
(2015) 01 JH CK 0019
In the Jharkhand High Court
Case No : L.P.A. No. 132 of 2014

Manish Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2015) 1 JLJR 802 : (2015) 2 AJR 407

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : Sidhartha Roy, for the Appellant; A. Allam, Sr. S.C. and Nehala Sharmin, J.C. to Sr. S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order delivered by the learned Single Judge in W.P. (S) No. 2236 of 2013 dated 25th February, 2014.

2. It is submitted by the learned counsel for the appellant that this appellant had preferred W.P. (S) No. 2236 of 2013 mainly for the reason that this appellant had applied for the post of Assistant and he had participated in the Combined Secretariat Services Competitive Examination, 2012 and when he had applied for the aforesaid post, he had appeared in an examination of Bachelor of Computer Application (BCA) Degree examination. Thus, when application was preferred by this appellant, he was student of last year of Graduation, but, he got the degree of BCA after the application was preferred by him and, therefore, he was not accepted as a candidate for the post of Assistant and, therefore, he has preferred Writ Petition, which was dismissed by the learned Single Judge and, therefore, this Letters Patent Appeal has been preferred by the original petitioner.

3. It is also submitted by learned counsel for the appellant that requirement of minimum qualification of BCA degree is not on the date of application, but, it

may be interpreted that requirement of BCA degree examination must be as on date of appointment. This aspect of the matter has not been properly appreciated by the learned Single Judge and, hence, this Letters Patent Appeal may kindly be allowed. It is further submitted by learned counsel for the appellant that this appellant was allowed to appear in the written examination, which he had cleared, but, he was not allowed to appear in the viva-voce test (interview). It is further submitted by learned counsel for the appellant that if this Letters Patent Appeal is allowed, still there is vacancy of 100 posts of Assistant with the respondent-State and, therefore, let the respondents be directed to take interview of this appellant and if he is, otherwise, qualifying for selection, he may be appointed as an Assistant.

4. We have heard learned counsel for the respondent-State, who has mainly submitted that as per Clause 4 of the advertisement which is at Annexure-1, the minimum educational qualification for the post of Assistant is Graduation and the last date of application was extended up to 4th July, 2012, therefore, if any candidate is not possessing Graduation degree as on 4th July, 2012, the candidate shall not be qualified for the post of Assistant and admittedly this appellant has cleared his Graduation examination on 22nd August, 2012 and, therefore, he is not qualified for the post, in question. This aspect of the matter has been properly appreciated by the learned Single Judge and, hence, this Letters Patent Appeal may not be entertained by this Court. It is further submitted by learned counsel for the respondent-State that if this Letters Patent Appeal is allowed, then there may be several similarly situated persons like this appellant, who might have cleared Graduation examination after the last date of application, there will be injustice to all such type of candidates who have not applied for the post of Assistant because of Clause 4 of the advertisement and, therefore, if this Letters Patent Appeal is allowed, then chance may be given to all those prospective candidates who have cleared their Graduation examination after 4th July, 2012 (last date for preferring an application for the post of Assistant). This will create lot of inconvenience to the State because now the selection process is over and successful candidates must have also joined the services and, therefore, Clause 4 of the advertisement cannot be interpreted in the manner in which this appellant has argued. Even otherwise also, the minimum qualification as on last date for preferring application may not be changed by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Whenever there is any cut off date for preferring an application with bare minimum qualification, there are bound to be few candidates who are falling on the wrong side of that cut off date, that does not mean that always the Court should allow those candidates, who have obtained Graduation degree after the last date of preferring application. It is further submitted by learned counsel for the respondent-State that neither this Court in exercise of its writ jurisdiction can change the cut off date for getting minimum qualification nor this Court can allow this type of liberal approach, that even if the minimum qualification is obtained, after the cut off date, the candidate

should not be allowed to appear in the examination, may be written or oral. This is not permissible in the eye of law and, hence, this Letters Patent Appeal may not be entertained by this Court.

5. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:

(i) This appellant is an original petitioner, who had preferred W.P. (S) No. 2236 of 2013 mainly for the reason that this appellant had obtained minimum qualification after the last date of preferring an application (4th July, 2012), for the post of Assistant in the Combined Secretariat Services Competitive Examination, 2012.

