

147 **10.04.**
2026
Ct. No. 24

Ab

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE.**

WPA 7992 of 2026

**Dr. Debiprasad Paul
Vs.**

The State of West Bengal and others.

**Mr. Prasenjit Mukherjee,
Mr. Nirmalya Kumar Das.**

... for the petitioners.

**Mr. Ashim Kumar Ganguly, Ld. AGP.
Mr. Bellal Shaikh,
Mr. Arun Singh.**

... for the State.

**Mr. Subhrangsu Panda,
Mrs. Ina Bhattacharyya,
Mrs. Mithu Singha Mahapatra.**

... for the WBCSC.

1. The affidavit of service as filed today is taken on record.
2. The petitioners are all, except one, holders of Ph.D degrees and are extremely qualified and meritorious persons.
3. The grievance of the petitioners is that by the Notification of February 26, 2026, the respondent no. 7 had issued an advertisement for holding examination of Assistant Professor with a stipulation of age criteria and without affording any relaxation, which had been given on an earlier occasion in 2018. This age relaxation, if given in terms of 2018, would have permitted the petitioners to participate in the examination process that has been

undertaken.

4. Mr. Mukherjee, learned Advocate appearing for the petitioners, makes the following submissions:

(a) The impugned advertisement is contrary to the powers enshrined in the State body. These powers are concurrent with any Central Authority, as this subject of education features at Serial No. 25 in the Concurrent list under Schedule VII of the Constitution of India. The advertisement is based on the University Grants Commission Act, 1953 (in short 'Act of 1953').

(b) Such Act does not permit to make any parameter insofar as the age is concerned.

(c) Thereby, the age limit fixed by the authorities is in clear contravention of the Central statute as enshrined in the said Act of 1953. Therefore, this bar created by fixing the upper age limit is beyond the jurisdiction of the authority and is contrary to the stand taken by a Central body (UGC) in the said Act of 1953. Therefore, this fixation of upper age limit is bad in law, de hors the provisions and suffers from jurisdictional deficiency and is hence liable to be set aside.

(d) He placed reliance on Article 236 and 256 of the Constitution of India to buttress his point that in the case of conflict of a subject in the concurrent list, the law made by the Central Government will

undoubtedly prevail over that made by the State.

(e) He has relied upon a decision of Kerala High Court in case of University of Kerala represented by Registrar, University Campus, Trivendum & Anr. vs. Sebastian Joseph & Ors. (WA No. 672 of 2023) dated January 8, 2024 and the decision of the Hon'ble Supreme Court in case of Professor (Dr.) Sreejith P.S. vs. Dr. Rajasree M.S. & Ors. (Civil Appeal Nos. 7634-7635 of 2022).

5. Mr. Panda, learned Advocate appearing for the West Bengal College Service Commission, has made the following submissions:

(i) The State Government derives its authority to make necessary orders or notifications touching on age as a parameter by way of the West Bengal Services (Raising of Age-Limit) Rules, 1981 read with West Bengal Regulations of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999.

(ii) There is no dichotomy insofar as the concurrent list is concerned, as the State is also empowered to make the requisite law on the subject. In fact, the question of dichotomy would arise only if the laws made by the State

or Union are in contravention or contrary to each other in which case the Central Laws would prevail or the Laws promulgated by the State Authorities are contrary to the Central Laws.

- (iii) In the instant case, the reliance in the advertisement of 2026 is on the basis of Clauses (e) and (g) of sub-section (1) of Section 26 of the said Act. These clauses deal with the merits and the educational qualifications required of an incumbent candidate. It does not touch on the qualifications insofar as age is concerned. Hence, if the State Government has fixed an upper age limit, the same is not contrary to the laws enunciated in the said Act by the UGC does it had suffer from any jurisdictional deficiency as the same is within the domain of the State power to legislate under the concurrent list.
- (iv) He has also placed reliance on Article 309 of the Constitution of India, urging that the State draws its powers for making relevant laws for its officers and employees from this provision of the Constitution of India.
- (v) He has placed reliance on a celebrated decision of the Hon'ble Supreme Court of India in *Balco Employees Union (Regd.) vs.*

Union of India & Ors., reported in (2002) 2
SCC 333 (paragraph 46 and 92).

6. I have heard the learned Advocates appearing for the parties and considered their submissions and also gone through the records of this case.
7. This is nothing short of a paradox. The petitioners challenge the right of the State Authorities to mark an upper age limit insofar as their eligibility to participate in the examination for Assistant Professors are concerned.
8. They are aggrieved that such an upper age limit had been fixed and it was argued that an upper age limit could not have been fixed at all by the State, in view of the lack of jurisdiction of the State to make such a parameter. They seek a relaxation of age to enable them to participate in the examination.
9. If the petitioners' arguments are taken as correct and the State has no right to fix the age limit, the natural corollary of this submission would be the State would have no right to give an age relaxation either. This argument of jurisdictional deficiency is clearly a self-defeating argument. If the State has the right to relax the age limit, which the petitioners accept they do, then the State has an equal right to fix the age limit. It is a classic case of holding the cake in the hand and eating it at the same time.
10. The provisions relied upon by Mr. Mukherjee are

not in dispute, particularly that the concurrent list has subjects on which both the State and the Central are entitled to legislate. It is also indisputable that the State Laws if they are contrary to any Central Law, the Central Law will have to prevail.

11. The only question, therefore, that remains to be considered is, if the UGC has framed any law or the Notification or the corresponding memorandums on the basis of age. As pointed out by Mr. Panda, the provisions have been promulgated under Section 26(1) Clauses (e) and (g), which do not relate to the age factor. It relates to the qualifications required for interested candidates who wish to participate in the examination. Had the State tampered with the parameters of qualifications set forth by the UGC under the said Act, their action would have been absolutely illegal and would have necessarily suffered the fate of annulment. However, in the instant case, no such acts of commission and/or omission have been complained of. The only complaint, as put forth by the petitioners, is the age relaxation.

12. This is clearly a policy decision, which has been taken by the State and in a jurisdiction of judicial review as in the present case, the Courts are slow and cautious in their approach to interfere and

interject in such policy decisions as specified in the decision of Balco Employees' Union (supra) rendered by the Hon'ble Supreme Court of India.

13. Mr. Mukherjee does not argue of an administrative bias or malice in law or any amount of opaqueness in the acts of State authorities and has merely stated that the fixation of the upper limit on account of age by the State authorities is de hors of provisions of law as it violates the jurisdictional contours set by the aforestated entries in the concurrent list.

14. The decision of the Hon'ble High Court at Kerala dealt with a situation where the UGC Regulations had been directly violated by a State Legislation. Hence, the State Legislations were set at naught by the Hon'ble Court.

15. The facts of the instant case are clearly different as there has been no violation insofar as the State Rules are concerned. The second decision relied upon by Mr. Mukherjee of the Hon'ble Supreme Court of India is distinguishable on facts as the same related to a University for the post of appointment of Vice Chancellor. The principle, however, remains the same whether the State statute or notification or Rules or State Legislation would override a Central Legislation pertaining to an issue in the concurrent list. Clearly in the instant

case, since there is no violation of the Central statute, the question of the State Legislation prevailing over the Central Legislation does not arise.

16. It has been clearly established that there is no parameter set forth by the UGC on the account of age. The upper age limit fixed by the State insofar as these examinations for the post of Assistant Professors are concerned cannot be deemed, in any manner, to be without jurisdiction.

17. In view of the aforestated discussions and observations, the writ petition fails and is accordingly dismissed.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Reetobroto Kumar Mitra, J.)