
(2010) 03 CHH CK 0006
In the Chhattisgarh High Court
Case No : Writ Appeal No. 362 of 2009

Chhattisgarh Public Service Commission	APPELLANT
Vs	
State of C.G. and Others	RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 — Rule 4
Chhattisgarh Police Executive (Gazetted) Service Recruitment and Promotion Rules, 2005 — Rule 25, 27, 3, 35, 4
Chhattisgarh Police Executives (Gazetted) Service Recruitment and Promotion Rules, 2000 — Rule 3, 4, 5, 8, 8(1)
Constitution of India, 1950 — Article 309

Citation : (2010) 2 CGLJ 234

Hon'ble Judges : R.N. Chandrakar, J;Dhirendra Mishra, J

Bench : Full Bench

Advocate : Sanjay K. Agrawal, B.D. Guru, P.S. Koshy, Rajiv Shrivastava, Ranbir Singh Marhas, Matin Siddique, Jitendra Pali, Shailendra Dubey and Rajnish Kumar Shrivastava, for the Appellant; Kishore Bhaduri, A.A.G., U.N.S. Deo, Government Advocate and Prateek Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—These writ appeals are being disposed of by a common order, as they arise out of the judgment dated 16th November, 2009 passed in W.P.(S) No. 3809/07, W.P.(S) Nos. 3202, 3203, 3204, 3841 and 4294 of 2008 and other connected matters disposed of by the learned Single Judge in terms of the order passed in the aforesaid petitions.

2. Briefly stated facts of the case are that the Chhattisgarh Public Service Commission (for short "Commission") issued an advertisement on 27th August, 2005 for selection of various civil services and the Police Services Posts through the State Services Examination, 2003. For the post of Deputy Superintendent of Police (for short "DySP"), the provisions of the Chhattisgarh Police Executives

(Gazetted) Service Recruitment and Promotion Rules, 2000 (for short "the Rules, 2000") were made applicable. The Petitioners participated in the selection process, however, their names were not considered for appointment on the post of DySP on the ground of over age as the Petitioners had attained the age of more than 25 years, maximum age limit prescribed under the Rules, 2000 and advertisement.

3. The Petitioners challenged the select list/merit list dated 17 May 2007 issued by the Commission on the ground that selections were made in violation of the Chhattisgarh Police Executive (Gazetted) Service Recruitment and Promotion Rules, 2005 (for short "the Rules, 2005") and prayed for direction to the Respondent authorities to issue a fresh select/merit list in accordance with the Rules, 2005 for the post of DySP with all consequential benefits.

4. The Petitioner in Writ Petition (S) No. 3809/2007 challenged the select list also on the ground that she was not given benefit of age relaxation for appointment on the post of DySP in spite of the fact that she was working in the Excise Department of the State of Chhattisgarh and thus she was entitled to age relaxation for 8 years.

5. Writ Petition (S) No. 3809/2007 filed by Petitioner Richa Mishra has been dismissed with a finding that she entered into a Government job in pursuance of the appointment order dated 24-1-2006 after the cut off date i.e. 1st January, 2006 and thus, she was not entitled to the benefit of age relaxation as on account of being government servant. She had also not completed the basic requirement of 6 months service before the cut-off date as provided in the Rules, 2005.

6. Allowing the other writ petitions, select/merit list dated 17th May, 2007 issued by the PSC for appointment on the post of DySP has been quashed and the PSC has been directed to prepare a fresh selection list for appointment on the post of DySP on the basis of merit treating the persons to be within age, if they were within maximum age limit of 27 years on the cut-off date under Rule 35. If the Petitioners are found successful in the merit list for appointment on the post of DySP, they shall be granted appointment in accordance with law.

7. The finding recorded by the learned Single Judge may be summarized as under:

The Rules, 2005 was made in exercise of power conferred by proviso to Article 309 of the Constitution of India, in supersession of the previous rules in the subject and as such after 28th June, 2005, the Rules, 2000 were not in existence. Since the impugned advertisement was issued on 27th August, 2005, the relevant date of vacancy was the date of impugned advertisement dated 27th August, 2005.

