



CWP-12953-2020 (O&M) & connected cases **1**

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

(293) **CWP-12953-2020 (O&M)**
Date of Decision : September 19, 2024

Nidhi Sharma **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

(2) **CWP-5096-2020 (O&M)**

Ravneet Kaur and another **.. Petitioners**

Versus

State of Punjab and another **.. Respondents**

(3) **CWP-8858-2020 (O&M)**

Vishwas and others **.. Petitioners**

Versus

State of Punjab and another **.. Respondents**

(4) **CWP-17190-2020 (O&M)**

Kulwinderjit Kaur and others **.. Petitioners**

Versus

State of Punjab and others **.. Respondents**

(5) **CWP-16772-2020 (O&M)**

Manmohan Singh **.. Petitioner**

Versus

**CWP-12953-2020 (O&M) & connected cases****3**

Mr. Gaurav Sharma, Advocate for the petitioner(s)
in CWP-8858-2020.

Mr. Rahul Chadha, Advocate, for
Ms. Rupali Verma, Advocate for the petitioner
in CWP-17190-2020.

Mr. H.C.Arora, Advocate, with
Ms. Sunaina, Advocate, for the petitioners
in CWP-16772-2020.

Mr. Suneet Singh Deol, Advocate, for the petitioner(s)
in CWP-13361-2021.

Mr. K.D. Sachdeva, Advocate, for the petitioner(s)
in CWP-6290-2020.

Mr. Umesh Sharma, Advocate, for the petitioner(s)
in CWP-21984-2021.

Mr. Arun Gupta, Deputy Advocate General, Punjab.

Ms. Alka Chatrath, Advocate,
Mr. Nikhil Singh, Advocate and
Mr. Ratik Kapur, Advocate, for respondents No.4, 5, 6, 9 to 13,
15 and 24 to 33 in CWP-5096-2020.

Mr. Gaurav Sharma, Advocate, for intervener
in CM-4583-CWP-2021 in CWP-6290-2020.

Mr. Amit Jhanji, Sr. Advocate, with
Ms. Eliza Gupta, Advocate for the private respondents
in CWP-5096-2020.

HARSIMRAN SINGH SETHI J. (ORAL)**CM-18740-CWP-2022 in CWP-5096-2020**

Present application has been filed for impleading the applicant
Ravi Kumar son of Sawan Kumar, r/o Dhani Bisheshar Nath, Azimgarh
District Ferozepur as party in the present writ petition.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the application is allowed as applicant is
necessary party. Applicant Ravi Kumar son of Sawan Kumar, r/o Dhani

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Bisheshar Nath, Azimgarh District Ferozepur is impleaded as respondent No.16 in the present writ petition and the amended memo parties attached with the application is taken on record.

CM-966-CWP-2022 in CWP-5096-2020

Present application has been filed for impleading the applicants as party respondents No. 34 to 39 in the present writ petition.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed as applicants are necessary parties. Applicants are impleaded as respondents No. 34 to 39 in the present writ petition and the amended memo parties attached with the application is taken on record.

CM-4191-CWP-2020 in CWP-5096-2020

Present application has been filed for impleading the applicants as party respondents No. 3 to 15 in the present writ petition.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed as applicants are necessary parties. Applicants are impleaded as respondents No. 3 to 15 in the present writ petition and the amended memo parties attached with the application is taken on record.

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1. By this common order, 9 writ petitions, the details of which have been given in the heading, are being disposed of as all these petitions involve the same question of law arising out of similar facts.

In the present bunch of petitions, the challenge is to the action of the respondent-Department by which, the total number of posts



advertised vide Advertisement dated 31.12.2016 (Annexure P-1) are being filled on the basis of joint merit list of male and female candidates on the ground that the same is contrary to the Rules governing the service i.e. The Punjab State Education Class III (School Cadre) Service Rules 1978 (hereinafter referred as '1978 Rules') as amended from time to time, as interpreted by the judgment of the Division Bench of this Court in ***CWP No.12275 of 2000 titled as Neelam Rani vs. State of Punjab and others, decided on 08.01.2010.*** It has been pressed that 50% of the advertised posts are to be filled from the joint merit list of male as well as female candidates and the remaining 50% from the female candidates only whereas, the respondent-State has prepared a common merit list of male and female candidates to fill up the total number of posts advertised vide Advertisement dated 31.12.2016 (Annexure P-1).

