
(1995) 08 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3581/94

Dr. Devinder Pal Bansal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-08-1995

Acts Referred:

Citation : (1996) 112 PLR 342

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : S.S. Toor, for the Appellant; D.S. Dhillon, AAG, for the Respondent

Judgement

Jawalal Lal Gupta, J.—Can a person who is working on a post in the Punjab Civil Medical Service Class I on ad hoc basis be declared ineligible for direct recruitment to the same service on the ground of having become over-age without being given the benefit of the period of adhoc services. This is the short question that arises for consideration in this case.

2. On October 2, 1993, the Punjab Public Service Commission advertised 200 posts in P.C.M.S. Class I. It was stipulated that the candidates should be between the age of 22 to 35 years on November 2, 1993 which was the 1st date for submission of applications. The petitioner who had served the State of Punjab on a post in P.C.M.S. Class I from January 29, 1987 to January 20, 1991 and from January 29, 1993 onwards applied for the post. Vide order dated February 8, 1994, a copy of which has been attached an Annexure P-6 with the writ petition the Commission rejected the petitioner's application on the ground that he was over age. Aggrieved by this order the petitioner has approached this court through the present writ petition. He claims that in view of the instructions appended with the application from issued by the Commission, the petitioner had a right to be given relaxation to the extent of 7 years. In spite of the fact that the petitioner had submitted a representation pointing out the factual position his claim was not considered. Consequently, he his approached this Court with a prayer that the action of the Commission in rejecting his application be quashed

and it be directed to interview him for selection to P.C.M.S. Class I.

3. No written statement has been filed on behalf of the States of Punjab and the Director of Health and Family Welfare Department. However, a written statement has been filed on behalf of the respondent-Commission. The impugned order is supported on the basis of the provisions in the P.C.M.S. Class II Rules, 1982. It has been averred that there is no provision in the rules for relaxation of age and consequently, the petitioner was not entitled to be considered for appointment. With regard to the instructions appended to the application form, a copy of which has been produced as Annexure P-5 with the writ petition, it has been averred that the said instructions "are related to only in those cases where the age relaxation is provided in the Service Rules." On this basis, it is submitted that the writ petition has no merit and should be rejected.

4. Counsel for the parties have been heard.

5. Admittedly, the Commission had advertised the posts which were in the Punjab Civil Medical Service Class I. The recruitment to this service is governed by the provisions of the Punjab Civil Medical (State Service Class I) Rules, 1972 (hereinafter to be referred to as the Rules). Rule 6 prescribes the age limit and reads as under :-

"6. Age.--(1) No person shall be recruited to the service by direct recruitment if he is less than 21 years or more than 35 years of age on the date of appointment or such age as may be specifically prescribed by Government from time to time:

Provided that -

(i) the Government may, for reasons to be recorded in writing, relax the upper age limit; and

(ii) in case of members of Scheduled Caste Scheduled Tribes and backward Classes, the upper age limit shall be such as may be fixed by Government from time to time."

A perusal of the above provision shows that the Government has been vested with the power to relax the upper age limit. Furthermore, a general power of relaxation has also been conferred under rule 22. It has been interalia provided that "where the Government is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons". Vide Notification dated April 24, 1979 it was stipulated that the relaxation shall not be admissible in respect of the educational qualifications and experience. It is thus clear that power of relaxation has been vested in the Government under rule 6 as well as rule 22. Furthermore, even on a perusal of the application form, an extract from which has been produced by the petitioner as Annexure P-5 with the writ petition, it is clear that the Government had issued instructions for relaxation of age in respect of persons working on adhoc basis. Specific reference

has been made to the letter dated July 28, 1972. These instructions are contained in the Manual of instructions on Service Matters issued by the Punjab Govt. (1977 edition) at page 651. Keeping in view the situation of unemployment in the State, the Government had decided that -

"a) If in the Recruitment Rules for a post filled by direct recruitment, there is a provision for relaxation of the prescribed age limits in favour of Government servants, and the person holding that post on adhoc basis is one of the applicants for the post, when advertised by the Punjab Public Service Commission, Subordinate Services Selection Board or any other Recruiting/Selecting Agency, he is also entitled to age relaxation like other Government servants, who apply for that post; and

(b) A person who is appointed on an adhoc basis and who is later retrenched after having rendered continuous service for a period of not less than six months under the Punjab Government is entitled to an age concession to the extent of the period of his service rendered under the Punjab Government plus three years, for appointments made otherwise than on the basis of open competitive tests held by Punjab Public Service Commission, Subordinate Services Selection Board or any other Recruiting/Selecting Agency."