After the Rules, 2005 came into force with effect from 28th June, 2005, the applicability of the Rules, 2000 in advertisement dated 27th August, 2005 was

illegal and unconstitutional; schedule III appended with the Rules, 2005 for appointment on the post of DySP, headquarters, training police academy, PTC, PTS, Security, Line, Area Superintendent and Assistant Commandant, minimum age limit prescribed is 21 years and the maximum limit is 28 years.

The Home Department sent first requisition on 27 September, 2004 and second requisition on 22nd March, 2005 to the PSC specifying the relevant rules i.e. the Rules, 2000. The subsequent requisition was sent on 18th April, 2006 after publication of the advertisement on 27th August, 2005 and thus, it is established that the entire selection process for appointment on the post of DySP was done on the basis of old rules i.e. the Rules, 2000 which has been superseded/ repealed on 28th June, 2005.

Appointment of the successful candidates on the post of DySP would not confer any right on them as appointment in accordance with non-existent Rules, 2000 is illegal and unconstitutional.

8. The main contentions canvassed by Learned Counsel appearing for the Appellants, during final hearing, may be summarized as under:

(i) All the writ Petitioners except Richa Mishra participated in the entire selection process without questioning the advertisement prescribing the application of the Rules, 2000; they also did not give their preference for the post of DySP in their application. They questioned select list on or after 24th June, 2008, by the time select list became final and culminated into the appointment, in these circumstances, the Petitioners cannot be permitted to challenge the select list and they are not entitled for any relief and the petitions suffers from vice of delay and laches. Writ Petitioners, except Richa Mishra having not given their preference for the post of DySP on the date of interview as per Clause 39 of the advertisement, cannot be permitted to challenge the select list of DySP as being not in the zone of consideration as they were ineligible for the post of DySP. No writ of mandamus can be issued in their favour.

(ii) Writ petitions are liable to be dismissed for non-joinder of the candidates who have been appointed after selection.

(iii) The process of recruitment has already been completed in the year 2007, therefore, in the absence of any allegation of malafide, favouritism or corruption, finality has to be attached to the recruitment process initiated and completed by the PSC by public examination.

(iv) The first and second requisition to commence recruitment process against the vacant seats to the post of DySP was made when the Rules 2000 was in force, therefore, recruitment has rightly been made under the Rules, 2000. Even otherwise, the Rules, 2005 makes no change in age criteria for appointment to the post of DySP.

9. First point:

All the writ Petitioners except Richa Mishra participated in the entire selection process without questioning the advertisement prescribing the application of the Rules, 2000; they also did not give their preference for the post of DySP in their application. They questioned select list on or after 24th June, 2008, by the time select list became final and culminated into the appointment, in these circumstances, the Petitioners cannot be permitted to challenge the select list and they are not entitled for any relief and the petitions suffers from vice of delay and laches. Writ Petitioners except Richa Mishra having not given their preference for the post of DySP on the date of interview as per Clause 39 of the advertisement cannot be permitted to challenge the select list of DySP as being not in the zone of consideration as they were ineligible for the post of DySP. No writ of mandamus can be issued in their favour.

10. Learned Counsel for the Appellants argued that writ Petitioners, except Richa Mishra, filed writ petitions belatedly in the month of June, 2008 and impugned the select list on the ground that the Rules, 2005 were applicable in which age for the post of DySP has been prescribed to be 21 to 28 years. It was argued that once a candidate participates in the recruitment process without protest and demur, he cannot be permitted to turn around and contend that selection process or eligibility criteria was contrary to the service rules applicable when he finds result of the interview or examination is not palatable to him.