(ii) The advertisement given by the respondent-Government is at Annexure-1 to the memo of this Letters Patent Appeal. Looking to Clause 4 of the said advertisement, it appears that the minimum qualification for the post of Assistant is Graduation.

(iii) The present appellant (original petitioner) was not Graduate as on last date of preferring application which is 4th July, 2012. This appellant has cleared the said degree examination on 22nd August, 2012. The result of Bachelor of Computer Application (BCA) was declared, of this appellant, after the last date of preferring an application, hence, though he had appeared in the written examination, he was not allowed to appear in viva-voce test. There is no illegality, committed by the respondents for rejection of the candidature of the appellant.

(iv) If this appellant is allowed or his candidature is allowed for the post of Assistant, there may be many more similarly situated candidates who might have obtained the degree after the last date of preferring an application i.e. after 4th July, 2012, there will be injustice to all those candidates because they have never applied for the post, in question, looking to Clause 4 of the advertisement.

(v) Moreover, this Court cannot extend the cut off date of 4th July, 2012 till 22nd August, 2012, for getting minimum qualification, merely because this appellant has got degree on 22nd August, 2012. This misplaced sympathy towards this appellant, which is beyond the law is cruelty to others, if the last date for getting minimum qualification is extended by this Court. There cannot be any extension of such cut off date because there may be few candidates who might have obtained the degree in the month of October 2012 and they may also prefer Writ Petition, praying extension of last date of preferring application. If the last date for getting minimum qualification is extended by this Court upto October, then another applicant will come for further extension. Thus, no selection process can be completed, at all because the Court is extending the last date for getting minimum qualification, every now and then. This will create an absurd situation. Hence, it has been rightly submitted by the learned counsel for the respondent-State that this Court will not extend the last date for getting minimum

qualification especially in exercise of its writ jurisdiction under Article 226 of the Constitution of India and we are in full agreement with the arguments canvassed by the learned counsel for the respondent-State.

(vi) It has been held by the Hon"ble Supreme Court in the case of Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, as under:

"10. The concessional rate of duty can be availed of only by those who satisfy the conditions which have been laid down under the notification. The respondent was not a manufacturer before September 4, 1967 as it had applied for licence only on September 5, 1967 and it could not have made a declaration before September 4, 1967 that its total clearance for the financial year 1967-68 is not estimated to exceed 75 million matches. In the matter of granting concession or exemption from tax, the Government has a wide latitude of discretion. It need not give exemption or concession to everyone in order that it may grant the same to some. As we said, the object of granting the concessional rate of duty was to protect the smaller units in the industry from the competition by the larger ones and that object would have been frustrated, if, by adopting the device of fragmentation, the larger units could become the ultimate beneficiaries of the bounty. That a classification can be founded on a particular date and yet be reasonable, has been held by this Court in several decisions (see *Hatisingh Mfg. Co. Ltd. v. Union of India*, *Dr. Mohammad Saheb Mahboob Medico v. Deputy Custodian-General*, *Bhikuse Yamasa Kshatriya (P) Ltd. v. Union of India* and *Daruka and Co. v. Union of India*. The choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless we can say that it is very wide off the reasonable mark See *Louisville Gas Co. v. Alabama Power Co.* per Justice Holmes."

(Emphasis supplied)

(vii) It has been held by the Hon"ble Supreme Court in the case of A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, as under:

6. There is no dispute that the eligibility of a candidate as to age for appointment as Deputy Superintendent of Police should be determined according to Rule 5 of the A.P. Police Services Rules. It is, therefore, necessary to look first at that Rule. Rule 5 so far as is relevant provides:

"5. Qualifications.-- (A) No person shall be eligible for appointment as a Deputy Superintendent of Police, Category 2 by direct recruitment unless he--

(i) has completed the age of 21 years and had not completed the age of 26 years on the first day of July of the year in which the selection is made.

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7. The rule prescribes the minimum as well as the maximum age for appointment as Deputy Superintendent of Police. Minimum age is 21 years. The candidate must have completed 21 years on the first day of July of the year in which the selection is made. He should not have also completed 26 years as on that day. The Tribunal while construing this rule has observed:

"According to the procedure the process of selection begins with the issue of the advertisement and culminates in forwarding the list to the appointing authority. The essence of the process lies in the preparation of the list. A selection can be said to have been done only when the list is prepared. In this view the eligibility of the candidates as to age has to be determined at this stage."