For the sake of convenience, the facts leading to the filing of the present petition are being taken from ***CWP No.12953 of 2020 titled as Nidhi Sharma vs. State of Punjab and others*** which are stated as under:

The respondent-State of Punjab issued an advertisement, copy of which has been appended as Annexure P-1 on 31.12.2016 advertising 873 vacancies of the D.P.E. (Master). The distribution of the posts in various categories was also mentioned in the advertisement itself. The educational qualification required for the post was also mentioned in the advertisement itself and the method of recruitment to the post in question was also given.

As per the method of recruitment, the candidates were required to appear in an aptitude test of 150 marks and thereafter in a written test in

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concerned subject of 150 marks and the candidates who secured at least 50% marks in each of the test, were to be considered as eligible and further 5% relaxation in the passing marks was given to candidates belonging to the various reserved categories and the merit list was to be prepared after counting the marks obtained by the candidates in both the abovementioned tests as well as by considering the educational/professional qualification required to be eligible against the posts for which appointment is sought which was also mentioned in the advertisement.

As per the general conditions of the advertisement, it was mentioned that a combined merit list will be prepared of the candidates from which, appointment will be made to the advertised posts.

The petitioners competed for the posts in question and were declared successful in the aforementioned tests conducted in pursuance to the advertisement. Thereafter, a merit list was prepared by the respondents keeping in view the provisions of the advertisement, which was a common merit list with the posts not being bifurcated between male and female candidates.

On the basis of joint merit list of all the candidates, the respondents started selecting the candidates against 873 posts of DPE.

Through the present bunch of petitions, challenge is laid to the said action of the respondents with the grievance that out of 873 posts of DPE, which were to be filled, the same are required to be filled as per 1978 Rules, as amended from time to time and in accordance with the interpretation given to the said 1978 Rules by this Court in ***Neelam Rani's case (supra)***, as per which, it is contended that 873 posts are to be



bifurcated equally between male and female candidates and against 50% of the posts which are to be filled by male candidates from the common merit list of male and female candidates should operate and female candidates be also considered whereas, with regard to the remaining 50% of posts, the same are to be filled from female candidates only and only the female candidates from the joint merit list are to be treated eligible for the same and no male candidates can be considered eligible for the said 50% of posts. It is the contention of the petitioners that the respondents are violating the 1978 Rules governing the service and are also violating the judgment of the Division Bench of this Court in *Neelam Rani's case (supra)*.

While issuing notice of motion, the Coordinate Bench of this Court, stayed the filling of the posts beyond 50% from the common merit list, which interim order continues even as of today.

Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that 1978 Rules were amended in the year 1995 and keeping in view the amendment in the year 1995, there are no separate posts of male and female candidates keeping in view the amendment to Appendix A of 1978 Rules hence, once there are no separate posts reserved for male and female candidates in the cadre of Master/Mistress, the appointment to the advertised post of DPE are to be made only on the basis of joint merit list, which term also exists in the advertisement itself.

Learned counsel for the respondents submits that once there is no quota provided for male and female candidates in 1978 Rules and after the amendment of 1978 Rules, as amended in the year 1995 even the



Appendix A, which initially provided separate posts for male and female has been amended to mean that there is a joint cadre of all the posts, the claim of the petitioner that 50% posts are to be filled from male candidates and 50% from female candidates, is contrary to the 1978 Rules governing the service.

With regard to the judgment of the Division Bench of this Court in *Neelam Rani's case (supra)*, the contention of the respondent-State is that though, the said judgment has been upheld upto the Hon'ble Supreme Court of India but the said judgment was given on the basis of un-amended 1978 Rules wherein, in Appendix A separate number of posts were reserved for male candidates as well as for female candidates, which Appendix A of 1978 Rules has already been amended in the year 1995, hence after the amendment in Appendix A of 1978 Rules, the judgment in *Neelam Rani's case (supra)*, cannot be made applicable so as to demand 50% reservation in favour of female candidates, especially when no separate posts exist for appointment of female candidates.