These instructions were issued after the Class I rules had been promulgated on February 15, 1972. It appears that these instructions embody a general criteria for relaxation of age in case of persons who are working on any post on adhoc basis. The purpose is obvious. A vacancy may be available. On account of certain reasons, the Government may not be in a position to fill it up. To meet the exigencies of service, it decides to make adhoc appointments. The person appointed on adhoc basis continues to work on the post for a number of years. There after, the Govt. proceeds to advertise the post. On account of the delay in advertisement the incumbent can become overage. As a result he may be rendered ineligible to be considered for appointment to the post. This would obviously result in hardship to the individual and the Government would be deprived of the experience that the incumbent has gained by working for a member of years. In order to obviate such a situation, the Government has taken a decision that "the person holding that post on an adhoc basis --- ---is also entitled to age relaxation --- ---". as a result, the incumbent does not suffer on account of the delay on the part of the State in advertising the post. The instructions embody a general rule. Presumably it is in pursuance to these instructions that a stipulation had been made in the instructions issued by the Public Service Commission. In fact, a specific reference to the letter dated July 28, 1972 has been made.

6. In view of the provision in the rules providing for relaxation and the instructions issued by the Government, the petitioner was eligible for the grant of relaxation in age. Admittedly, if the benefit of ad hoc service was given to him, the application submitted by the petitioner could not have rejected on the ground of his being overage.

7. The Commission appears to have completely misdirected itself in considering the petitioner's claim. It appears that the Commission noticed only the provisions in the P.C.M.S. Class II rules and not in Class I rules. So, far as the Class II service is concerned, it is governed by the provisions of the rules called the P.C.M.S. Class II Rules, 1982. The provisions regarding age is contained in rule 6. Clause (1) of the rule which is relevant provides as under :-

"(1) No person shall be appointed to the service by direct appointment if he is less than 22 years or more than 25 years of age on the last date fixed for receipt of application by the Commission or unless he is within such other range of minimum and maximum age as may be specifically fixed by the Government from time to time.

Provided that in case of candidate belonging to Scheduled Caste, or other Backward Classes, the upper age limit shall be such as may be fixed by Government from time to time."

In this provision, the Government has not reserved to itself the power of relaxation. However, so far as the Class I Rules are concerned, the provision is entirely different and a clear power of relaxation is contained in rule 6. It appears that it was on account of the Commission having not taken into consideration the provision in Class-I Rules, that the mistake occurred. In the circumstances of the case, it deserves to be rectified.

8. Accordingly, the question posed at the outset is answered in the negative and it is held that a person who has worked on a post in P.C.M.S. Class I is entitled to the benefit of ad hoc service while determining his eligibility in respect of age.

9. One more thing before concluding, learned counsel for the parties are agreed that in pursuance to the directions given by the Motion Bench vide order dated March 29, 1994, the petitioner was permitted to appear for the interviews, He had appeared. Mr. Dhillon has produced a sealed envelope containing the result of the interview. According to the statement recorded by the Commission, the petitioner had secured 37 marks out of 100. In accordance with the criteria prescribed by the Commissions candidate had to secure a minimum of 45% marks so as to be declared suitable for appointment. Since the petitioner had secured only 37% marks, he has not been selected.

10. In view of the above, it is declared that the petitioner was eligible. However, since he has failed to secure the requisite standard, he has been rightly rejected by the commission. The writ petition is accordingly disposed of No costs. The envelope containing the petitioner's result has been returned to Mr. D.S. Dhillon.