



2025:DHC:41-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 76/2025 & CM APPL. 248/2025, CM APPL.249/2025**
SHWETA CHOWDHERYPetitioner
Through: Ms. Bhabna Das and Mr. Arpit
Kumar Mishra, Advs.

versus

HONBLE HIGH COURT OF DELHI THROUGH ITS
REGISTRAR GENERALRespondent
Through: Dr. Amit George, Adv. with
Ms. Rupam Jha, Mr. Adhishwar Suri, Ms.
Ibansara Syiemlieh, Ms. Medhavi Bhatia,
Ms. Suparna Jain, Mr. Dushyant Kaul, Mr.
Arkaneil Bhaumik, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT (ORAL)

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07.01.2025

C. HARI SHANKAR, J.

1. The petitioner aspires to enter the Delhi Higher Judicial Service¹.

2. The petitioner is the holder of a BA (Hons) English degree from the University of Delhi, followed by LLB from the Chaudhary Charan Singh University, Meerut. She, thereafter, enrolled as an advocate with the Bar Council of Uttar Pradesh on 31 December 2015. She cleared the All India Bar Examination on 21 May 2016 and was issued

¹ "DHJS", hereinafter



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a Certificate of Practice. She has, since, been practising before courts at Meerut.

3. During the course of her practice, the petitioner also obtained her LLM degree from the Maharishi University of Information Technology, Lucknow in June 2023. She is presently perusing her Ph.D. in Investment Arbitration from the Guru Gobind Singh Indraprastha University.

4. The petitioner attained the age of 35 on 9 September 2024.

5. On 27 December 2024, a vacancy notice was issued by this Court, inviting online applications from eligible candidates for participating in the Delhi Higher Judicial Service Examination 2024², against the 25% direct recruitment quota. Applications for undertaking the DHJSE 2024 could be submitted from 27 December 2024 till 10 January 2025. The preliminary written examination is to be held on 2 February 2025. The qualifications for direct recruit aspirants to the DHJS were thus set out in the vacancy notice:

“The qualifications for direct recruits shall be as follows:-

- (1) must be a citizen of India.
- (2) must have been continuously practising as an Advocate for not less than seven years as on the last date of receipt of applications, i.e., 10.01.2025.
- (3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the

² “DHJSE 2024”, hereinafter



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year in which the applications for appointment are invited, i.e., on 01.01.2024.”

6. The petitioner is aggrieved by condition (3) in the aforesaid public notice dated 27 December 2024 issued by this Court, *to the extent it stipulates 1 January 2024 as the date by which the candidate aspiring to attempt the DHJSE 2024 had to have attained the age of 35*. By the present writ petition, the petitioner seeks a modification in this criterion, to the extent of fixing 1 January 2025 or, in the alternative, 10 January 2025. instead of 1 January 2024, as the cut-off date by which the candidate had to have attained the age of 35.

7. We have heard Ms. Bhabna Das, learned Counsel for the petitioner and Dr. Amit George, learned Counsel for the respondent, at length.

8. Ms. Das advances, essentially, three contentions.

9. Ms. Das’s first contention is predicated on the impugned stipulation itself. She submits that the stipulation is contradictory in terms. According to Ms. Das, “the 1st day of January of the year in which the applications for appointment are invited” would not be 1 January 2024, but 1 January 2025. Inasmuch as, the applications for the DHJSE 2024 could be submitted till 10 January 2025, she submits that the invitation for applications continued till 10 January 2025.

10. In that view of the matter, Ms. Das’s contention is that 2025 has to be treated as the year in which applications are invited, thereby rendering the 1st day of January of the said year as 1 January 2025,



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and not 1 January 2024.

11. Ms. Das's second contention is that, by fixing 1 January 2024 as the cut-off date for the aspiring candidates to have attained the age of 35, a large number of candidates, including her client, who have attained the age of 35 between 1 January 2024 and 10 January 2025 would become ineligible for consideration. In other words, even though the candidates had attained the age of 35 before 27 December 2024, which was the opening date for submitting applications for appearing in the DHJSE 2024, they were nonetheless, unable to submit their applications merely because of the fixation of the artificial date of 1 January 2024 for reckoning their having attained the age of 35.