11. On the other hand, Shri Prateek Sharma, Learned Counsel appearing for private Respondents would submit that the answering Respondents bonafidely participated in the recruitment process by believing the advertisement dated 27-8-2005 prescribing the applicability of the Rules, 2000 by the PSC. They were misled by the PSC and, therefore, no estoppel will apply against them. The answering Respondents are successful and meritorious candidates. They have been deprived from consideration from appointment on the post of DySP on account of mistake committed by the PSC by applying wrong statutory recruitment rules for recruitment to the post of DySP. The Respondents have challenged only the post wise merit list to the extent that it is in violation of the Rules, 2005 and they have not challenged overall merit list dated 17-5-2007. All the judgments cited by the Appellants are with regard to challenge by unsuccessful candidates after participation.

12. The PSC issued an advertisement on 27-8-2005 inviting applications for recruitment to the post of DySP clearly stating that the age limit for the post of DySP would be in accordance with the Rules, 2000 i.e. minimum age 20 years and maximum age 25 years. The Petitioners submitted their applications for their recruitment. Preliminary examination was held on 6-11-2005 and thereafter interview took place in the month of April, 2007, which completed by 28 April, 2007, select list of the advertised post was published on 11-5-2007, on account of certain mistake the revised select list was published on 17-5-2007. Richa Mishra, writ Petitioner in WP(S) No. 3809/2007, filed a writ petition on 29-6-2007 seeking quashment of the select list dated 17-5-2007, as she was not

extended relaxation in age as per Rule 8 of the Rules, 2000 and also on the ground that she was entitled for relaxation in view of Rule 4 of the Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 (for short "the Rules, 1997"). The appointment orders of DySP were issued by the State Government on 10-12-2007; thereafter an interim order was passed in Richa Mishra's petition directing the State to keep one post vacant, if available and subsequently other writ petitions were filed on or after 24th June, 2008 for quashment of select list/merit list dated 17-5-2007. Indisputably, the Petitioners have averred in their petitions that they did not opt for the post of DySP in the preferential form submitted as per clause-39 of the advertisement.

13. In *Amlan Jyoti Borooah Vs. State of Assam and Others*, , recruitment process was questioned by candidates who participated and were not selected on the ground that all the candidates i.e. those appointed and those left out were assessed with different yardsticks. The Supreme Court held thus:

31. The Appellant was aware of his position in the select list. He was also aware of the change in the procedure adopted by the Selection Committee. He appeared at the interview without any demur whatsoever although he was not called to appear for the physical ability test prior thereto. The Appellant chose to question the appointment of 77 candidates not only on the premise that the procedure adopted by the Selection Committee was illegal but also on the premise that no new vacancy could have been filled up from the select list.

32. The Appellant, in our opinion, having accepted the change in the selection procedure sub silentio, by not questioning the appointment of the 169 candidates, in our considered opinion, cannot now be permitted to turn round and contend that the procedure adopted was illegal. He is estopped and precluded from doing so.

14. In *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, , the unsuccessful candidates in the interview challenged the selection process on the ground that the advertisement and selection were not based on the service rules. Rejecting the above contention, it has been held thus:

7. It is not disputed that the Respondent-writ Petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , this Court pointed out that when the Petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the Petitioners as well as the contesting Respondents concerned, the Petitioners took a chance to get themselves selected at the said oral interview. Therefore, only

because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the present case, as already pointed out, the Respondent-writ Petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

15. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , it has been observed thus:

9. Before dealing with this contention, we must keep in view the salient fact that the Petitioners as well as the contesting successful candidates being Respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the Petitioners as well as the contesting Respondents concerned. Thus the Petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla-1* it has been clearly laid down by a Bench of three learned Judges of this Court that when the Petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a Petitioner.

16. In *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, it has been held as under:

18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

17. Shri Sanjay K. Agrawal, Learned Counsel appearing on behalf of the PSC argued that writ Petitioners except Richa Mishra did not submit their preference

for appointment on the post of DySP, as admitted in the petitions and thus they being not in the zone of consideration were ineligible for the post of DySP and no writ of mandamus can be issued in their favour.

Relying upon the judgment in the matter of Dr. Umakant Saran Vs. State of Bihar and Others, , wherein it has been held that in order that mandamus may be issued to compel authorities to do something, it must be shown that the statute imposes a legal duty and the aggrieved party have a legal right under the statute to enforce its performance, he submitted that the aforesaid judgment has been subsequently followed in the matter of K.H. Siraj Vs. High Court of Kerala and Others, .

