
(2001) 09 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4247 of 2001

Ku. Archana Agarwal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 227

Citation : (2001) 4 RLW 374 : (2003) 2 WLN 365

Hon'ble Judges : Asok Parihar, J;A.R. Lakshmanan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—Heard learned Counsel for the petitioner.

2. The petitioner states that she passed her LL.B. examination in year 1987 from Agra University and, thereafter, enrolled as an Advocate with the Bar Council of Uttar Pradesh on 10.2.1990. and is practicing in District Court Mathura. According to her, she is fully eligible to appear in the RJS Examination, 2001 and she has the requisite experience of 3 years as a Lawyer for appearing in the RJS examination. It is also her case that in the Advertisement and in the Rajasthan Judicial Service Rules, the age of relaxation of five years has been provided to the SC/ST candidates only, but the age relaxation to the female candidate has not been provided; though, the age relaxation is provided in all other Rules. The age relaxation for RJS examination has been provided to only SC/ST candidates, which is not only violative of Articles 14,16 and 21 of the Constitution of India, but is also against the national policy as the relaxation of reservation has been provided to the female candidates.

3. The petitioner's counsel invited our attention to the Advertisement dated, 1.6.2001, issued by the Rajasthan Public Service Commission for inviting applications for R.J.S. Competitive Examination, 2001. According to the petitioner, in the advertisement, at Item No. 7 (Age), it has been mentioned that

on 1.1.2002, the applicant should not have completed 35 years of age and proviso has been given that if due to the age the applicant who was eligible, but no examination were conducted in that year, then the applicant will be eligible to appear in the next examination. In the bracket, it has been further stated that for the year 2000 examination were not conducted. Thus, it is submitted that the advertisement issued on 1.6.2001 is liable to be quashed and set aside. With the above averments, the following prayer has been made in the writ petition:

(i) To issue appropriate writ, order or direction directing to non-petitioners for quashing the condition at item No. 7 (age) in the advertisement dated, 1.6.2001 (Annexure-1) for R.J.S. Competitive Examination 2001;

(ii) to issue appropriate writ, order or direction directing the non-petitioners to provide age relaxation for the year 1999 and 2000 for appearing in R.J.S. competitive Examination, 2001;

(iii) to issue appropriate writ, order or direction directing the non-petitioners to provide 5 years age relaxation to the female candidates and direction also may be issued for incorporating the provisions to this effect in R.J.S. Rules;

(iv) to issue appropriate writ, order or direction directing to non-petitioners to provide 3 years age relaxation as 3 years practice as an Advocate have been made mandatory.

A reading of the above prayers would only relate to the relaxation of the age to the female candidates and to quash the conditions at Item No. 7 of the Advertisement dated, 1.6.2001 (Annexure-1)

4. Rule-10 of the Rajasthan Judicial Service Rules, 1955 which deals with the qualifications (Part-IV) reads as follows:

10. Age.--A candidate for recruitment to the Service *(must not have attained the age of xx (35 years) on the first day of January next following the date of commencement of the examination by the commission for recruitment to the Service:

Provided:

(i) that barring the first examination to be held under the provisions of these rules, if a candidate would have been entitled in respect of his age to appear at an examination in any 6 years in which no such examination was held, he shall be deemed to be entitled in respect of his age to appear at the next following examination;

**(ii) provided further that for the examination to be held under the provisions of these Rules in the year 1962, the upper age-limit shall be 35 years;

(iii) that in respect of the first examination to be held under the provisions of these rules the upper age limit shall be 32 years; and

(iv) that the upper age-limit for a candidate of a Scheduled Caste or of a

Scheduled Tribe shall be deemed to have been raised by five years;

(v) that the upper age-limit for the reservists, namely the defence service personnel transferred to the reserve, shall be 50 years;

(vi) that the upper age-limit for the political sufferer shall be 40 years till the 31st December, 1964.

Explanation.--The expression "political sufferer" for the purpose of this rule shall have the meaning assigned to it under clause (iii) of Rule 2 of the Rajasthan Political Sufferers Aid Rules, 1959, published in Part IV of Rajasthan Gazette, dated 18.6.1959;

(vii) That the upper age-limit mentioned above shall be relaxable by a period equal to the service rendered in the N.C.C. in the case of Cadet Instructors and if the resultant age does not exceed the prescribed maximum age limit by more than three years, they shall be deemed to be within the prescribed age limit".

(viii) Provided further that any candidate who is released Commissioned Officer as defined in Clause (e) of Sub-Rule (1) of Rule 3 of the Rajasthan Civil Service (Recruitment of Released Emergency Commissioned and Short Service Commissioned Officers) Rules, 1968, and who had not attained the age of 32 years when he was recruited in the Armed Force of the Union shall be eligible, to appear in the examination to be held under the provisions of these rules in the years 1970, 1971 and 1972 if he fulfills the qualifications laid down in Rule 11.

(ix) Notwithstanding anything contained contrary in these Rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall be 40 years.

In the above rule, there is no provisions for relaxation of age and qualification. Rule 10 prescribes the age. It has been mentioned that on 1.1.2002, the applicant should not have completed 35 years of age. In the instant case, the petitioner was born on 6.12.1965. Thus, admittedly, she has completed 35 years of age on 1.6.2001. The rule clearly prescribes the age that a candidate for recruitment to the service must not have attained the age of 35 years on the first day of January next following the date of commencement of the examination by the Commission for recruitment to the service. That means, the petitioner must not have attained the age of 35 years on 1.1.2002. The petitioner has admittedly crossed the maximum age limit of 35 years on the first day of January next following the date of commencement of the examination by the Commission.

5. It is settled proposition of law that no direction contrary to the rules can ever be issued. Therefore, in our opinion, the petitioner is not entitled for any relief of age relaxation. Fixing the age limit classification/ categorisation/relaxation is primarily for the Legislature or for the statutory authority charged with the duty of framing the terms and conditions of service. If looked at from the point of the authority making it, there is no discrimination and the classification is found to rest on reasonable basis and, therefore, the rule as it stands, has to be upheld.

The Supreme Court in many cases, has held that the Court cannot issue a mandamus to violate the law or to act in violation of the law. The Court cannot perform the legislative functions and that the Court has no power to act contrary to the existing law.

6. In the instant case, the applications are entertained subject to the age as per Rule-10 and other provisions of the rules. By judicial order, the said age limit fixed cannot be nullified. We are, therefore, not inclined to issue any direction or mandamus to the authorities for disobeying the law.

7. The power conferred by Article 226/227 of the Constitution is designed to enforce the rule of law and to ensure that every authority and organs of the State act in accordance with law. It cannot be invoked for directing the authorities who are creatures of the statutes, cannot be directed to ignore or act contrary to Rule-10. As already noticed, the Advertisement, in the instant case, was issued on 1.6.2001. The writ petition was filed by the petitioner on 7.8.2001 and brought for admission only on 7.9.2001 and the examination is scheduled to take place on 16.9.2001. The writ petition, is therefore, liable to be dismissed on the question of laches as well.

8. Consequently, the writ petition fails and is hereby dismissed.