
(2013) 07 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Appeal No. 1163 of 2012

Geeta Verma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 07 CHH CK 0017

Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J

Bench : Full Bench

Advocate : Rahul Tamaskar, for the Appellant; Praveen Das, Deputy Government Advocate for State/Respondents, for the Respondent

Final Decision : Allowed

Judgement

1. These appeals revolve around interpretation of rule 5 of Chhattisgarh Women Multipurpose Health Welfare (ANM) Courses Admission Rules, 2011 (the Rules) and the main point involved is,

Whether a candidate is entitled to either of age relaxation mentioned under sub-rule (3) of rule 5 {5(3)} of the Rules and the Explanation to rule 5(3) or all of them.

It arises in these writ appeals against the consolidated order of the single judge dated 26.11.2012 dismissing the writ petitions filed by Ms. Geeta Verma, Ms. Savita Jaamulkar and Ms. Snehlata Soni (referred to as the Appellants).

THE FACTS

The Director, Directorate of Health Services, Raipur, Chhattisgarh (the Director) published an advertisement on 17.07.2012 for admission in Auxiliary Nurses and Midwifery Course (the ANM course). The Appellants applied for the same.

2. Ms. Geeta Verma is Mitantin i.e. Accredited Social Health Activist (ASHA); whereas, Ms. Snehlata Soni and Ms. Savita Jaamulkar are class-IV employees working in the office of Chief Medical and Health Officer, Rajnandgaon,

Chhattisgarh (the CMO). They are respectively divorcee, SC, and OBC candidates and were aged about 36, 38 and 37 years on 31.07.2012, namely, the year of the advertisement.

3. The CMO rejected the candidature of the Appellants on 19.10.2012 on the ground that they were only entitled to age relaxation of five years as they were in service and were not entitled to age relaxation on any other ground mentioned in the Explanation to rule 5(3) of the Rules.

4. Aggrieved by the aforesaid order, the Appellants filed Writ Petitions (C)-2039 of 2012, 2036 of 2012 and 2037 of 2012. They were dismissed by the single judge by a consolidated order dated 26.11.2012. Hence, the present three writ appeals.

THE DECISION

5. We have heard counsel for the parties.

Entitled to All Relaxations

6. Rule 5 of the Rules is titled "Patrata" (eligibility) (see Appendix-1) and also provides minimum and maximum age of the candidates. Under rule 5 of the Rules, a candidate, who is an Indian citizen and has completed atleast 17 years of age, is eligible for admission in the ANM course.

7. Rule 5(3) of the Rules also provides the maximum age of the candidate as 30 years on 31st July of the year of advertisement. It along with sub-clauses of its Explanation provides relaxation in the maximum age of a candidate.

8. Rule 5(3) of the Rules provides the age relaxation at three places--one is in the main rule 5(3); and two are in the sub-clauses of the Explanation to rule 5(3):

? The main rule 5(3) provides relaxation of five years for candidate in service;

? Explanation-2 of rule 5(3) provides five years relaxation in case of SC, ST, and OBC candidates;

? Explanation-4 of rule 5(3) provides five years age relaxation in case of widows and divorcees.

9. The Appellants were undoubtedly aged between 35-40 years on 31.07.2012 and the State has given a benefit of five years to them under rule 5(3) of the Rules being in service. There is no dispute about this, but the dispute is whether the Appellants are further entitled to age relaxation mentioned in the Explanation to rule 5(3) or not.

10. According to the State,

? Out of the three relaxations mentioned in rule 5(3) and its Explanation, only one could be availed of by a candidate;

? The Appellants have availed the benefit of relaxation of five years of being in service;

? They were not entitled to any other relaxation mentioned in the Explanation to rule 5(3);

? They could take benefit of the age relaxation under the Explanation to rule 5(3) only if they had not got age relaxation under rule 5(3) of the Rules.