12. Ms. Das's third contention is that there is no reasonable justification for fixing 1 January 2024 as the cut-off date by which date the candidate had to have attained the age of 35, especially when the very notification inviting applications for participating in the examination was issued in December 2024. She submits that, even if some degree of latitude is enjoyed by the establishment in fixing the cut-off date, the decision cannot be arbitrary and has to be informed as well as reasonable.

13. As against this, Dr. George, appearing for the High Court, submits that fixation of a cut-off date is essentially an executive exercise, in which the Court must defer to the executive discretion. Besides, he submits that the impugned condition (3) in the public notice dated 27 December 2024, to the extent it dealt with the



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qualifications of candidates who aspire for direct recruits to the DHJSE 2024, was not merely a matter of administrative discretion, but was in accordance with the Delhi Higher Judicial Service Rules, 1970³, of which Dr. George invites our attention to Rule 9, which reads as under:

“9. The qualifications for direct recruits shall be as follows:-

- (1) must be a citizen of India.
- (2) must have been continuously practising as an Advocate for not less than seven years as on the last date of receipt of applications.
- (3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.”

14. Ms. Das’s contention that, as applications could be submitted till 10 January 2025, the year in which applications are invited has to be treated as 2025 and not 2024, he submits, already stands urged and rejected before this Court in *Advocate Rajender Kumar Dudeja v High Court of Delhi*⁴.

Analysis

15. Ms. Das’s submission is that the words “in which the applications for appointment are invited”, as employed in Rule 9(3) of the DHJS Rules, should be accorded a liberal interpretation so as to include as many as candidates possible and, if this were done, applications would continue to be invited so long as the date for filing

³ “DHJS Rules”, hereinafter

⁴ 2014 SCC OnLine Del 463



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applications is still open. As such, she exhorts the Court to adopt a view that applications for appointment to the DHJS are continued to be invited till 10 January 2025 and that, therefore, the 1st of January of the year in which applications are invited should be treated as 1 January 2025.

16. We regret our inability to agree.

17. To our mind, the concept of invitation is a one-time concept. Rule 9(3), quite clearly, envisages only “one year in which the applications are invited”. Invitation is an act of the establishment; application being the response, thereto, by the candidate. The submission of Ms. Das conflates the two concepts. Invitation occurs only when the Notice, *inviting* applicants to apply, is issued, though *submission of applications* in response, may continue over a protracted period.

18. It is therefore clear to us that applications are invited only when a notification or a notice is issued inviting candidates to apply for being considered for the DHJS examination. We are not inclined to adopt an interpretation that, till the last date for submission of application, applications continue to be *invited*, though they could be *submitted* earlier.

19. We find ourselves fortified by the view adopted by a Division Bench of this Court in ***Advocate Rajender Kumar Dudeja***, in which an identical argument, advanced by the appellant in that case, was rejected. Paras 8 to 10 of the decision read thus :



“8. We now come to the interpretation of Rule 9(3) of the said Rules. It is evident on a plain reading of the said Rule that applications could be invited on any date of the year. It could be the first day of the year as well as the last day. In a case where applications are invited on the 31st day of December of a particular year it is obvious that the applications would have to be submitted on a day subsequent thereto. In other words, *the date of submission of applications would be in a year different from the year in which the applications are actually invited. The invitation for applications, in our view, is extended when the notice to this effect is published.* In this case, the notice was published in the national dailies on 28th -29th December, 2013. And, even in respect of the advertisement in Employment News, we are of the view that insofar as the Delhi High Court is concerned it had already sent the same for publication to the Manager, Employment News on 27.12.2013 itself with the specific direction that it be published on 28.12.2013. Just because the Employment News published the advertisement on 4th -10th January, 2014 would not enable us to come to the conclusion that the applications were invited in 2014 and not in 2013.

9. Another way of looking at the case at hand is to simply ask the question – what was the notice for? Simply put, the answer is – for inviting applications. *The next question would be – when was the notice issued? The answer clearly is – in 2013. The fact that applications were to be submitted in Jan-Feb, 2014 would not alter the fact that the invitation for applications was made in December, 2013.* As such, the relevant cut-off date would be 01.01.2013.

