
(2017) 11 RAJ CK 0042
In the Rajasthan High Court
Case No : 14856 of 2017

Manak Chand Sharma S/o Shri Satyanarayan Sharma	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 16-11-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 11 RAJ CK 0042

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : Vikram Choudhary, Anil Bissa

Final Decision : Disposed

Judgement

1. Petitioner(s) has/have preferred the present writ petition mainly with a prayer that the respondents may be directed to accept their off-line application form for the post of Constable/Driver in pursuance of advertisement dated 18.10.2017 and they be further directed to permit the petitioners to appear in the written examination. The petitioners' case is that the respondents have not carried out recruitment for last 3-4 years, during which period they have all become over age. It has also been prayed that the respondents be directed to grant age relaxation to the petitioners.
2. Learned counsel appearing for the petitioner(s) relied upon a Co-ordinate Bench decision of this Court dated 03.05.2017,

rendered in S.B. Civil Writ Petition No.18005/2016 titled as "Rajendra Prasad Jat & Ors. Vs. State of Rajasthan & Ors. and submitted that the petitioners are also entitled for a similar direction, as has been given by a Co-ordinate Bench at Jaipur.

3. Mr. Anil Bissa, learned Additional Government Counsel for the respondents submitted that no direction for grant of relaxation in the upper age limit can be issued as has been held in Catena of decision of this Court and Hon"ble the Supreme Court.

4. To buttress his submission, Mr. Bissa cited a Division Bench judgment dated 25.03.2014 rendered in D.B. Civil Special Appeal (Writ) No.1151/2013 titled as "Rajasthan Public Service Commission Vs. Mahendra Kumar & Ors.".

5. Heard learned counsels for both the sides and considered submissions and judgments cited at Bar.

6. The legal position that this Court, in exercise of its power under Article 226 of the Constitution of India, cannot issue a dictat or writ or mandamus to grant relaxation in upper age limit, is trite. This is also equally settled that it is within the domain of the employer to grant relaxation in upper age cap, keeping into consideration various factors, such as nature of job, fitness, etc.

7. This Court, therefore does not feel inclined to grant any positive direction for grant of relaxation in upper age limit, merely because for more than three years, no recruitment for the post of Constable/Driver has taken place.

8. The Co-ordinate Bench of this Court, vide its judgment dated 03.05.2017 has only permitted the petitioners to submit their representation with the simultaneous direction to the respondents to consider the same.

9. While issuing such direction, with a view to protect the interest of the petitioners, this Court has directed the respondents

to accept their off-line application form; with a word of caution that the same would not create any right or equity in petitioners favour.

10. Looking to the innocuous order passed by the Co-ordinate Bench of this Court at Jaipur, vide its judgment dated 03.05.2017, this Court feels inclined to issue identical directions in the present petition, as under:-

Therefore, in the interest of justice, each petitioner is granted liberty to make representation to the State Government on the anvil of Rule 46 of Rules of 1989 and other co-related rules applicable to the case of relaxation with regard to the age. It is ordered that in case the representation is filed by the petitioner in individual capacity within two weeks from today, then the State Government shall take decision upon the representation so filed within a period of four weeks, independently without persuaded by any observation made by this Court.

It is further ordered that till the representation to be made by the petitioners is considered by the State Government, the respondent shall accept the application form of the petitioners offline and proceed with the process of recruitment considering the application of each petitioner to be in order.

It is further clarified that in case the State Government

reject the representations of the petitioner or petitioners, candidature of the petitioner/petitioners shall be cancelled and they shall be at liberty to assail the decision of the State Government. However, in case the State accepts representation and grant relaxation, the respondents shall proceed ahead with the matter. It is further clarified that the court has only ordered that till the decision of the representation, application of the petitioners shall be accepted offline without commenting upon the rights of the State Government to grant or refuse relaxation qua the age of a candidate."

11. The respondents are directed to decide petitioners representation or take a common decision applicable to all for grant of relaxation in upper age limit, on or before 15.12.2017.

12. The direction to decide the petitioners" representation for grant of relaxation in upper age limit has been issued only with a view to ensure expeditious redressal of their grievance and the same may not be construed to be a direction to decide the petitioners" representation for grant of relaxation in upper age

limit in a particular manner.

13. The writ petition is disposed of.