11. According to the counsel for the Appellants:

? A candidate is entitled to the benefit not only of the relaxation under rule 5(3), but is further entitled to relaxation if she qualifies under any provision of the Explanation;

? Ms. Geeta Verma is a divorcee and she was further entitled to relaxation under Explanation-4 to rule 5(3);

? Ms. Savita Jaamulkar and Ms. Snehlata Soni are SC and OBC candidates. They are further entitled to relaxation of five years under Explanation-2 to rule 5(3).

12. The Rules do not clearly provide answer to the submissions raised by the parties. They are unlike the rules providing maximum age as is in Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 (the 1997-Rules).

13. In the 1997-Rules, the maximum age for the appointment after giving all relaxations is also provided as 45 years. Had this kind of provision there in the Rules or specific clause that a candidate is entitled to age relaxation only once, then the matter would have been simple. However, in absence of the same, let us consider the reasons for providing age relaxation.

14. Sub-rule (5) of rule 5 {5(5)} of the Rules is titled "Sewarat Abhyarthi Ke liye Atirikt Avashyak Yogyata" (Additional qualification for the person already in service). Sub-clause (2) of rule 5(5) {5(5)(2)} of the Rules provides that a candidate should have completed at least five years of service. It is for this reason, that the candidates in service are given five years age relaxation. This is given irrespective of their status.

15. The candidates falling in SC, ST, OBC categories, or divorcees, or widows are given special privilege including benefit of age relaxation, considering their status in the society. SC, ST and OBC are downtrodden classes and special efforts are necessary to uplift them. So is the case of widows and divorcees. They also require special protection; they should be financially independent and stand on their own feet; lest they fall to evil design of the society.

16. In case no benefits are given to the downtrodden, widows, and divorcees, then they will fall in same class as others. It is permissible but the provision should clearly state so. In case of any doubt, benefit may be given to them as they need special protection.

17. Considering the above aspect, it would be unfair to restrict the advantage of age relaxation to one category. In our opinion, the candidate is entitled to all age relaxation if she falls in more than one category of age relaxation.

18. It is relevant to point out that in other writ petitions in which the grievance was the same, namely, Writ Petition (C)-7100, 7102, 7103 and 7582 of 2011, the State had filed its reply. In paragraphs 4 and 7 they had replied that if a candidate falls into more than one category, then she is entitled to all relaxations mentioned therein. The State has also understood the Rules in the same way as we have interpreted them. It belies to our imagination as to how the State after understanding the rules applying the same in other cases, is not applying the same in these cases.

19. In our opinion,

? The candidate is entitled to all age relaxations, if she qualifies for relaxation under rule 5(3) or any clause of its Explanation;

? The candidature of the Appellants was wrongly rejected.

Relief Granted

20. The Appellants had applied for the ANM course in pursuance of the advertisement dated 17.07.2012. We are informed that this course is of two years and one year period has already completed. In view of this, the Appellants cannot be admitted in this course. Then, the question is, what relief should be granted to them.

21. According to the Respondents, the Director invites applications every year and fresh advertisement is likely to be published soon. We make it clear that in case the Appellants apply in the next advertisement, then their candidature will not be rejected on the ground of age.

AN OBSERVATION

22. It is relevant to point out that the 1997-Rules relates to appointment of women in service. It gives relaxation under different heads. The State itself has provided the maximum limit for the age relaxation. The State will be well advised to do same in this case or clarify the Rules so that unnecessary litigation is avoided.

CONCLUSIONS

23. Our conclusions are as follows:

? The Appellants are entitled to benefit of different relaxations provided under the Rules;

? The order dated 19.10.2012 rejecting their candidature was illegal;

? The Appellants may apply in the next advertisement for admission in the ANM

course and their candidature shall not be rejected merely on the ground of age.

In view of our conclusions, the writ appeals are allowed with the aforesaid observations and directions.

Appendix-I

Rule 5 of the Chhattisgarh Women Multipurpose Health Welfare (ANM) Courses Admission Rules, 2011 is as follows:

HEADLINES

Candidates are entitled to relaxation of age under all categories for ANM course.