If the word "selection" is understood in a sense meaning thereby only the final act of selecting candidates with preparation of the list for appointment, then the conclusion of the Tribunal may not be unjustified. But round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to. The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the rule making authority.

8. The appeal therefore, is allowed setting aside the order of the Tribunal."

(Emphasis supplied)

(viii) It has been held by the Hon"ble Supreme Court in the case of Union of India and Another Vs. Sudhir Kumar Jaiswal, , as under:

7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void, as stated in *Metropolis Theater Co. v. City of*

Chicago in which Justice McKenna observed as follows:

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void"

The aforesaid was noted by this Court in *Sushma Sharma v. State of Rajasthan* in which case also reasonability of fixation of a date for a particular purpose had come up for examination.

8. Having known the legal parameters within which we have to function, let it be seen whether fixation of 1st August as cut-off date for determining the eligibility of applicants qua their age can be held to be arbitrary despite preliminary examination being conducted before that date. As to why the cut-off date has not been changed despite the decision to hold preliminary examination, has been explained in paragraph 3 of the special leave petition. The sum and substance of the explanation is that preliminary examination is only a screening test and marks obtained in this examination do not count for determining the order of merit, for which purpose the marks obtained in the main examination, which is still being held after 1st August, alone are material. In view of this, it cannot be held that continuation of treating 1st August as the cut-off date, despite the Union Public Service Commission having introduced the method of preliminary examination which is held before 1st August, can be said to be "very wide off any reasonable mark" or so capricious or whimsical as to permit judicial interference.

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11. For the aforesaid reasons, equity does not demand any favour to be shown to the respondent. The result is that appeal is allowed with costs by setting aside the impugned order of the Tribunal. Cost assessed as Rs. 10,000. The respondent would not be treated or deemed to have passed the examination in question and whatever benefit of the same was given to him pursuant to Tribunal's directions shall stand cancelled."

(Emphasis supplied)

(ix) It has been held by the Hon^{ble} Supreme Court in the case of *Dr. Ami Lal Bhat Vs. State of Rajasthan and others*, , as under:

"5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such

a manner as would avoid hardship in all conceivable cases. As soon as a cutoff date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in *Union of India v. Parameswaran Match Works* and has been reiterated in subsequent cases. In the case of *A.P. Public Service Commission v. B. Sarat Chandra* the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

"when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

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7. In the present case, the cut-off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All Service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut-off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all Service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time-gap between the advertisement and the cut-off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut-off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut-off date is the last date

for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut-off date. But there is no basis for urging that this is the only reasonable cut-off date. Even such a date is liable to question in given circumstances. In the first place, making a cut-off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependent on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fall on the wrong side of such a cut-off date may well contend that the cut-off date is unfair, since the advertisement could have been issued earlier; or in the alternative that the cut-off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut-off date fixed and the manner in which it is fixed. That is why this Court has said in the case of Parameswaran Match Works and later cases that the cut-off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut-off date can be the last date for receiving applications, appears to be without any basis. In our view the cut-off date which is fixed in the present case with reference to the beginning of the calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

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11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.

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17. In the premises the appeals of the candidates who have challenged the cut-off date under the relevant rules are dismissed while the appeals filed by the State of Rajasthan are allowed. The validity of the Rules concerned relating to the cut-off date being fixed with reference to 1st of January of the year following the application is upheld. There will be no order as to costs."

(Emphasis supplied)

(x) It has been held by the Hon"ble Supreme Court in the case of Public Service Commission through Secretary, Madhya Pradesh Public Service Commission etc. Vs. Arvind Singh Chauhan and Others Etc., , as under:

"19. As far as the finding of the High Court is concerned, had the intention of the Commission been to consider 31-3-2003 as a cut-off date for eligibility, it would have been explicitly specified. The Division Bench has referred to the Circular dated 22-3-2002 issued by the Department of General Administration of the State Government. The relevant portion of the Circular reads:

"Keeping in view the increasing problem of unemployed youths in the State and keeping the interest of the unemployed youths in mind, the Government has again considered and has taken a decision that a further relaxation of two years more needs to be given. Meanwhile, thereby now from March 2000 to March 2003, the maximum age-limit for appointment in government services will be thirty-five years."