Learned counsel for the respondent-State further submits that though, the direction was given by the Coordinate Bench of this Court while issuing notice of motion that 225 posts of the general category be kept vacant but by the time the said order was passed, approximately 758 posts of the total advertised post of 873 had already been filled up, however, after the passing of the order granting interim relief no further post has been filled up so as to await the decision in the present bunch of petitions.

Learned senior counsel for the private respondents submits that the claim of the petitioner as raised in the present writ petitions is contrary



to the 1978 Rules as amended in the year 1995 which govern the service as well as to stipulations mentioned in the advertisement and in the absence of any challenge to the rules governing the service especially amended Appendix A or to the terms and conditions of the advertisement, raising a claim that 50% posts are to be filled exclusively from the female candidates, is contrary to the 1978 Rules governing the service as those existed on the date of appointment and the writ petitions are therefore, liable to be dismissed.

Learned senior counsel for the private respondents further submits that the implementation of the judgment of the Division Bench of this Court in ***Neelam Rani's case (supra)***, has to be made keeping in view the rules governing the service especially when the judgment in ***Neelam Rani's case (supra)*** has been given on the basis of unamended Appendix A of 1978 Rules which already stands amended in the year 1995 and the advertisement issued by the Department is to be given effect on the basis of 1978 Rules as well as Appendix A which existed on the day when the advertisement was issued i.e. 31.12.2016, hence it is contended that the argument of the learned counsel for the petitioners that without even appreciating the 1978 Rules governing the service as well as the amended Appendix A as it existed on the date of advertisement, the judgment in ***Neelam Rani's case (supra)*** should be made applicable qua the present advertisement, is liable to be rejected.

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

The question which has been posed before this Court in the



present bunch of petitions is as to whether the judgment in *Neelam Rani's case (supra)* which interpreted 1978 Rules is to be made applicable qua the Advertisement Annexure P-1 so as to fill 50% of the posts from the joint merit list and the remaining 50% from the exclusively female candidates from the said joint merit list.

In order to appreciate the said issue, a perusal of the statutory rules governing the advertised posts of DPE (Master/Mistress) cadre is necessary. It is a conceded position between the parties that the 1978 Rules govern the service for filling up the post of DPE which is part of Cadre of Master/Mistress. The 1978 Rules have been placed on record as Annexure P-4. As per Rule 3 of the 1978 Rules, the service is to be of two branches namely men branch and women branch and is to comprised of the post shown in Appendix A to these Rules. The original Appendix A which was attached to the 1978 Rules is at page 73 of the paper book. It is a conceded position between the parties that the description of the post in the said Appendix A of 1978 Rules was bifurcated between men and women and there were a particular number of posts which were available to be filled from men and particular number of posts which were available to be filled from women.

Keeping in view the said Appendix A, there was no ambiguity to operate Rule 3 of 1978 Rules and the respondent-State in past continued to separately fill the posts prescribed for men and women as per the said Appendix A to 1978 Rules.

The said practice of filling the posts prescribed for men in Appendix A to 1978 Rules from only male candidates came under challenge



in ***Neelam Rani's case (supra)*** before the Division Bench of this Hon'ble Court. The argument raised in the said case was that even women should also be considered for appointment qua the posts which were earmarked for only male candidates in the original Appendix A to 1978 Rules.

Upon consideration after interpreting the said 1978 Rules and its Appendix A, the Division Bench of this Hon'ble Court came to the conclusion that women candidates are also to be considered as eligible to compete for the posts which have been reserved for men in Appendix A to 1978 Rules however, with regard to the posts which were reserved for only women candidates in the same Appendix A only women candidates had to be exclusively considered. Direction was given that for filling up the posts which have been reserved for men in Appendix A of 1978 Rules, the joint merit list of men/women is to be made operational and after filling the posts reserved for men, remaining posts will be filled exclusively from the women candidates from the same merit list to the exclusion of the men.

After the said judgment, the respondents started implementing the judgment in ***Neelam Rani's case (supra)*** for various categories of the posts which were advertised to be filled up in the cadre of Master/Mistress.

The reliance in the present petitions is also on the same judgment to contend that the posts which have been advertised vide Annexure P-1 are to be filled up according to 1978 Rules keeping in view the interpretation given by the Division Bench in ***Neelam Rani's case (supra)***.

