

(2024) 07 MP CK 0030

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19419 of 2024

Dr. Jyoti Choubey Vs The State Of Madhya Pradesh & Others

Date of Decision : 23-07-2024

Acts Referred:

Constitution of India 1950 — Article 14

Citation : (2024) 07 MP CK 0030

Hon'ble Judges : Vivek Jain, J

Bench : Single Bench

Advocate : Shailesh Tiwari, Naveen Dubey, Parag Tiwari

Final Decision : Dismissed

Judgement

Vivek Jain, J

The present petition has been filed challenging the order Annexure P/4 dated 28.03.2024 issued by the respondent No. 3 whereby the respondent No. 3 has provided benefit of relaxation in age limit only to guest faculty in Government Colleges and not to guest faculty in Government Universities in the State of M.P.

2. It is the case of the petitioner is that the petitioner is working as guest faculty in Rani Durgawati Vishwavidyalaya, Jabalpur which is a government University and there is no reason why the State should distinguish and discriminate between the guest faculty working in Government Colleges and in Government Universities in the State.

3. Learned counsel for the petitioner has based his contention on the aspect that by making distinction between Government colleges and Government Universities, an artificial discrimination has been created which is not having any nexus with the object to be achieved and this artificial discrimination is hit by Article 14 of Constitution of India. It is contended that the classification is unreasonable unless it is having some rational relation with any object to be achieved.

4. Per contra it was contended by learned counsel for the PSC that the Division

Bench of this Court has rejected the petition filed by the guest faculty working in the private college in the State of M.P. by judgment dated 06.11.2023 passed in W.P. No. 24997/2023 and has been held therein that fixing of eligibility criteria is always in the domain of the employer and a candidate cannot seek relaxation of any condition as a matter of right. It is further contended that as per instructions received from the State Government, the PSC has issued advertisement Annexure P/4 whereby relaxation is only granted to guest faculties in government colleges and not to guest faculties in private colleges or in government or private Universities in the State.

5. It is further contended by learned counsel for the MPPSC that the petitioner in any event is above 48 years of age and the maximum relaxation can be granted only till the age of 48 years. In other words, it is the contention of the MPPSC that by reckoning all sort of relaxations a candidate should have maximum age limit of 48 years and no relaxation beyond the age of 48 years can be granted to any candidate. Learned counsel for respondent has relied upon schedule 1 to advertisement Annexure P/2 whereby as per note No. 2 of the said schedule No. 1, it has been mentioned that the candidates who will get all the relaxations in age but even after getting all the relaxation the maximum age limit would not exceed 48 years whatever be any circumstances.

6. Heard.

7. The contention of learned counsel for the petitioner is that the State Government has issued relaxation vide Annexure P/5 dated 06.10.2023 as per which the guest faculty working in government colleges are granted age relaxation upto 10 years and a coordinate Bench at Gwalior in W.P. No. 1107/2024 decided on 06.02.2024 has held that the said relaxation would enure good also for the posts advertised in the year 2022 and for that purpose the State Government has issued a corrigendum vide Annexure P/4 whereby relaxation has been granted to guest faculty.

8. It is the case of the petitioner that such relaxation in terms with Annexure P/4 & P/5 is being granted only to the guest faculty working in government college and not in government universities.

9. Another contention that was raised by learned counsel for the respondent was that by reckoning all the age relaxations taken together, the maximum age is permission is 48 years and since the petitioner has crossed the age limit of 48 years and has admittedly 56 years of age, she cannot be granted the age relaxation even if she had been entitled for the same. However, it has been pointed out by learned counsel for the petitioner that the aforesaid aspect has already been considered by a coordinate Bench at Gwalior in W.P. No. 1107/2024 and the petition filed by those guest faculties who were above 48 years of age have been allowed. Thus, the aspect of relaxation beyond 48 years of age is no longer res-integra as no writ appeal has been filed against the said order passed by Gwalior Bench.