18. If we examine the facts of the present matter in the light of the principles of law laid down in the aforesaid judgments, we observe that the Petitioners other than Richa Mishra submitted their application in response to the advertisement dated 27-8-2005 and participated in the recruitment process. After being successful, they were called for interview. At the time of interview also, they did not make any preference for the post of DySP. They did not challenge the final select list and appointment orders were issued for the post of DySP on 10-12-2007 and only after interim order was passed by this Court in Richa Mishra's case, the writ petitions were filed after more than 6 months of the order of appointment and without impleading the candidates who have been appointed on the post of DySP. In these circumstances, they could not be permitted to question the select list, that too much after the same culminated into appointment.

19. Second point:

Writ petitions are liable to be dismissed for non-joinder of the candidates who have been appointed after selection.

20. The writ petitions have been filed after appointment orders were issued on 10-12-2007 without impleading the appointed candidates. Learned Single Judge during the course of hearing on 23rd March, 2009 in Richa Mishra's case directed the State Government to issue notice and intimate all the selected candidates indicating that their selection is under challenge in various writ petitions mentioned in the order and it has been further clarified that if they wish to make representation and want to file response, they may do so within a period of 2 weeks. After publication of the notice and intimation by the State Government, some of the successful DyS Ps appeared through their counsel and filed their return. One of the successful candidate also filed an application for impleading him as necessary party. 17 more selected candidates filed reply.

21. Learned Counsel for the Appellants argued that the appointed candidates were not impleaded as party Respondent. They were noticed only for challenge to their selection and not to their appointment, though the effect of quashing their selection would deprive them from the post of DySP.

22. It is well settled that necessary party is one without whom no order can be made effectively. Selected candidates having been appointed on the post prior to institution of the writ petitions were necessary party, as in their absence, no order can be made effectively quashing the selection which has been culminated into appointment. Writ petitions were liable to be dismissed for not impleading appointed candidates who were necessary party in the writ petitions. Bare notice to make representation or to file response against selection without impleading them as Respondents and furnishing copies of the entire pleadings filed from time to time would not serve any purpose. Notice issued as per the directions of learned Single Judge was only to the extent of selection. Select list/merit list on the basis of which appointment orders have been issued to the selected candidates cannot be quashed without quashing the appointment orders itself. The order of appointment conferred vested right in the appointees to hold the post and that right cannot be taken away without impleading such appointees and without affording them opportunity of hearing.

23. The Appellants have been selected and appointed on the post of DySP through a fair and reasonable selection process in which the Respondents also participated and there is no allegation that they were involved in any unfair means, improper action, illegality or corruption. They have been selected through fair competition. It is settled law that the appointment cannot be cancelled where there is no fault of the candidate who has been fairly selected.

24. On the other hand, Shri Prateek Sharma, Learned Counsel appearing for private Respondents submitted that out of total 44 DyS Ps, 3 have been arrayed as Respondents in the writ petition in the representative capacity and 17 DyS Ps have filed their reply whereas others have not cared to respond to the notices issued by learned Single Judge. They did not make any efforts for impleadment as Respondents or to obtain copies of the writ petitions and thus, the Appellants have waived their rights of participation and filing of return and now, they cannot be permitted to take benefit of their own fault.

25. The ratio of law laid down in *Sadananda Halo* has no application in the present case, as in the cited case, despite repeated requests of the selected candidates, copies were not supplied to them and not a single candidate was made Respondent in the writ petition nor in the representative capacity. Only one selected candidate Om Prakash Chandel made an application for impleading him as party in Richa Mishra's case but no-one appeared thereafter either in person or through counsel to prosecute the application. Even otherwise, Richa Mishra's petition was dismissed by learned Single Judge.

