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

(251)

**CWP-22373-2021 (O&M)
Date of Decision : October 14, 2024**

Sharanjit Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Alka Chatrath, Advocate and
Mr. Nikhil Singh, Advocate, for the petitioners.

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

Mr. K.L. Arora, Advocate, for respondents No. 4 to 10.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-7309-CWP-2023

Present application has been filed for impleading the applicants as respondents No. 4 to 10 in the present writ petition.

Notice of the application to the counsel opposite.

Ms. Alka Chatrath, Advocate, accepts notice on behalf of non-applicant/petitioners. She raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. The applicants, details of whom are given in para 2 of the application, are allowed to be impleaded in the present writ petition as respondents No. 4 to 10 and the amended memo of parties attached with the present application is taken on record.



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As prayed for, the application is allowed.

Annexure P-19 is taken on record.

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1. In the present writ petition, the grievance being raised by the petitioners is that their claim to grant them age relaxation so as to allow the petitioners to compete for the post of Multipurpose Health Worker (Male), advertised by the respondents vide Advertisement dated 24.11.2016 (Annexure P-3), has been rejected by the respondents vide order dated 28.02.2020 (Annexure P-9).

2. The grievance being raised by the petitioners is that the posts of Multipurpose Health Worker (Male), which were advertised by the respondents, were advertised by the Department after a period of one decade and when those posts were advertised on 24.11.2016, the maximum age required to compete for the said post as on 01.01.2016 was 37 years for a General category candidate with five years relaxation for the reserved category candidate, the petitioners have become ineligible as they had crossed the said age hence, the respondents were under an obligation to grant the petitioners the benefit of age relaxation.

3. Learned counsel for the petitioners submits that initially, by an interim order, on provisional basis, the petitioners were allowed to compete for the post in question and thereafter, the said writ petition was disposed of by the Coordinate Bench of this Court directing the respondents to take appropriate decision with regard to the petitioners, who were claiming eligibility by the grant of age relaxation and by passing an impugned order

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dated 28.02.2020 (Annexure P-9), the benefit of age relaxation has been declined by the respondents so as to treat the petitioners ineligible for the post in question despite the fact that they were higher in merit as compared to large number of candidates who have been already been appointed on the said post.

4. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that the post is being filled up as per the Rules governing the service and keeping in view the Rules governing the service, a candidate, who is more than 37 years of age as on 01.01.2016, competing in the General category, has been declared ineligible for the post in question.

5. Learned counsel for the respondents submits that the grant of benefit of age relaxation is within the domain of the State especially when, the other candidates who were otherwise eligible, were not considered, the grant of age relaxation in favour of the petitioners will amount to back door entry and they cannot be treated eligible merely on the ground that they were allowed to participate in the selection process provisionally by the Court.

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

7. The only question which arises for determination is whether, a candidate who is ineligible as per the terms and conditions of the advertisement, can claim benefit of age relaxation so as to be treated eligible to participate in the selection process for the post.

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8. It may be noticed that the maximum age to compete for a Government post has been provided under the statutory rules i.e. 37 years. Learned counsel for the petitioners has not been able to dispute the fact that as the maximum age prescribed to compete for the post is 37 years and as on 01.01.2016, all the petitioners had already crossed the said age hence, they were ineligible for the post in question keeping in view the statutory rules governing the service on the said aspect.

9. Further, the question of law as to whether, the age relaxation can be claimed as a matter of right, has already been settled by the Hon'ble Supreme Court of India while passing order in **Civil Appeal Nos. 2250-2252 of 2020 titled as "Dr. Thingunjan Achouba Singh and others vs. Dr. H. Nabachandra Singh and others"**, decided on 17.04.2020 wherein, the Hon'ble Supreme Court of India has held that the candidates cannot seek as a matter of right to provide them the age relaxation as the same is within the domain of the employer and the eligibility criteria fixed by the employer has to be adhered to and the Courts have no power to interfere with the same. The relevant paragraph 14 of the said judgment is as under:-

"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 and Executive Council of the Society to consider for providing such relaxation Clause. We fail to under as to how such direction can be 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

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of right, to provide relaxation clause.”

10. In the present case, as per the criteria fixed by the employer, which was also the part of the advertisement, the petitioners were over age. Not only this, even under the statutory rules governing the aspect of age, the petitioners were over age.

11. The only issue which arise in this petition is whether the Court can give directions to the employer to grant the petitioners the benefit of age relaxation merely on the ground that the posts of Multipurpose Health Worker (Male) were not advertised by the respondent-State for a considerable time period.

12. Keeping in view the judgment of the Hon’ble Supreme Court of India in ***Dr. Thingunjan Achouba Singh’ case (supra)***, no such direction can be given. In the said case, such directions given by the High Court, has been set aside by the Hon’ble Supreme Court of India.

13. Learned counsel for the petitioners has not been able to rebut the said proposition of law laid down by the Hon’ble Supreme Court of India.

14. Further, in case the petitioners are allowed to be considered for the post in question, then, it would be a proposition where, large number of candidates who had already crossed the age of 37 years as on 01.01.2016, could not have applied. The petitioners, being ineligible, were only allowed to compete provisionally by an interim order of this Court, which cannot be treated as a precedent hence, the grant of benefit of age relaxation to the petitioners will amount to denying a benefit of consideration to the similarly situated employees, who considering themselves to be ineligible, did not

apply for the post.

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15. At this stage, learned counsel for the petitioners submits that in some of the cases, State has granted the benefit of age relaxation, which benefit has not been granted to the petitioners.

16. It may be noticed that the grant of benefit of age relaxation is prerogative of the Government and the said decision is to be taken at the time when the posts are to be advertised and not thereafter. In case, the State Government chooses to relax the age criteria that is within their jurisdiction and the Court cannot direct the State that in case, the age relaxation clause has been made operational qua one advertisement, they are bound to operate the said clause for all the other advertisements which advertisements are either in operation or are yet to be issued.

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

18. Dismissed.

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

October 14, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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