

(2013) 07 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16920 of 1995 (O and M)

Atma Ram

APPELLANT

Vs

Haryana State Agricultural Marketing Board

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 P&H CK 0053

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : R.K. Malik and Mr. Tejpal Dhull, for the Appellant; Nitin Rathee, for the Respondent

Final Decision : Dismissed

Judgement

M.M.S. Bedi, J.—Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India and sought issuance of a writ in the nature of certiorari to quash the termination order (Annexure P-11) holding that the petitioner was not entitled to relaxation in the upper age limit for his appointment as Assistant Secretary in the Haryana State Agricultural Marketing Board (hereinafter referred to as the respondent-Board). Brief facts for the decision of the present writ petition are that the petitioner was regular employee of Haryana Backward Classes and Economically Weaker Section Kalyan Nigam w.e.f. 06.01.1983 as Field Officer. Pursuant to Advertisement Annexure P-1, the petitioner was interviewed and selected as Assistant Secretary in the respondent-Board. He was issued an appointment letter (Annexure P-2) dated 09.01.1992. The petitioner left the services of Corporation and submitted joining report on 15.01.1992. He was declared medically fit and he joined on 22.01.1992. The service conditions of the employees of respondent-Board are governed by statutory rules, called The Haryana State Agricultural Marketing Board Service Rules, 1974. As per Rule 5 of the abovesaid Rules the upper age limit for entry into service is 30 years on or before the first day of January, next preceding the

last day of submitting of application to the Board. For the persons already in service of Haryana Government, the upper age limit is 35 years. The Chief Secretary, Government of Haryana, had issued a general letter raising the upper age limit from 30 to 35 years for entry into Government service. In this respect a letter dated 05.09.1990 (Annexure P-5) had been issued. Vide Annexure P-6, in the meeting of Board held on 12.12.1990, Rule 5 of the Haryana State Agricultural Marketing Board Service Rules, 1974 has been amended raising the upper limit from 30 to 35 years. The letter of Chief Secretary (Annexure P-5) dated 05.09.1990 stands adopted by the respondent-Board in the meeting dated 12.12.1990. After more than 3 years of appointment of the petitioner, he was issued a show cause notice in June 1995 vide Annexure P-9 as to why action should not be taken against him as he was more than 34 years of age as on 01.01.1991 as his date of birth is 18.04.1956 and on 01.01.1991 he was over age. The petitioner submitted a reply Annexure P-10 that the age for entry into service was 30 years and that the petitioner having received the appointment letter submitted his resignation in the office of Haryana Backward Class and Economically Weaker Section Kalyan Nigam Chandigarh and was relieved on 14.01.1992 and submitted his joining report on 15.01.1992. The Chief Administrator of the respondent-Board vide order dated 15.11.1995 held that the petitioner could not be considered eligible being overage and that he did not fulfill the prescribed qualification at the time of selection as such his selection and appointment was quashed vide order dated 15.11.1995.

2. On notice having been issued to respondent, in the written statement the respondent-Board has taken up the plea that the petitioner was more than 30 years as on 01.01.1991. He deliberately concealed this aspect while applying for the post. It has also been pleaded that although the age of entry into service had been raised from 30 to 35 years but the rules had not been amended till the appointment of the petitioner. Petitioner's date of birth is 18.04.1956 and he had, therefore, rightly been removed from service as the petitioner is not eligible for the post. It has been pleaded that in the advertisement it was specifically mentioned that candidates should not be below 17 years and more than 30 years of age as on 01.01.1991. In view of said clear cut stipulation the petitioner cannot take the shelter of any Haryana Government instructions or the proposal for amendment of the rules which were not approved by the competent authority i.e. Commissioner and Secretary to Government of Haryana, Agricultural Department. The notification dated 07.12.1995 vide which the Rule 5 of the Service Rules, 1974 was amended and the word "30 years" was substituted by "35 years" was subsequently withdrawn vide notification dated 17.12.1996. Copies of the notifications dated 07.12.1995 and 17.12.1996 have been appended with the reply as Annexure R-1 and R-2 respectively.

3. It is not out of place to observe here that it has been admitted in the written statement that the Haryana Government vide notification dated 25.02.1997 amended Rule 5 of Haryana State Agricultural Marketing Board Service Rules, 1974 and the words "30 years" has been substituted in place of "35 years".

4. Mr. R.K. Malik, Sr. Advocate appearing on behalf of the petitioner submitted that the petitioner had not suppressed his age and particulars regarding the date of birth which was duly scrutinised while appointing the petitioner. The principle of estoppel was relied upon by the petitioner in the case of R.K. Goswami Vs. K.M. Raval and Others, wherein the termination order was held bad in law as it had been passed after 2 years of appointment of the petitioner on the ground of being over age at the time of his appointment, holding that the petitioner had not concealed anything at the time of entry into service.

5. I have considered the facts and circumstances of the case. The short question which requires to be determined in the present case is whether the respondent-Board has acted fairly in terminating the services of the petitioner vide order dated 15.11.1995 after a lapse of more than 3 years from the joining of the petitioner as Assistant Secretary on the ground that he was over age on the date he applied for the post and whether the age of entry into service in the year 1991-92 was 35 years or it was 30 years as per the statutory rules.

6. It is an admitted fact that the petitioner had given his date of birth as 18.04.1956 and that he was more than 30 years of age as on 01.01.1991 and the age has not been concealed by the petitioner. It is also an admitted fact that before entry into the service of the respondent-Board, the petitioner was earlier serving with Haryana Backward Classes and Economically Weaker Section Kalyan Nigam w.e.f. 16.01.1983 as Field Officer and had rendered service of more than 9 years in the said Corporation. The upper age limit for a person already in service of Haryana Government was prescribed as 35 years. It is also an admitted fact that vide letter dated 05.09.1990 (Annexure P-5) issued by Chief Secretary to Government of Haryana the upper age limit entry into Haryana Government service had been enhanced from 30 to 35 years. The order of the Chief Secretary was adopted by the respondent-Board for amendment of Rule 5 of Haryana State Agricultural Marketing Board Service Rules, 1974. The upper age for filling up of the post by direct recruitment stand enhanced from 30 to 35 years as the respondent-Board had been following the Government instructions for entry into service and other conditions of service. The advertisement inviting applications for appointment as Assistant Secretary was issued in the year 1991 and cut of date was 01.01.1991. The service rules describing age for entry into service as 35 years laid down by the State Government vide letter dated 05.09.1990 (Annexure P-5) had been adopted prior to the date of advertisement. As such it will be deemed that the age for entry into service in Haryana State Agricultural Marketing Board was already 35 years. Besides the principle of estoppel will also come into operation in the present case. The date of birth of the petitioner had been disclosed by the petitioner and was known to the authorities of the respondent-Board. The decision of State Government to enhance the date of entry into the service was also known to the respondent-Board. As such the respondent-Board was estopped by their act and conduct to cancel the selection and the appointment after lapse of more than 3 years without an opportunity of hearing being given to the petitioner.

7. In view of above circumstances, the order (Annexure P-11) passed by Chief Administrator of the respondent-Board setting aside the appointment of the petitioner is not legal and is liable to be set aside. It is also not out of place to mention here that the petitioner has served the respondent-Board till date and is to retire next year. It would be unreasonable to set aside the selection after his appointment w.e.f. 15.01.1992. The petition is allowed. The order Annexure P-11 is set aside. The petitioner would be entitled to all the benefits of service including his promotion, seniority and other retiral benefits.