26. In *Government of A.P. and Another Vs. A.V. Venugopala Rao*, , the Appellants were selected and appointed as Inspectors of Industries etc.. Selections were challenged by unsuccessful candidates on the ground that the interviews held for the said selection were a sham affair. The High Court quashed the selection and appointments. Allowing the appeal preferred by the selected and appointed candidates and in view of the fact that except Ishwar Singh, no other selected

candidate was impleaded before the High Court, it was held that the High Court was not justified in hearing the writ petitions in the absence of the selected candidates especially when they had already been appointed.

27. In *Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr.*, 1995 Supp (2) SCC 663, the High Court set aside the selection and appointment without hearing the persons concerned. The order of the High Court was set aside on the short ground that no order to the detriment of the persons can be passed without hearing him.

28. In *B. Ramanjini and Others Vs. State of Andhra Pradesh and Others*, , the persons selected were appointed pursuant to the selection made and had been performing duties. They were not impleaded as parties to the proceeding either in their individual capacity or in their representative capacity. In these circumstances, the Supreme Court held that the High Court ought not to have examined the matter at the instance of the Petitioners particularly in the absence of the parties before the Court as substantial right to hold the office came to be vitally affected.

29. In *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, recruitment of 5500 posts of armed constables was made by inviting applications through advertisement in the newspapers. The recruitment was held in 25 districts and as many as 2 lakh candidates took part in recruitment process. Recruitment was postponed twice and finally recruitment process took place between 3rd December, 2004 and 11th December, 2004. Unsuccessful candidates filed large number of writ petitions challenging recruitment process on various grounds. Learned Single Judge got a sample survey of records of selected/unsuccessful candidates done through three judicial officers and after examination of district-wise selection, upheld the selection process for 10 districts and quashed the selection process for 15 districts. The Division Bench allowed the appeals pertaining to 4 districts and dismissed the appeal pertaining to rest of the districts. Setting aside the judgment of learned Single Judge as well as the Division Bench, it was observed thus:

63. Similarly we are not satisfied with the course taken in inviting the objections of the selected candidates who were never bothered to be made parties to the writ petitions. This Court in *All India SC and ST Employees' Assn. v. A. Arthur Jeer* 17 has stressed the necessity of joining the selected candidates as a party in paras 13 and 14 of its judgment, referring to the reported decisions in *Prabodh Verma v. State of U.P.*¹⁸ and *A.M.S. Sushanth v. M. Sujatha*¹⁹. In these cases this Court has stressed the necessity of the selected candidates being joined as a party at least in the representative capacity. The Single Judge, after realising the fact that the selected candidates were not joined as a party, though the selection lists were available to the Petitioner, had merely advertised about the dates of hearing of the petitions and when few of the selected candidates approached the High Court, they were not even supplied with the pleadings or the copies of the petitions in time. All this, in our opinion amounted to denial of an appropriate

opportunity to the selected candidates. All this has been dealt with by both the courts below and particularly the Division Bench in a very casual manner holding that the decisions relied on by the Appellants were individual cases. Even if they were so, the principles stated in those cases regarding the natural justice were most apposite particularly in Canara Bank case⁹, a reference of which has been made. In that case this Court held:

Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

The Court further went on to say:

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance....

(emphasis supplied)

64. The Division Bench thus could not have condoned the non-supply of copy of the writ petitions prior to the hearing of the writ petitions before the learned Single Judge. Similarly, after having noticed that the notice issued by the learned Single Judge was vague and that the impleaded selected candidates were constantly crying for the copies of the writ petitions, the Division Bench could not have simply brushed aside those weighty objections. We also do not understand the alleged stand taken by the counsel for the selected candidates before the Division Bench regarding their readiness to argue. It is for this reason that we have extensively quoted the arguments by the counsel in paras 19 to 22 of this judgment where the non-supply of copies of petitions was criticised.

30. Indisputably, appointments in pursuance of the select list/merit list were made on 10-12-2007 and the appointed candidates have joined their duties by

virtue of the said appointments. Except Richa Mishra's petition, other writ petitions were filed on or after 24th June, 2008 i.e. much after the appointment orders were issued in favour of the Appellants. In the writ petitions, the Petitioners have prayed only for quashing of the select list without making any prayer for quashing of the appointment orders of the selected candidates.