Learned counsel appearing on behalf of the petitioner argues that once the judgment in ***Neelam Rani's case (supra)***, has already been



upheld upto the Hon'ble Supreme Court of India, the same is to be given effect to while making the selection to the post of DPE which is part of Master/Mistress, which is governed by the 1978 Rules and therefore, the number of posts of DPE which have been advertised by the respondents by the advertisement in question, has to be bifurcated between men and women and the selection to the posts should be made as per the direction given in ***Neelam Rani's case (supra)*** so as to exclude the men from the posts which should have been reserved only for women candidates.

The said argument is to be tested as per the fact and rules governing the service which existed on the date when the advertisement was issued.

Before juxtaposing arguments raised on behalf of both the parties, it needs to be noticed here that the 1978 Rules were amended by the Government vide amendment dated 08.07.1995. The Appendix A to the 1978 Rules was amended to the effect that the bifurcation which existed between posts for men and women candidates was eliminated and after the amendment, Appendix A only mentioned the number of posts available in the cadre without any distinction being made for men and women. The said amendment though was done on 08.07.1995 but was never brought to the notice of the Division Bench either by the State or by the petitioners though, the judgment in ***Neelam Rani's case (supra)*** was delivered on 08.01.2010.

Further, it may be noticed that even in ***Neelam Rani's case (supra)***, the advertisement in question was issued on 18.10.1996 but it is very unfortunate to note that neither the petitioners nor the respondent-State brought to the notice of the Division Bench the factum of the amendment of



1978 Rules and the amended Appendix A attached thereto in the year 1995. It may be noticed that while delivering the judgment in ***Neelam Rani's case (supra)***, the un-amended Appendix A of 1978 Rules has been noticed wherein, the posts have been created separately for men and separately for women. The State failed to perform the duties to bring to the notice of the Court the actual facts so that the controversy could have been determined keeping in view the 1978 Rules which were in operation at the time when the advertisement was issued in October, 1996. The amendment dated 08.07.1995 has never been brought to the notice of any of the Court even subsequently.

It may also be noticed that the judgment in ***Neelam Rani's case (supra)***, has been upheld by the Hon'ble Supreme Court of India while deciding ***SLP (C) No.10521-10522 of 2012 titled as Ashu Chopra and others vs. State of Punjab and others, decided on 15.03.2023***. Again, the State did not inform the Hon'ble Supreme Court of India about the amended 1978 Rules as amended on 08.07.1995 qua amendment to Appendix A, which fact is clear that even in the orders of the Hon'ble Supreme Court of India, the Appendix A of 1978 Rules as it existed prior to the amendment on 08.07.1995 has been noticed to uphold the judgment in ***Neelam Rani's case (supra)***. The State was very much present before this Court as well as before the Hon'ble Supreme Court of India and rather than bringing the true and correct facts before the Court, for reasons best known to the State, the actual amendment which had already taken in place and had been notified on 08.07.1995 was withheld. The judgment in ***Neelam Rani's case (supra)*** is given inference to the un-amended Appendix A of 1978 Rules which



existed prior to 08.07.1995 though, the advertisement, which was in question, related to a period which was subsequent to 08.07.1995 i.e. amendment to 1978 Rules.

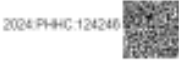
This Court, has to keep in mind the said relevant fact, which fact stands conceded between the parties to the present case. Hence this Court is now required to answer the issue raised in the present bunch of petitions by keeping the said fact in center while appreciating the applicability of the judgment in ***Neelam Rani's case (supra)*** so as to decide whether the same can be made applicable in the facts and circumstances of the present case even after the amendment dated 08.07.1995 was made to 1978 Rules.

It is a settled principle of law that the selection is to be made on the basis of rules governing the service. Even if, an advertisement specifies any terms and conditions, which is contrary to the Rules, the said condition is liable to be ignored for the reason that it is obligatory upon the State to make selection in accordance with the rules governing the service. On the date when the present advertisement was issued, the 1978 Rules governing the service and Appendix A attached to the said Rules is as under:-

“3. The service shall have two branches namely, Men Branch and women branch and shall comprise the posts shown in Appendix A to these rules:

Provided that nothing in these rules shall affect the inherent right of Government to add to produce the number of such posts or to create new posts with different designation and scales of pay whether permanently or temporarily.