20. Rule 5(C) of the State Services Examination Rules on which reliance was placed by the appellant states:

"5. (C)(a) A candidate must have attained the age of 21 years and must not have attained the age of 30 years on 1st January next following the date of commencement of the competitive examination."

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23. On account of no record of any concession made on the part of the appellants and considering all the circumstances of the case, it is clear that the respondents were over aged on the specified cut-off dates which makes their application liable for cancellation.

24. In view of the above discussion, the appeals are allowed. The impugned order is set aside. In view of the peculiar facts and circumstances of the case, the parties are directed to bear their own costs."

(Emphasis supplied)

(xi) It has been held by the Hon"ble Supreme Court in the case of University Grants Commission Vs. Sadhana Chaudhary and Others, , as under:

"21. We find considerable force in the aforesaid submissions of Shri Banerjee. It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works at p. 579 and Sushma Sharma

(Dr.) v. State of Rajasthan at p. 269.) In the present case, the date, 31-12-1993, as fixed by notification dated 21-6-1995, in the matter of grant of exemption from the eligibility test for appointment on the post of lecturer has a reasonable basis keeping in view the time taken in submitting the Ph.D. thesis or obtaining M. Phil. degree by candidates who had undertaken the study for Ph.D. or M. Phil. degree prior to the issuance of the 1991 Regulations and the date, 31-12-1993, cannot be held to be capricious or whimsical or wide off the reasonable mark. The High Court of Punjab and Haryana has proceeded on the basis that the cut-off date for the purpose of granting exemption from eligibility test should have nexus with the date of the advertisement inviting applications for appointment on the post of Lecturers. The High Court was in error in taking this view."

(Emphasis supplied)

(xii) It has been by the Hon'ble Supreme Court in the case of State of Bihar and others Vs. Ramjee Prasad and others, , as under:

"8. In the present case as pointed out earlier the past practice was to fix the last date for receipt of applications a month or one and a half months after the date of actual publication of the advertisement. Following the past practice the State Government fixed the last date for receipt of applications as January 31, 1988. Those who had completed the required experience of three years by that date were, therefore, eligible to apply for the posts in question. The respondents and some of the intervenors who were not completing the required experience by that date, therefore, challenged the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court's attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc. It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational. We are, therefore, of the opinion that the High Court was clearly in error in striking down the government's action of fixing the last date for receipt of applications as January 31, 1988 as arbitrary."

(Emphasis supplied)

(xiii) It has been held by the Hon''ble Supreme Court in the case of Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, , from paragraph Nos. 29 to 36, as under:

"29. It is now well settled that for the purpose of effecting promotion, the employer is required to fix a date for the purpose of effecting promotion and, thus, unless a cut-off date so fixed is held to be arbitrary or unreasonable, the same cannot be set aside as offending Article 14 of the Constitution of India. In the instant case, the cut-off date so fixed having regard to the directions contained by the National Industrial Tribunal which had been given a retrospective effect cannot be said to be arbitrary, irrational, whimsical or capricious.

30. The learned counsel could not point out as to how the said date can be said to be arbitrary and, thus, violative of Article 14 of the Constitution of India.

31. It is not in dispute that a cut-off date can be provided in terms of the provisions of the statute or executive order. In University Grants Commission v. Sadhana Chaudhary it has been observed: (SCC p. 546, para 21)

"21. ... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works, SCC at 310 : SCR at p. 579 and Sushma Sharma (Dr) v. State of Rajasthan, SCC at 66 : SCR at p. 269.)"

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

34. In State of W.B. v. Monotosh Roy it was held: (SCC pp. 76-77, paras 13-15)

"13. In All India Reserve Bank Retired Officers Assn. v. Union of India a Bench of this Court distinguished the judgment in Nakara and pointed out that it is for the Government to fix a cut-off date in the case of introducing a new pension scheme. The Court negatived the claim of the persons who had retired prior to

the cut-off date and had collected their retiral benefits from the employer. A similar view was taken in *Union of India v. P.N. Menon*. In *State of Rajasthan v. Amrit Lal Gandhi* the ruling in *P.N. Menon* case was followed and it was reiterated that in matters of revising the pensionary benefits and even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits.