31. In the instant case, initially the petition was entertained though all the selected candidates were not arrayed as Respondents. Subsequently, the State was directed to issue notice and intimation to all the selected candidates indicating that their selection is under challenge in the writ petitions and they may make representations or file response, if they so desire. 17 candidates appeared in response to the notices and they filed their reply. However, there is nothing on record to show that copies of the writ petitions as amended from time to time and documents annexed with the writ petitions were supplied to them. From perusal of para-14 of the impugned order, it appears that selected candidates in their reply dated 21st June, 2009 only stated that if the select list is disturbed, they would suffer irreparable loss as they were not allowed to appear in the subsequent examination. On the basis of the aforesaid reply, it has been held that "it cannot be held that the successful candidates, who are likely to be affected, are not represented in the matter."

32. While dealing in identical situation in *Sadananda Halo*, it was held that the Division Bench could not condone non-supply of copy of the writ petition prior to hearing of the writ petition before learned Single Judge and the course taken in inviting objections of the selected candidates who were never bothered to be made parties to the writ petition has been disapproved. In the facts and circumstances of the present case, we are of the opinion that the writ petitions for quashing of the select list without seeking any relief for cancellation of appointment already made in pursuance of the select list could not be entertained. A vested right accrued to the appointed candidates and thus, they were necessary parties and the relief of quashing of select list could not be granted without their impleadment as Respondents in the petitions.

33. Third point:

The process of recruitment has already been completed in the year 2007, therefore, in the absence of any allegation of malafide, favouritism or corruption, finality has to be attached to the recruitment process initiated and completed by the PSC by public examination.

34. Indisputably, Common State Civil Services Examination, 2005 was held for filling up vacancies available against 15 categories. The Appellants have been recruited on the post of DySP. By impugned order passed in the writ petitions, select list of DySP has been set aside with a direction to prepare a fresh select list for appointment on the post of DySP on the basis of merit treating the Petitioners to be within age if they were within maximum age limit of 28 years on cut off date under the Rules, 2005.

35. It is desirable in the public interest that result of Common State Civil Services Examination should attain finality as any belated alteration/amendment in the select list would not only affect the Petitioners and the selected candidates but it may also affect the candidates of all the categories as selection and appointment through common entrance examination are inter-linked.

36. Fourth point:

The first and second requisition to commence recruitment process against the vacant seats to the post of DySP was made when the Rules of 2000 was in force, therefore, recruitment has rightly been made under the Rules, 2000. Even otherwise, the Rules, 2005 makes no change in age criteria for appointment to the post of DySP.

37. Shri Sanjay K. Agrawal, Shri Matin Siddique, Shri P.S. Koshy and Shri B.D. Guru, Learned Counsel appearing for the Appellants submitted that the Home Department of the State Government notified vacancies to the PSC for the posts of DySP vide its memo dated 27-9-2004 and 22-3-2005 mentioning therein that recruitment has to be made on the post of DySP in accordance with Rules, 2000. The PSC commenced recruitment process and published advertisement on 27-8-2005. In the said advertisement, it was clearly mentioned that age limit prescribed in the Rules, 2000 i.e. 20 to 25 years, would be applicable.

Schedule III framed under Rule 8(1)(a) of the Rules, 2000 prescribes the age criteria. Similarly, Rule 8(1) of the Rules, 2005 and schedule III framed thereunder prescribes the age criteria to the eligible candidates for competing in the examination.

38. Referring to Schedule III under both the Rules, it was argued that Schedule III under the Rules, 2005 prescribes the age limit of 21 to 28 years for the post of DySP ((Hqrs, Training, Police Academy PTC, PTS, Security, Line, etc), Area Supdt. and Assistant Commandant. However, there is no age limit prescribed for the post of Deputy Superintendent of Police. Whereas in schedule III under the Rules, 2000 in addition to DySP, all the categories mentioned in schedule III of the Rules, 2005, age limit for Deputy Superintendent of Police is also prescribed between 20-25 years. Thus, there is no change in age limit so far as appointment for the post of DySP under the Rules, 2005 and it is same as schedule III of the Rules, 2000 and the changes are with respect to DySP (HQ, Training, JNPA, PTC, PTS, Security, Lines, etc.).