4. (1) No person shall be appointed to the Service, unless he-
(a) a citizen of India: or



- (b) a citizen of Nepal or
- (c) a subject of Bhutan or
- (d) a Tibetan refugee who came over to India before the 1st January 1962, with the intention of permanently setting in India or
- (e) a person of Indian origin who has migrated from Pakistan, Burma, Shri Lanka, East African Countries of Kenya, Uganda, the United Republic of Tanzania (formerly Tanganyika and Zanzibar) Zambia Malawi, Zaire, and

Ethopia, with the intention of permanently setting in India:

Provided that a candidate belonging to categories (b), (c), (d) and (e) shall be a person in whose favor a certificate of eligibility has been issued by the Government of India.

(2) A candidate is whose case a certificate of eligibility is necessary may admitted to an examination or interview conducted by the commission or Board or other recruiting authority and he may also provisionally be appointed subject to the necessary certificate being given to him by the Government of India.

(3) No person shall be recruited to the Service by direct appointment unless he produces a certificate of character from the Principal academic officer of the University college, school or institution last attended, if any and similar certificates of character from two responsible persons not being his relatives, who are well acquainted with him in hisprivate life and are unconnected with his university, college, school or institution.”

Appendix A

Appendix-A (See Rule 3)					
Sr. No.	Designation	ofGrade	No. of Posts		
	post				
1	2	3	4	5	6

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1.	Headmaster	Rs.(i)	2000-50-2400-60-2700-75-3000-100-3500 2100-50-2400-60-2700-75-3000-100-3700 2200-50-2400-60-2700-75-100-4000	Senior Scale after eight years service as Headmaster Selection scale after eighteen years service as Headmaster	1742	1742
2.	Lecturer	(ii) Special pay of Rs .100/- P.M. Prospectively	1800-40-2000-50-2400-60-2700-75-3000-100-3200 2000-50-2400-60-2700-75-3000-100-3500 2100-50-2400-60-2700-75-3000-100-3700	Senior Scale after eight years service as Lecturer Selection scale after eighteen years service as Lecturer	5943	5943
3.	Master/Mistress		1640-40-2000-50-2400-60-2700-75-2925 1800-40-2000-50-2400-60-2700-75-3000-100-3200 2000-50-2400-60-2700-75-3000-100-3500	Senior Scale after eight years service Selection scale after eighteen years service	27213	27213
4.	Block Primary Education Officer		1640-40-2000-50-2400-60-2700-75-2925		228	228
5.	Classical and vernacular Teacher		1500-30-1560-40-2000-50-2400-60-2640 1660-40-2000-50-2400-60-2700-75-2925 1800-40-2000-50-2400-60-2700-75-3000-100-3200	Senior Scale after eight years service Selection scale after eighteen years service	14975	14975
6.	Junior Teacher (School side)	Scale (School side)	1200-30-1560-40-2000-50-2100		164	164
						89.00%

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		1410-30-1560-40-2000-50-2400-60-2460	Senior Scale after eight years service		
		1640-40-2000-50-2400-60-2700-75-2925	Selection scale after eighteen years service		
7.	Vocational Lecturer	1800-40-2000-50-2400-60-2700-75-3000-100-3200		1225	1225
	Vocational Master	2000-50-2400-60-2700-75-3000-100-3700	Senior Scale after eight years service		
		2100-50-2400-60-2700-75-3000-100-3500	Selection scale after eighteen years service		
8.	District Co-ordinator (Vocational Education)	1640-40-2000-50-2400-60-2700-75-2925		6	6
9.	Senior Inspector	1800-40-2000-50-2400-60-2700-75-3000-100-3200		1	1
10.	Master Craftsman Garde-I	1800-40-2000-50-2400-60-2700-75-3000-100-3200		2	2
11.	Master Technician Grade-I	1800-40-2000-50-2400-60-2700-75-3000-100-3200		2	2
12.	Technical Instructor	1500-30-1560-40-2000-50-2400-60-2640		8	8
13.	Master Craftsman Grade-II	1500-30-1560-40-2000-50-2400-60-2640		5	5
14.	Master Technician Grade-II	1500-30-1560-40-2000-50-2400-60-2640		2	2
15.	Draftsman (Mechanical)	1500-30-1560-40-2000-50-2400-60-2640		1	1
16.	Junior Inspector	1500-30-1560-40-2000-50-2400-60-2640		1	1
17.	Tailoring Teacher	1200-30-1560-40-2000-50-2100		76	76
		1410-30-1560-40-2000-50-2400-60-2500	Senior Scale after eight years service		
		1640-40-2000-50-2400-60-2700-75-2925	Selection Scale after eighteen years service		
18.	Work Experience Teacher	1200-30-1560-40-2000-50-2100		48	12
					60