10. Now coming to the main contention of the petitioner that the distinction being made between the guest faculty in government colleges and government universities is taken up. Learned counsel for the State as well as M.P.P.S.C. have heavily relied upon the judgment passed in W.P. No. 24997/2023 by the Division Bench wherein it has been held that recruitment policy, selection method and fixing of eligibility criteria is in the sole domain of the employer and no candidate can seek relaxation in conditions as a matter of right.

11. The Division Bench in the aforesaid has held as under:-

"7.It is a settled principle of law that the employer is having the right to make the eligibility criteria. The Hon'ble Supreme Court in the case of Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another reported in (1994) 6 SCC 293 has held as under:-

"9. In Kothari Committee's Report on the "Recruitment Policy and Selection Methods for the Civil Services Examination" it has also been pointed out in respect of interview where a written test is also held as follows:

"The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled."

In this background, it is all the more necessary to fix the limit of the applicants who should be called for interview where there is no written test, on some rational and objective basis so that personality and merit of the persons who are called for interview are properly assessed and evaluated. It need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short- listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences, If with five years of experience an applicant is eligible, then no fault can be found with the Commission if the applicants having completed seven and half years of practice are only called for interview because such applicants having longer period of practice, shall be presumed to have better experience. This process will not be in conflict with the requirement of Section 8(3)(c) which prescribes the eligibility for making an application for the post in question. In a sense Section 8(3)(c) 7 places a bar that no person having less than five years of practice as an advocate or a pleader shall be entitled to be considered for appointment to the post of Presiding Officer of the Labour Court. But if amongst several hundred applicants, a decision is taken to call for interview only those who have completed seven and half years of practice, it is neither violative nor in

conflict with the requirement of Section 8(3)(c) of the Act.”

8.The Hon'ble Supreme Court in the case of State of Haryana Vs. Subhash Chander Marwaha and others reported in (1974) 3 SCC 220 has held as under :-

“12. It was, however, contended by Dr. Singhvi on behalf of the respondents that since rule 8 of Part C makes candidates who obtained 45 per cent or more in the competitive examination eligible for appointment, the State Government had no right to introduce a new rule by which they can restrict the appointments to only those who have scored not less than 55%. It is contended that the State Government have acted arbitrarily in fixing 55 per cent as the minimum for selection and this is contrary to the rule referred to above. The argument has no force. Rule 8 is a step in the preparation of a list of eligible candidates with minimum qualifications who may be considered for appointment. The list is prepared in order of merit. The one higher in rank is deemed (1) [1962] (2) Suppl. S.C.R. 144. to be more meritorious than the one who is lower in rank. It could never be said that one who tops the list is equal in merit to the one who,, is at the bottom of the list. Except that they are all mentioned in one list, each one of them stands on a separate level of competence as compared with another. That is why rule 10(ii), Part C speaks of "selection for appointment". Even as there is no constraint on the State Government in respect of the number of appointments to be made, there is no constraint on the Government fixing a higher score of marks for the purpose of selection. In a case where appointments are made by selection from a 8 number of eligible candidates it is open to the Government with a view to maintain high-standards of competence to fix a score which is much higher than the one required for mere eligibility. As shown in the letter of the Chief Secretary already referred to, they fixed a minimum of 55% for selection as they had done on a previous occasion. There is nothing arbitrary in fixing the score of' 55% for the purpose of selection, because that was the view of the High Court also previously intimated to the Punjab Government on which the Haryana Government thought fit to act. that the Punjab Government later on fixed a lower score is no reason for the Haryana, Government to change their mind. This is essentially a matter of administrative policy and if the Haryana State Government think that in the interest of judicial competence persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who get less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government. In our view the High Court was in error in thinking. that the State Government had somehow contravened rule 8 of Part C.”

9.The Hon'ble Supreme Court in the case of Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others reported in (2020) 20 SCC 312 has held that fixing of the eligibility criteria is always in the domain of the employer and a candidate cannot seek relaxation in conditions as a matter of right. Under these circumstances and in terms of the settled legal proposition of

law with respect to the employer's right to fix the criteria, no relief can be extended to the petitioner as he has already crossed the upper age limit."