39. Referring to Rule 27 of the Rules, 2005, it was argued that proviso to above rule saves any order made or action taken under the repealed rules and it is deemed to have been made or taken under the corresponding provisions of the Rules, 2005. Since Rule, 2005 does not prescribe any age limit for the post of DySP, age limit prescribed under the Rules, 2000 would be applicable even for the purposes of recruitment under the Rules, 2005. Though, the Rules, 2005 were made applicable with effect from 28-6-2005, however, it would not disrupt or invalidate the recruitment proceeding already initiated and conducted at the

command/direction of the State.

Reliance is placed in the matters of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, and State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, .

40. It was argued that vacancy of the DySP post occurred when requisitions for the same were made by the State Government and, therefore, they would be governed by the Rules, 2000 and not by the Rules, 2005.

41. On the other hand, Shri Prateek Sharma, Learned Counsel appearing for the private Respondents submitted that the Appellants, during the course of arguments, had taken a ground of partial repeal and, therefore, they cannot be permitted to raise this ground for the first time in these appeals.

Reliance is placed in the matter of Umashanker Pandey Vs. B.K. Uppal and Others, . Rule 25 of the Rules, 2005 clearly stipulates that the State is the final authority regarding interpretation of any provisions of these rules and it is clear stand of the State that for recruitment on the post of DySP, the Rules, 2005 shall be applicable. Even in the next recruitment process, appointment on the post of DySP is being done by prescribing minimum age as 21 years and maximum age as 28 years as per the Rules, 2005.

42. There is no dispute that the vacancies were notified and requisitions to commence recruitment process were initially made on 27-9-2004 and 22-3-2005 by the Home Department and in the said requisitions, it was clearly mentioned that recruitment has to be made for the post of DySP in accordance with the Rules, 2000. The advertisement was issued on 27-8-2005 i.e. after 28-6-2005 when the Rules, 2005 were made applicable.

43. Facts in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, are that a panel had to be prepared every year of list of approved candidates for making appointments to the grade of Sub-Registrar Grade-II by transfer according to the old rules. However, the panel was not prepared in the year 1976 and the Petitioners were deprived of their right of being considered for promotion. In the meanwhile, new rules came into force. In these factual background, it was held that the vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

44. In Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal and Another, , the Hon"ble Supreme Court, referring to earlier judgments, held that recruitment to a post must be made strictly in terms of the rules operating in the field.

45. In State of Punjab and Others Vs. Arun Kumar Aggarwal and Others, , the Hon"ble Supreme Court, extracting para-9 of its earlier judgment in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , held thus:

There is no quarrel over the proposition of law that normal rule is that the vacancy prior to the new Rules would be governed by the old Rules and not by the new Rules. However, in the present case, we have already held that the Government has taken conscious decision not to fill the vacancy under the old Rules and that such decision has been validly taken keeping in view the facts and circumstances of the case.

46. However, in the instant case, the State has requested the PSC to commence recruitment under the Rules, 2000 as vacancies arose prior to coming into force of the Rules, 2005.

47. From close examination of the Rules, 2000 and 2005, we observe that Rule 3 prescribes that these rules shall be applicable to every member of the services mentioned in Schedule I whereas Rule 4 deals with constitution of service and Rule 5 prescribed that classification of service, the number of the posts included in the service and the scale of pay attached thereto shall be as specified in Schedule I. Rules 3, 4 and 5 of the Rules, 2005 also make similar provisions. Sub-rule (2) of Rule 4 of the Rules, 2005 prescribes the categories of DySP with pay scale. The Deputy Superintendent of Police finds place at entry No. 18 under Schedule I of the Rules, 2000 whereas the other categories of Deputy Superintendent of Police find place at entry No. 20 to 30. The posting and eligibility for officers of promotion quota are also different for each category. Similarly, DySP under the Rules, 2005 finds place at entry No. 11 whereas other categories of DySP find place at entry Nos. 12, 14, 15, 16, 17 and 18. The posting and eligibility for officers of promotion quota are also different under each category.