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		1410-30-1560-40-2000-50-2400-60-2460	Senior Scale after eight years service	
		1640-40-2000-50-2400-60-2700-75-2925	Selection Scale after eighteen years service	
19.	Vocational Teacher	1200-30-1560-40-2000-50-2100		600 600
		1410-30-1560-40-2000-50-2400-60-2460	Senior Scale after eight years service	
		1640-40-2000-50-2400-60-2700-75-2925	Selection Scale after eighteen years service	
20.	Crafts Instructor	1200-30-1560-40-2000-50-2100		1 1
21.	Workshop Superintendent	1200-30-1560-40-2000-50-2100		1 1
22.	Multi Instructor	950-25-1200-30-1500-40-1800		4 4

Appendix A as it existed on the date of advertisement show only permanent and temporary posts in the cadre of Master/Mistress. There is no separate post created for men/women.

But prior to the amendment dated 08.07.1995, the Appendix A which existed under the 1978 Rules is as under:-

Serial No.	Designation of Post	Grade Rs.	No. of posts					
			Men			Women		
			Total	Permanent	Temporary	Total	Permanent	Temporary
			(i)	(ii)	(iii)	(iv)	(v)	(vi)
1.	Headmaster (15%)	400-30-640/40-800	73	73	-	-	-	-
2.	Headmistress (15%)	400-30-640/40-800	-	-	-	18	-	15
3.	Headmaster	300-25-450/25-600	605	100	505	-	-	-
4.	Headmistress	300-25-450/25-600	-	-	-	328	56	272
5.	Lecturers (Men)	250-25-450-25-600	917	-	917	-	-	-
6.	Lecturer (Women)	250-25-450-25-600	-	-	-	577	-	577
7.	Master Block Education Officer	or220-12-340/15-400/20-500	10,542	5,592	4,950	-	-	-

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8.	Mistress of Block Education Officer	220-12-340/15-400/20-500	-	-	-	5425	2120	3305
9.	J.S.T Mistress	220-12-340/15-400	-	-	-	139	139	-

A bare perusal of the abovestated facts would show that prior to the year 1995, in the Appendix A of 1978 Rules, there was a complete bifurcation of the post between men and women in the cadre of Master/Mistress. After the amendment on 08.07.1995, Appendix A was amended and the separate bifurcation given to the posts qua men and women stood amended and there was only one cadre of 27213 posts of Master/Mistress to be filled up as per Rule 3 of 1978 Rules.

The judgment in *Neelam Rani’s case (supra)* has been given on the basis of unamended Appendix A of 1978 Rules wherein, it has been said that when the posts have been created separately for men and women, in respect of the posts created for men, women will be eligible and the posts created for women, will be filled exclusively from women. The said judgment cannot be brought into operation once, the separation of posts in favour of men and women was taken out vide amendment dated 08.07.1995 to the said Rules. Once, no separate post for men and women exist under 1978 Rules of the amendment dated 08.07.1995, the contention that there still will be 50% ratio for filling up the total number of posts advertised between men and women, stands contrary to the 1978 Rules as it existed on the date when the advertisement was issued, in pursuance to which the appointment is being claimed by the petitioners.

Learned counsel for the petitioners submits that even if, Appendix A has been amended and the posts have been amalgamated vide amendment dated 08.07.1995, still Rule 3 of 1978 Rules provides for



separate branches of cadre for men and women and therefore, the posts have to be reserved in favour of women candidates.

After giving due consideration to the said argument, it is the understanding of this Court that the said Rule has to be given a harmonious interpretation for its operation within the scheme of entirety of 1978 Rules even after the amalgamation of the posts effected vide amendment dated 08.07.1995.

