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

% Judgment delivered on: 11.03.2024

+ **W.P.(C) 3515/2024 & CM APPL. 14318-319/2024****JASVINDER KAUR & ANR**

..... Petitioner

versus

UNOIN OF INDIA & ORS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vijay Kumar Meena, Advocate

For the Respondent : Ms. Arunima Dwivedi, CGSC with Ms. Priya Mishra (GP), Ms. Pinky Pawar and Mr. Aakash Pathak, Advocates for UOI.
Ms. Avnish Ahlawat, Standing Counsel for GNCTD with Mr. N.K. Singh, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

CORAM:**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[The proceeding has been conducted through Hybrid mode]**

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

“A. Issue a writ of Mandamus or any other appropriate writ/order/directions to respondent No. 2 to 5, consider the petitioners maximum age 32 years as one time age

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relaxation and allow the petitioners to apply against the Advertisement Notification (No. F.1(249)P&P-1/DSSSB/2024/Adv./4388) dated 12/01/2024, against the vacancy for the post of nursing officer,

B. Direct respondent no. 2 to 5, extend the last date to fill out the online form for 7 days.

C. Pass any other or further orders/directions which this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. The petitioner has challenged the recruitment notification No. F.1(249)P&P-1/DSSSB/2024/Adv./4388) issued on 12.01.2024 for the post of Nursing Officer setting the maximum age limit of 30 years.
3. According to the petitioners, after having prepared for this post for over five years, found themselves ineligible as their age exceeded the specified limit and despite the previous recruitment rules allowing the candidates upto 32 years, this particular notification has been issued whereby the maximum age limit for the post of Nursing Officer has been limited to 30 years.
4. The petitioners also submit that on 19.10.2023, the Delhi Government had revised the recruitment rules with maximum age limit of 30 years. The petitioners submit that the Central Government Recruitment Rules for similar positions have retained the age criteria at 35 years and on that basis, the petitioners submit that since the change in the Recruitment Rules, prescribing the age limit of 30 years for the post of Nursing Officer, deprives the petitioners from the right to even consideration for such post, the said notification be quashed as the petitioners be given one time age relaxation to 32 years.



5. Learned counsel appearing for the petitioners submits that the Government can consider relaxing the age limit from 30 years to 32 years and this Court can exercise its jurisdiction under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondent-Government to increase the age limit to 32 years for the post of Nursing Officer.

6. At the outset, it is observed that the Government of NCT of Delhi had by its notification dated 06.07.2023 had revised the Recruitment Rules in respect of the Nursing Officer and the age limit for the direct recruits was sought at not exceeding 30 years. It is observed from the records that the petitioners have not even challenged the said Recruitment Rules which were notified on 06.07.2023.

7. That apart, the petitioners have sought a direction, which according to this Court too cannot be passed, inasmuch as the direction to increase or decrease the age limit as an essential criteria for purposes of recruitment to any civil post in a Government service, is within the policy decision of a particular Government, and not available to this Court to make any such directions.

8. This Court is fortified in its view by the judgment of the Supreme Court in *Rachna and Others vs. Union of India and Another* reported in (2021) 5 SCC 638 apart from the judgment of this Court in *Bipin Nagar and Others vs. Office of the Principal District and Sessions Judge Headquarter Delhi and Others* bearing W.P.(C) 1731/2024 rendered on 06.02.2024 by relying upon the aforesaid judgment of the Supreme Court.

9. The relevant portions of the judgment of *Rachna* (supra) are



extracted hereunder:-

"43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in Union of India v. M. Selvakumar.

The relevant portion is as under: (SCC p. 523, para 47)

"47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High CourtJ. and the Delhi High Court. The horizontal reservation and relaxation for physically handicapped category candidates for Civil Services Examination, is a matter of governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the physically handicapped candidates belonging to the reserved category as well as general category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution. "

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45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is



called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right.

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47. The data furnished to this Court by the Commission clearly indicate that various selections have been held by the Commission for Central Services in the year 2020 during Covid-19 Pandemic and selections must have been held by the State Commissions and other recruiting agencies, if this Court shows indulgence to few who had participated in the Examination 2020, it will set down a precedent and also have cascading effect on examinations in other streams, for which we are dissuaded to exercise plenary powers under Article 142 of the Constitution.

48. We, however, make it clear that this decision would not restrict the 1st respondent or the executive in exercising its discretion in meeting out the nature of difficulties as being projected to this Court, if come across in future in dealing with the situation, if required.”

10. Ms. Kaushik has also handed over the bench, the judgment of the learned Division Bench of this Court in ***Amant Kumar and Others vs. The Commissioner of Police and Others*** bearing W.P.(C)14022/2023 and batch rendered on 07.11.2023 whereby the issue of age relaxation



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was repelled.

11. Learned Division Bench had relied upon the judgments of *High Court of Delhi vs. Devina Sharma* reported in (2002) 4 SCC 643, *Sachin and Others vs. CRPF and Ors* reported in 2023 SCC OnLine Del 1545, *Anurag Sharma and Others vs. Central Reserve Police Force and Another* reported in 2023 SCC OnLine Del 1545, *Nitish Kumar and Ors vs. Union of India and Another* reported in 2023 SCC OnLine Del 1542, *Santram Patel and Others vs. CRPF and Another* reported in 2023 OnLine Del 1991 and *Nagen Bhoi & Ors vs. State of Odisha and Ors* reported in 2023 SCC OnLine Ori 172, to conclude as above.

12. In that view of the matter and in view of the fact that there are a catena of judgments allowing the law contrary to the proposition that the learned counsel for the petitioner is advocating, the present petition is dismissed with no order as to costs.

13. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J.

MARCH 11, 2024

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