48. We have carefully examined Rule 8(1)(a) and schedule III made under the Rules, 2000 and 2005. In schedule III under the Rules, 2000, at S. No. 1, column No. 3, the name of the post has been described as Deputy Superintendent of Police, Deputy Superintendent of Police (HQ, Training, JNPA, PTC, PTS, Security, Lines etc), Area Superintendent and Assistant Commandant. For all these posts minimum age limit is prescribed as 20 years and maximum age limit is prescribed as 25 years, whereas in schedule III under the Rules, 2005 at S. No. 1, under column 2, the name of the posts included are Deputy Superintendent of Police (Hqrs, Training, Police Academy, PTC, PTS, Security, Line etc.), Area Supdt. and Asstt. Commandant have been shown and post "Deputy Superintendent of Police" which is mentioned in schedule III of the Rules, 2000 has been omitted and age limit has been prescribed as 21 to 28 years. Rule 27 of the Rules, 2005 reads as under:

Repeal and Saving:

Madhya Pradesh Police Executive (Gazetteed) Service Recruitment and Promotion Rules, 2000, Notification No. F-1(B) 26-2000-B-IV-II dated 22-05-2000 relating to its application in state of Chhattisgarh, and orders, resolutions, if any, in force immediately before the commencement of these rules, are hereby repealed or

rescinded as per the case may be, in respect of matters covered by these rules;

Provided that any order made or action taken under rules so repealed, shall be deemed to have been made or taken under the corresponding provisions of these rules.

49. Since no age criteria has been prescribed for the post of DySP in schedule III under the Rules, 2005, by virtue of Rule 27, age criteria prescribed in schedule III under the Rules, 2000 is saved. In view of the undisputed fact that the posts have been advertised for Deputy Superintendent of Police for the vacancies which arose prior to coming into force of the new rules and advertisement clearly mentions that age limit fixed for the post of DySP is 20 to 25 years as per the Rules, 2000 and it was the stand of the Respondents that recruitments were made by following the Rules, 2000, the argument advanced by Shri Prateek Sharma that the Petitioners cannot be permitted to raise new ground of partial repeal cannot be accepted.

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50. The Appellant's writ petition has been dismissed with a finding that the Appellant was not entitled for age relaxation as she entered into Government job pursuant to the appointment order dated 24-1-2006 i.e. after cut off date i.e. 1-1-2006. Even otherwise, she has not completed basic requirement of 6 months service before the cut-off date as provided in the Rules, 2005.

51. The Appellant has not challenged the above finding recorded by the learned Single Judge, however, it was argued on her behalf that the Appellant was entitled for age relaxation being a woman in the light of Rule 4 of the Rules, 1997 wherein relaxation of 10 years is available to woman candidate in addition to other relaxation in age.

52. We are unable to accept this argument. The advertisement clearly mentions that for the post of DySP, minimum and maximum age limit would be 20 and 25 years clearly spelling out the terms and conditions for relaxation of age criteria.

53. From bare reading of Rule 8 of the Rules, 2000, it is clear that age relaxation under the Rules, 1997 is not applicable for recruitment on the post of DySP. From advertisement also, it is evident that no relaxation in age for recruitment for the post of DySP was available to the woman candidates whereas, age relaxation under the aforesaid rules have been made applicable in other categories. Since there was no challenge by the Appellant to the applicability of the Rules, 2000, she cannot be permitted to assail the impugned judgment on the ground that she was entitled for age relaxation as provided under Rule 4 of the Rules, 1997.

54. In the result:

? Writ Appeal No. 358/2009 preferred by Appellant Richa Mishra is dismissed.

? Writ Appeals preferred by the Chhattisgarh State Public Service Commission and the selected candidates, who are working on the post of Deputy

Superintendent of Police are hereby allowed and the writ petitions preferred by the Petitioners before the Writ Court are dismissed.