A bare perusal of Rule 3 of the 1978 Rules would show that it only prescribes two branches namely men branch and women branch. There is no percentage or quota fixed qua the men branch and women branch. In the absence of any such stipulation, bifurcating the posts between men branch and women branch by specific boundaries of 50% each in order to reserve specific number of posts will be outside the scope of the amended 1978 Rules and therefore, the contention to reserve 50% of the posts especially for women on the strength of Rule 3 of 1978 Rules cannot be accepted. The argument of the petitioners that 50% of the posts be reserved for women will amount to implicitly reading 50% in Rule 3 of the said service Rules which is beyond the scope of interpretation of the said Rules.

Further, even after the creation of the joint cadre by amendment dated 08.07.1995 to the 1978 Service Rules, there can be men branch and women branch. The State can place the selected candidates separately in two branches i.e. of men and women. Any women selected against the posts advertised can be treated as part of the women branch and any men selected, can be treated as part of the men branch. Therefore, the Rule 3 has to be



interpreted in such a manner so that without reading into the same something which is not borne out of its plain reading, it can be interpreted harmoniously with the description of posts as mentioned in Appendix A of 1978 Rules as amended by the amendment dated 08.07.1995.

The judgment being relied upon by the learned counsel for the petitioners in *Jagdish Prasad vs. State of Rajasthan (SC) 2011 (7) SCC 789*, *Aphall Pharmaceuticals Ltd. M/s vs. State of Maharashtra (SC) 1989 (4) SCC 378*, *M/s Hospira Health Care India Pvt. Ltd vs. Development Commissioner, (Madras) 2016 (4) MLJ 179* as well as *M/s Siddharth Enterprises Through Partner Mahesh Liladhar Tibdewal vs. Nodal Officer, Gujarat 2019 (103) UPTC 1045* cannot be made effective in the facts and circumstances of the present case.

In the present case, even after amendment of Appendix A of 1978 Rules, the Rule 3 of 1978 Rules has not become redundant. Once the Rule 3 of 1978 Rules can still be made operational within the scheme of 1978 Rules, the said judgments cannot be made applicable.

Once, there is no provision of 50% bifurcation of posts between men and women in the Appendix A of 1978 Rules after amendment dated 08.07.1995 and the bifurcation was being done earlier on keeping in view separate allocation of the posts in favour of men and women in the unamended Appendix A of 1978 Rules and grievance being raised to the present bunch of petitions does not pertain to appointments done prior to the amendment dated 08.07.1995, it cannot be said that appointments are being made by the respondent-State in contravention of 1978 Rules. Hence, the judgment of the Division Bench in *Neelam Rani's case (supra)*, which



relied upon the unamended Appendix A of 1978 Rules is perfectly valid and legal qua the unamended Appendix A but the same cannot be made applicable upon the amended Appendix A which existed on the date of advertisement in question.

Learned counsel appearing on behalf of the petitioners submits that even after the judgment in *Neelam Rani's case (supra)* despite the fact that there was an amendment on 08.07.1995, whenever there was an advertisement, the respondent-State has been reserving 50% of the posts for men and women separately. Although, the said argument has been objected to by the respondent-State to be incorrect however, even if it is assumed for the sake of arguments that the State has been doing the same, still no relief can be given to the petitioners for the reason that any action of the State contrary to the 1978 Rules, will not give a right to the petitioners to claim that violation of the 1978 Rules should continue to operate under the pretext of "practice". The State is under obligation to comply with the Rules rather than "practice" which is contrary to the 1978 Rules. Further, Court cannot validate any illegality or any practice being undertaken by the State, which is not supported by the Rules governing the posts in question hence, even if at any given point of time, the State has issued an advertisement, which is contrary to the 1978 Rules, the 1978 Rules will prevail. In order to support the said findings, reliance can be placed upon the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.152 of 2022 titled as The Employees' State Insurance Corporation vs. Union of India and others, decided on 20.01.2022* wherein, the advertisement was challenged subsequently on the ground that the same is not conformity with the Rules



and the Hon'ble Supreme Court of India held that an error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules.

It may be noticed here that the Hon'ble Supreme Court of India in *Civil Appeal Nos.4578 to 4580 of 2022 titled as Krishna Rai (dead) through LR's and others vs. Banaras Hindu University through Registrar and others, decided on 16.06.2022*, again held that the selection process in case held in violation of service rules will be a nullity.