12. The aforesaid judgment was sought to be distinguished by learned counsel for the petitioner on the aspect that the said case related to teachers of private colleges who were working as guest faculty in private colleges. However, the present case is a case of teachers working as guest faculty in government university and therefore, the discrimination being made is artificial discrimination and deserves to be set aside on the touchstone of Article 14 of the Constitution of India.

13. The question of artificial discrimination being invalid on the touchstone of Article 14 of Constitution of India was considered by a Constitution Bench in *State of Jammu & Kashmir v. Triloki Nath Khosa & others* 1974(1) SCC 19 wherein the Constitution Bench has held that classification violates the Constitution guarantee of equality only if it does not rest on reasonable basis. Classification is illegal and unconstitutional if it is unreasonable and there appears no nexus with any object to be achieved. The Constitutional Bench held as under :-

21. Our reason for saying this is to emphasize that the respondents ought to have furnished particulars as to why, according to them, the classification between diploma-holders and degree-holders is not based on a rational consideration having nexus with the object sought to be achieved. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the respondents to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object. Rather than do this, the respondents contented themselves by propounding an abstract theory that educational qualifications are germane at the stage of initial recruitment only. Omission to furnish the necessary particulars was construed by this Court in two cases as indicating that the plea of unlawful discrimination had no basis. [(a) *Katra Educational Society v. State of U. P.* AIR 1966 SC 1307 : (1966) 3 SCR 328, 336-37 : (1967) 1 SCJ 5. (b) *Probhudas Morarjee Rajkotia v. Union of India* AIR 1966 SC 1044, 1047 : (1967) 1 SCJ 52.] Such an infirmity in pleadings led this Court in *State of Madhya Pradesh v. Bhopal Sugar Industries Ltd.* [AIR 1964 SC 1179 : (1964) 6 SCR 846 : (1964) 1 SCJ 555] to remand the matter to the High Court in order to enable the petitioner therein to amend its petition.

32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the

object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object.

14. In the present case the State Government has decided to give age relaxation to guest faculty teachers working in government colleges. Learned counsel for the State submitted that the present recruitment is for regular positions in government colleges only and does not comprise any posts for regular positions of the government universities.

15. It is undisputed that the recruitment in question is going on only for recruitment of regular posts in government colleges and the State Government has taken a decision to grant age relaxation to guest faculty in government colleges. This with the view to provide for regular appointment to those guest faculty teachers who were working in the government colleges of the State since long and now the direct recruitment in the said colleges is being carried out, and they may be the persons who are at the risk of losing their positions as Guest Faculties as soon as regular incumbents take charge. The present petitioner does not face any such risk by regular recruitments in Government colleges.

16. The contention of the petitioner would have had some force and the classification would have been unreasonable if the recruitment in question was being carried out for regular position of the teachers in Government Universities also. It is undisputed that the Government Universities in the State carry out their own selection processes and the selection process in question is restricted only to government colleges of the State. Thus, there is objective associated with the classification made by the respondents. They are giving benefit of age relaxation to those teachers who are working in the government colleges for recruitment to regular post in government colleges, who are at risk of losing positions as Guest Faculties. The petitioner is working as guest teacher in government University and she cannot seek relaxation in recruitment of regular position in government college as she has never worked in the government colleges and is working only in government University. She could have a valid grievance and a cause of action if regular recruitment takes place in government University also where she is working as Guest Faculty, but it is not so.

17. Accordingly, the classification being made by the respondents cannot be said to hit by Article 14 of the Constitution of India and the classification is having some nexus with objective to be achieved. Accordingly, the judgment of the Division Bench in W.P. No. 24997/2023 would apply to the case of the present petitioner also in full force notwithstanding she is working as Guest Faculty in Government University.

18. Consequently, the petition stands dismissed.