10. We may also point out that the advertisement itself specifically stipulated the cut-off date as 01.01.2013 and when a cut-off date is stipulated in the advertisement and which is not in discord with Rule 9(3) as we have interpreted, it is that date and that date alone which will have to be construed as the cut-off date.”

(Emphasis supplied)

20. The remaining submissions of Ms. Das are really merely residuary in nature. The contention that the fixation of 1st January 2024 as the cut-off date by which the aspiring candidate had to have attained the age of 35 would eliminate, from consideration, several



candidates who may have attained the said age after 1st January 2024 but before the applications were to be submitted, merely states a natural consequence whenever *any* cut off date is fixed. It is humanly impossible to fix a cut-off date which would satisfy everybody. This is especially because – at the cost of reiteration – there is no legal principle to the effect that the cut-off date for the purposes of determining whether the candidate has attained the minimum age for eligibility must coincide with the last date for submission of applications.

21. The submission that the cut off date for eligibility must be the last date of submission of applications was categorically rejected by the Supreme Court in *Dr Ami Lal Bhat v State of Rajasthan*⁵, from which the following passages are instructive:

“4. Is such a cut-off date fixed by the Rules applicable to the relevant service, arbitrary? It has been urged before us by the petitioners and/or appellants that the cut-off date of 1st of January following the last date fixed for receipt of applications is arbitrary. The cut-off date should only be fixed with reference to the last date of making the application in question. It is submitted before us that the date of 1st of January has no nexus with the application in question and, therefore, must be struck down.

5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly

⁵ (1997) 6 SCC 614



unreasonable. This view was expressed by this Court in ***Union of India v. Parameswaran Match Works***⁶ and has been reiterated in subsequent cases. In the case of ***A.P. Public Service Commission v. B. Sarat Chandra***⁷ the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

“when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications”.

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of ***Union of India v. Sudhir Kumar Jaiswal***⁸ the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut-off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut-off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut-off date had become arbitrary. Negating this view of the Tribunal and allowing the appeal, this Court cited with approval the decision of this Court in ***Parameswaran Match Works case*** and said that *fixing of the cut-off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the Court would be reluctant to strike down such a cut-off date.*”

⁶ (1975) 1 SCC

⁷ (1990) 2 SCC 669

⁸ (1994) 4 SCC 212



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22. Four propositions emerge from these passages, each of which is of particular relevance to the controversy in issue. Firstly, the fixing of a cut off date by which candidates would have had to attain the minimum age is permissible and, in fact, advisable, so as to impart certainty to the selection process. Secondly, there is no known principle that the cut off date must coincide with the last date for submission of applications. Thirdly, the Court would not interfere with the cut off date fixed by the administrative authorities unless it is totally capricious, whimsical or arbitrary. Fourthly, any cut off date, when fixed, would impact those who do not attain the requisite age, or eligibility, by then. This unavoidable hardship cannot render the fixation of the cut off date itself arbitrary.

23. The onus to establish that the fixation of the cut-off date is whimsical or arbitrary would be on the petitioner who seeks to challenge it. Besides the contention that, by fixing the cut-off date by which the candidates had to have attained the age of 35 as 1 January 2024, candidates who had reached 35 after 1 January 2024 but before 10 January 2025 which was the first date for submission of applications had been rendered ineligible to apply, no other ground has been urged, on the basis of which we can hold the fixation of 1 January 2024 as the cut off date to be arbitrary.

24. We also note that the issue in controversy in this case had earlier arisen before another Coordinate Division Bench of this Court in *DSSSB v Umashankar Sharma*⁹. In that case, the Division Bench

⁹ 2013 SCC OnLine Del 1911



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categorically held that there was a clear distinction between the cut-off date for determining the minimum age for participating in selection process and the last date till which applications applying for recruitment would be submitted. In fact, the Division Bench observed that, if these two were to be conflated it would result in a situation in which there would be uncertainty regarding the cut-off date for determining of eligibility from the age point of view.

25. For the aforesaid reasons, we are of the view that the prayers advanced in the writ petition cannot be granted.

26. The writ petition is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

AMIT MAHAJAN, J.

JANUARY 7, 2025

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Click here to check corrigendum, if any