Therefore, the argument that as the State even after *Neelam Rani's case (supra)* despite amendment dated 08.07.1995 to 1978 Rules was following the practice of bifurcating the posts between men and women for the purpose of appointment and because of the said practice, shall be made bound to continue doing the same qua appointments in pursuance to the present advertisement also, cannot be accepted.

Further, it is a settled principle of law that the advertisement is sacrosanct in case the same is in accordance with the rules governing the service and the selection is to be made on the basis of the advertisement/ Rules governing the service.

Learned counsel for the petitioners has not been able to rebut the fact that in the advertisement issued relating to the selected/appointment to 873 posts of DPE, it has been stated that the selection will be made on the basis of the common merit list prepared of the candidates. The relevant clause VIII/IX of the Advertisement of the General conditions finds mentioned at page 23 of the paper book, which is as under:-

“Combined merit list of male and female candidates will be prepared”



Once the same is clearly stated in the advertisement, which is in consonance with 1978 Rules as amended on 08.07.1995, the prayer of the petitioners that the judgment in *Neelam Rani's case (supra)* should be made applicable irrespective of the amendment done to Appendix A of 1978 Rules cannot be accepted.

Learned counsel for the petitioners lastly submitted that the petitioners have become over aged as on date and therefore, in the event the present petitions do not find favour with this Hon'ble Court, the petitioners be granted age relaxation in order to appear in future opportunities for appointment.

This Court does not have any power to grant age relaxation in the facts and circumstances of the present case and the same is within the domain of the executive. Though nothing shall prevent the petitioners who have become ineligible to apply for future appointment opportunities due to age from availing appropriate remedy of approaching the Government for the grant of age relaxation which plea if raised shall be decided by the State in accordance with law by passing an appropriate speaking order.

At this stage, learned senior counsel for the private respondents submits that though the select list was already out, however, due to an interim order passed by this Court, certain advertised posts advertised qua which, the private respondents have valid claim to be appointed, could not be filled up. It is further submitted that the said interim order has continued for the last four years. It is prayed that as the present writ petitions are being decided, direction be given to the respondents to consider filling up the remaining advertised posts from the select list already issued and by



giving the candidates deemed date of appointment i.e. from the date when the other candidates of the same selection were appointed.

Learned senior counsel for the private respondents submits that the private respondents undertake not to claim the salary for the retrospective appointment but all the other benefits of retrospective appointment be extended to them and their pay should be fixed by giving deemed date of appointment with actual fixation of salary from the date other candidates of the same selection were granted appointment along with seniority on the basis of the merit which they have obtained in their selection process.

The said argument needs to be accepted as, the delay in appointment of the candidates is due to an interim order passed by this Court. The delay is not on account of any act done on the part of the private respondents hence, the remaining posts out of the advertised be filled up on the basis of combined merit list and the candidates who are now being appointed, be given deemed date of appointment from the date when, the other candidates of the same selection were appointed.

It may be noticed that in case any of the candidate who stands to get appointed to the remaining advertised posts, which remained un-filled until now, stands higher in merit in comparison to any other candidate who has already been granted appointment in pursuance to the posts advertised vide Advertisement dated 31.12.2016 (Annexure P-1), the deemed date of appointment of such candidates who is now to be given appointment to the un-filled advertised posts shall not be beyond the date such already appointed candidate who stood lower in merit than him/her was given



appointment with the only condition that all the benefits of deemed date of appointment will be extended to the newly appointed candidate except arrears of salary.

At the cost of repetition, it may be noticed that in case any candidate who is lower in merit, has already been appointed, then such candidate who will be given appointment after the present order, will be given deemed date of appointment from the date when a candidate lower in merit was granted. Qua the other candidates who will be given appointment under this order, they will be appointed from the date last candidate appointed prior to the passing of the interim order due to which selected candidate could be appointed.

Let the posts in accordance with law/directions as detailed in this judgment be filled up within a period of eight weeks of the receipt of certified copy of this order.

The present writ petitions are dismissed in above terms.

Civil miscellaneous application pending if any, also stands disposed of.

A photocopy of this order be placed on the file of other connected case.

September 19, 2024

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No