider the claim of the petitioner, which has caused prejudice to the petitioner so as to compete for the post in question.

6. Upon notice of motion, the respondents have filed the reply wherein, they have stated that after the applications were received for the post in question, the same were scrutinized and along with the petitioner, two others candidates were found beyond the age of 45 years and the Department in order to seek relevant opinion, referred the matter to the Department of Social Security as to whether, the relaxation can be given to the such overage candidates beyond even the age of 45 years and meanwhile provisionally, the petitioner as well as two other similarly situated candidates were allowed to compete for the post in question but keeping in view the clarification given by the Department of Social Security, Women and Child Development dated 17.08.2000, no relaxation can be given beyond the age of 45 years hence, the petitioner as well as other two candidates, who were over aged as on 01.01.1999, could not be considered further for the post in question and respondent No.3 was appointed to the post in question.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The only question which arise for adjudication is whether, the petitioner was to be treated eligible for the post in question despite the fact that he had already crossed the maximum age limit of 45 years as on 01.01.1999.

**CWP-12155-2000 (O&M) 4**

9. Learned counsel for the petitioner has not been able to dispute the fact that the maximum age to compete for the post in question is 35 years.

10. It may be noticed that relaxation for a period of 10 years is given to serving Government employees. The petitioner, who was serving Government employee, was to be considered eligible upto the age of 45 years however, the petitioner had already crossed the said age of 45 years as on 01.01.1999 hence, the petitioner cannot claim that he was within the age prescribed to compete for the post in question.

11. Further, the argument of the learned counsel for the petitioner is that period of 10 years relaxation is to be given after adding the relaxation being given to physically disabled candidates.

12. It may be noticed that the period of 10 years relaxation is to be given keeping in view the maximum age prescribed for entering into service. Once, the maximum age for a normal person to enter into Government service at the relevant time was 35 years, the relaxation of 10 years will only take the maximum age to enter into Government service to 45 years. The claim of the petitioner that 10 years relaxation was to be given after the maximum age in entry to a Government servant i.e. 45 years, so as to mean that the petitioner was entitled to compete upto the age of 55 years, cannot be accepted hence, once the Department has already considered the said aspect and held that the maximum age after relaxation was 45 years, which age the petitioner has already crossed as on 01.01.1999, the petitioner cannot raise any grievance that he was wrongly ousted from the zone of consideration for the post in question.

**CWP-12155-2000 (O&M) 5**

13. The last question which has been raised by the learned counsel for the petitioner is that under the Rules governing the service, the Department had power to relax the upper age limit hence, the Department could have relaxed the age even beyond 45 years.

14. It may be noticed that the power to relax the upper age limit is to be used by the Department keeping in view the parameters laid down by the Government by various notifications. Once, the maximum age to enter for a normal person is 35 years and by the notification, the same has been relaxed for a period of 10 years, the petitioner cannot ask the Government to relax the said criteria further. Once, a relaxation benefit has already been given, the petitioner cannot claim that under Rule 17 of the Rules governing the service for the post in question, the Department should have further relaxed the age in favour of the petitioner.

15. Even otherwise, relaxation cannot be claimed as a matter of right. It is the sole jurisdiction/discretion of the State to grant the relaxation.

16. As per the settled principle of law, which is being cited here, the relaxation being claimed by the petitioner as a matter of right is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.2250-2252 of 2020 titled as Dr. Thingujam Achouba Singh and others vs. Dr. H. Nabachandra Singh and others, decided on 17.04.2020.*** The relevant paragraph of the said judgment is as under:-

“14. The High Court has also noticed that the experience for eligibility notified in the advertisement dated 16.08.2016 was not in conformity with the Medical Council of India Regulations. In reply affidavit filed before the High



Court, while denying such allegation, it was pleaded that the qualifications and experience, as notified in the advertisement dated 16.08.2016, was in accordance with the “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended from time to time), framed by the Medical Council of India. It was the specific contention of the respondent authorities that as the RIMS is affiliated to C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. Manipur University, the requirement as prescribed by Medical Council of India for Director of affiliated hospital should be applied. Such plea is not accepted by the High Court on the ground that there is no proper pleading in this regard. A copy of the Regulations titled as, “Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998” (as amended upto 11th March 2017) issued by the Medical Council of India is placed before us. As notified in the said Regulations, the academic qualifications and experience applicable for the post of Director of medical institutions differ from those applicable for the post of Director/Medical Superintendent of affiliated teaching hospital. For the post of Director in a medical institution, apart from the academic qualifications, ten years’ experience as Professor/Associate Professor/Reader in a medical college, out of which at least five years should be as Professor in a department, is prescribed. However, for the post of Director/Medical Superintendent of the affiliated teaching hospital the required experience is ten years only. It is the specific case of the respondents that the RIMS is an affiliated teaching hospital. In view of such stand of the respondents it cannot be said that the experience for eligibility notified in the advertisement dated 16.08.2016 is contrary to the Regulations of Medical Council of India. So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority

**CWP-12155-2000 (O&M) 7**

and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be C.A.@S.L.P.(C)Nos.15093-15095 of 2017 etc. given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause.”

17. Keeping in view the above, no ground is made out for any interference by this Court in the present case.

18. Further, it may be noticed that when the private respondent has already served the respondent-Department and must have retired as of now and the petitioner has also retired about two and half decades ago, it will not be justified in setting aside the appointment of respondent No.3.

19. At this stage, learned counsel for the petitioner submits that the recruitment process adopted by the respondents is faulted hence, the selection and appointment of respondent No.3 is liable to be set aside.

20. It is a settled principle of law that only the candidates who are eligible can challenge the recruitment process and not the one who does not have any right to even compete for the post in question. Here, in the present case, the petitioner is not eligible to compete for the post in question and therefore, challenging the process of selection is beyond the jurisdiction of the petitioner hence, he cannot raise any grievance with regard to the process adopted for selecting the private respondent. Even otherwise, the private respondent has already served the State and must have retired hence,



CWP-12155-2000 (O&M) 8

the said question has become academic.

21. No other argument was raised.
22. No ground is made out for any interference by this Court in the facts and circumstances of the present case.
23. Accordingly, the writ petition is dismissed.
24. Pending miscellaneous application if any, also stands disposed of.

August 27, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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