14. In *State of U.P. v. Jogendra Singh* a Division Bench of this Court held that liberalized provisions introduced after an employee's retirement with regard to retiral benefits cannot be availed of by such an employee. In that case the employee retired voluntarily on 12-4-1976. Later on, the statutory rules were amended by notification dated 18-11-1976 granting benefit of additional qualifying service in case of voluntary retirement. The Court held that the employee was not entitled to get the benefit of the liberalized provision which came into existence after his retirement. A similar ruling was rendered in *V. Kasturi v. Managing Director, State Bank of India*.

15. The present case will be governed squarely by the last two rulings referred to above. We have no doubt whatever that the first respondent is not entitled to the relief prayed for by him in the writ petition."

35. In *Vice-Chairman and Managing Director, A.P. SIDC Ltd. v. R. Varaprasad* in relation to "cut-off" date fixed for the purpose of implementation of Voluntary Retirement Scheme, it was said: (SCC p. 580, para 11)

"The employee may continue in service in the interregnum by virtue of clause (i) but that cannot alter the date on which the benefits that were due to an employee under VRS were to be calculated. Clause (c) itself indicates that any increase in salary after the cutoff point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under VRS."

36. The High Court in its impugned judgment has arrived at a finding of fact that the Association had failed to prove any malice on the part of the authorities of the Bank in fixing the cut-off date. A plea of malice as is well known must be specifically pleaded and proved. Even such a requirement has not been complied with by the writ petitioners."

(Emphasis supplied)

(xiv) It has been held by the Hon"ble Supreme Court in the case of *Shankar K. Mandal and Others Vs. State of Bihar and Others*, as under:

"5. Pursuant to the directions contained in the earlier judgment of the High Court as affirmed by this Court, a fresh exercise was undertaken. Since the present appellants were not selected, writ petitions were filed before the High Court. In the writ petition which was filed by fifty-five persons and disposed of by the Division Bench the conclusions were essentially as follows: (1) Some of the writ petitioners (Writ Petitioners 5, 18, 23, 28, 41 and 53) were overage at the time

of their initial appointment and their cases were, therefore, wholly covered by the directions given by the High Court, and they were not entitled to relaxation of age; (2) So far as Writ Petitioners 6, 26, 30 and 55 are concerned, the stand was that they had not crossed the age-limit at the time of making the applications for appointment and, therefore, were within the age-limit at the time of initial appointment and were, therefore, entitled to relaxation of age in terms of the judgment passed by the High Court earlier and affirmed by this Court. This plea was turned down on the ground that what was relevant for consideration related to the age at the time of initial appointment and not making of the application; (3) As regards Writ Petitioner 24, he was underage at the time of appointment. He was permitted to file a representation before the Director of Primary Education and the High Court ordered that his case would be considered afresh; (4) In respect of Writ Petitioners 9 and 17, it was noted that they were refused absorption on the ground that they had not made any application in response to advertisement issued pursuant to the order passed by this Court. Since no material was placed to substantiate this stand and no reasons had been communicated for non-absorption, direction was given to consider representations if made by them within one month from the date of judgment. The said judgment is under challenge in CA No. 916 of 1999. The appellants have taken the stand that in terms of this Court's judgment, a person who was not overage on the date of initial appointment was to be considered. Though it was conceded before the High Court that they were overage at the time of initial appointment, much would turn as to what is the date of initial appointment. The High Court had not considered as to what was the applicable rule so far as the eligibility regarding age is concerned. Learned counsel appearing for the respondent State however submitted that having made a concession before the High Court that they were overage on the date of appointment, it is not open to the appellants to take a different stand. The crucial question is whether appellants were overage on the date of their initial appointment. It is true that there was concession before the High Court that they were overage on the date of initial appointment. But there was no concession that they were overage at the time of making the application. There was no definite material before the High Court as to what was the eligibility criteria so far as age is concerned. No definite material was placed before the High Court and also before this Court to give a definite finding on that aspect. What happens when a cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non-prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court (see *Ashok Kumar Sharma v. Chander Shekhar*, *Bhupinderpal Singh v. State of Punjab* and *Jasbir Rani v. State of Punjab*) are as follows:

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as

appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority."

(Emphasis supplied)

(xv) It has been held by the Hon"ble Supreme Court in the case of Kendriya Vidyalaya Sangathan and Others Vs. Sajal Kumar Roy and Others, , as under:

"10. It is not in dispute that the appellants have framed rules for recruitment known as the Education Code for Kendriya Vidyalayas. Article 45 of the said Code provides for age-limit in the following terms:

"45. Age-limits

The following upper age-limits have been prescribed for recruitment to the posts:

The upper age-limits are relaxable in the case of special categories as follows:

The appointing authority can, in his discretion, relax these age-limits in deserving cases on the recommendation of the Appointing Committee/Selection Committee."

11. The respondents are not members of the Scheduled Caste or Scheduled Tribe. Age-limit is prescribed for appointment to the general category of employees. The upper age-limit for appointment to the post of LDC is 25 years. The advertisement also says so. The Rules, as noticed hereinbefore, are in two parts. The first part talks about the age-limit. The second part provides for relaxation. Such relaxation can be granted for the purpose specified i.e. in favour of those who answered the descriptions stated therein. Relaxation of age-limit even in relation to the Scheduled Caste and the Scheduled Tribe candidates or the retrenched Central Government employees, including the defence personnel is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age-limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As the respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High Court committed a manifest error in issuing the aforementioned directions."

(Emphasis supplied)

(xvi) It has been held by the Hon"ble Supreme Court in the case of Government of Andhra Pradesh and Others Vs. N. Subbarayudu and Others, , as under:

"5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal.)

6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

7. There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cut-off date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counter-affidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide State of Bihar v. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal (vide SCC para 5), Ramrao v. All India Backward Class Bank Employees Welfare Assn. (vide SCC para 31), University Grants Commission v. Sadhana Chaudhary, etc. It follows, therefore, that even if no reason has been given in the counter-affidavit of the Government or the executive authority as to why a particular cut-off date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cut-off date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in Aravali Golf Club v. Chander Hass and in Govt. of A.P. v. P. Laxmi Devi the court must maintain judicial restraint in matters relating to the legislative or executive domain."

(Emphasis supplied)

(xvii) Recently a Bench of this High Court in the case of Raju Kumar Upadhyay and Others Vs. State of Jharkhand and Others, has held as under:

"6. (vi) Maximum age limit and the cut-off date is being fixed, keeping in mind several aspects of the matter. The Courts must be slow in exercising powers of judicial review for change of cutoff date, unless it is capricious and whimsical.

(vii) Fixing the cut-off date for determining the minimum or maximum age is the

discretion of the Rule Making Authority. There cannot be any cut-off date, which can be fixed with so much mathematical accuracy and with so much statistical nicety, which can avoid hardship in all conceivable cases. Once the cut-off date is fixed, some candidates are bound to fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary, unless the cut-off date is so "wide of the mark, as to make it wholly unreasonable."

(Emphasis supplied)

In view of the aforesaid decisions, this Court cannot extend the last date for getting the minimum qualification because if this is allowed, perhaps the selection process will never come to an end because in every month few candidates will get the minimum qualification degree.

(xviii) Whenever there is any cut off date prescribed by the Government for getting minimum qualification or for preferring an application for the Governmental post, there are bound to be few candidates who are falling on the wrong side of the cut off date meaning thereby to there are bound to be few candidates who are obtaining their minimum qualification after the cut off date (may be the last date of preferring an application or sometimes in advertisement, the Government is mentioning that minimum qualification as on 1st July, as on 1st August or as on 1st October etc.). Whenever such type of cut off date is prescribed by the Government or by the "State"-within the meaning of Article 12 of the Constitution of India, the High Court will be extremely slow in altering such type of cut off date. If this type of cut off date is changed, every now and then, upon asking by the person like this appellant, perhaps there will be no need of selection process at all and there cannot be open ended condition for getting minimum qualification. There is bound to be a close date for getting minimum qualification and the close date is also known as cut off date for getting minimum qualification and, therefore, attractive argument canvassed by the learned counsel for the appellant that he has obtained degree examination on 22nd August, 2012 and last date of preferring an application was extended up to 4th July, 2012 and, therefore, the few weeks may be extended by this Court so that this appellant may be qualified for the post of Assistant, this attractive argument canvassed by the learned counsel for the appellant is not accepted by the aforesaid reasons.

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this Letters Patent Appeal as no error has been committed by the learned Single Judge in arriving at a conclusion that cut off date given by the Government or minimum qualification cannot be altered by this Court, otherwise, there will be no need of selection process, at all. We see no reason to take any other view than what is taken by the learned Single Judge. There is no substance in this Letters Patent Appeal and, hence, the same is, hereby, dismissed.