

(2023) 01 OHC CK 0122
In the Orissa High Court
Case No : Writ Petition (C) No.341 Of 2023

Nagen Bhoi & Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 309
Police Act, 1861 — Section 2

Citation : (2023) 01 OHC CK 0122

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : S.K. Samal, S.P. Nath, S. Routray, S. Sekhar, J. Biswal, A.K. Das, M. Panda, B.P. Tripathy

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. The above noted writ applications along with a batch of similar writ applications have been filed by the Petitioners named therein challenging Clause-4.a of the impugned advertisement dated 30.12.2022 issued by the Opposite Party No.4 and for a further direction to suitably modify the said Clause-4.a of the impugned advertisement dated 30.12.2022. The Petitioners have also prayed for a direction to the Opposite Parties to fix/relax the upper age limit, i.e., from 23 to 32 for UR (Five years relaxation in respect of SC/ST/SEBC/ Women candidates) in terms of the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989 as amended by Notification No.771 dated 11.0.2022, i.e., the Orissa Civil Service (Fixation of Upper Age-Limit) Amendment Rules, 2022 and further for a direction to the Opposite Party No.4 to allow the Petitioners to participate in the open competitive examination for recruitment to the post of Constables (Civil) pursuant to the advertisement dated 30.12.2022.

2. On perusal of the most of the writ applications, it appears that the prayers made in each one of the writ application are almost identical. Moreover, the

factual matrix involved in all the aforesaid writ applications are also similar. Since the State Government has already filed a counter affidavit in W.P.(C) No.341 of 2023, the facts of the said writ application is being taken up for analysis. However, all the above noted writ applications were taken up together for hearing and with the consent of the learned counsels appearing in the above noted writ applications, all the above writ applications are being disposed of by the following common order. However, for the sake of brevity and convenience, the factual background of the writ application bearing W.P.(C) No.341 of 2023 is being discussed hereinbelow.

3. The factual background of the above noted writ applications which are almost identical, in brief, is that the Petitioners, who are all qualified unemployed youth, came across an advertisement dated 30.12.2022 issued by the Chairman, State Selection Board, Odisha Police, Cuttack (in short 'SSB') for recruitment of Constables (Civil) in different districts and establishments in Odisha Police. On careful scrutiny of the said advertisement dated 30.12.2022 under Annexure-3 to the writ application, it appears that in total 4790 Constable (Civil) in 35 Districts/ Establishments are sought to be filled up through a recruitment process to be conducted by the SSB. The said advertisement also contains a detail district/ institutionwise breakup as well as categoriwise breakup of number of posts intended to be filled up through a recruitment process to be conducted by the SSB. The advertisement also contains a clause for reservation of 10% post of Constable (Civil) in each district for Home Guards in each recruitment year. It also contains a reservation of 10% in the notified vacancies in each district for Group-D employees of Police Department in each recruitment year. The scale of pay as has been prescribed in the said advertisement has been fixed under the ORSP Rules, 2017 is Level-05 of the Pay Matrix in the Scale of Pay (Rs.21,700-Rs.69,100).

4. The grievance of the Petitioners is mainly confined to the fixation of age criteria under Clause-4.a of the advertisement dated 30.12.2022 under Annexure-3 which is quoted hereinbelow:-

"4. Age – a. The candidate shall not be less than 19 (eighteen) years of age and not more than 23 (twenty three) years of age as on 01.01.2022.

Note: Date of Birth recorded in the High School Certificate such as Board of Secondary Education of Odisha, Cuttack/Central Board of Secondary Education, New Delhi/Indian Council of Secondary Education, New Delhi or equivalent certificate issued by the concerned Board/Council will only be acceptable to the Board.

b. The upper age limit is relaxable by years in respect of the SC/ST/SEBC/ Women candidates. For ex-servicemen, the relaxation shall be for the entire period of service rendered in the Armed Forces.

c. The Home Guard candidates, who intend to apply for the post of Constables (Civil) in District/Establishment, should not be more than 28 years of age as on

01.01.2022. Similarly, the candidates belonging to Group-D in the Police Department should not be more than 43 years of age as on 01.01.2022. However, a candidate can avail only one type of age relaxation as per Rules.

There are several other clauses in the advertisement. However, the same are not relevant for the purpose of adjudication of the dispute involved in the present writ application. As such, the same are not noted here. However, it is pertinent to mention here that as per the advertisement dated 30.12.2022, the submission of online application form which has commenced w.e.f. 30.12.2022 and the last date of submission of online application has been fixed to 21.01.2023 at 11.59 P.M. and the mode of application has been prescribed to be online mode only.

5. On a perusal of the writ petition, this Court observed that the Petitioners possess the minimum qualification of +2 Examination or equivalent examination conducted by the Council of Higher Secondary Education, Odisha or other recognized Board/Council and have registered their name in their respective employment exchanges of the district. Moreover, copies of such certificates have been filed along with the writ applications. It is also pleaded in the writ application that the Petitioners possess all the eligibility criteria except the upper age limit criteria as has been prescribed under the impugned advertisement. In the writ application, it has been stated that due to illegal fixation of upper age limit, the Petitioners have been illegally debarred to apply for the job for which they have been waiting since long.

6. The Petitioners have also categorically stated in the writ application that the last advertisement for recruitment to the post of Constable (Civil) was made in the year 2018 and after a long gap of 4 years, the Opposite Parties have published the impugned advertisement on 30.12.2022. It has also been stated in the writ application that the number of vacancies which have been notified in the impugned advertisement are a net result of the vacancies accumulated over a period of 4 years ,i.e., starting from the year 2018 till end of 2022. Therefore, they have pleaded in the writ application that had the Opposite Parties issued advertisement and conducted recruitment test each year, the Petitioners would have got the opportunity to apply within the prescribed age limit of 23 years for UR Category and with additional 5 years relaxation for the reserved category. As such, the delay and laches on the part of the Opposite Parties have deprived the Petitioners of an opportunity to apply for the advertised posts and to be considered for appointment to such posts.

7. The Petitioners have also referred to the Covid-19 pandemic which had hit the entire nation starting from March, 2020. As a result of the outbreak of Covid-19 pandemic, the Central Government as well as the State Government had been imposing lockdown and shutdown from time to time and the same continued till 2022. Therefore, the examination/selection test to fill-up the vacancies to many posts in the Government services could not take place in the entire country including the State of Odisha. As a result of which, many educated youth, who are eligible to apply for appointment to such posts, were deprived of such

opportunity or got the opportunity at a very belated stage. So far the present Petitioners are concerned, it has been stated that most of them became age barred during such pandemic. As a result of the same, the Government of Odisha took a conscious decision to mitigate the worries of the uneducated youth and, accordingly, the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989 was amended on 7.11.2022 and the following proviso was inserted thereunder:-

“Provide further that for advertisement made during calendar years 2021, 2022 and 2023, the said upper age limit shall be 30 years.”

8. In such view of the matter, the Petitioners by filing the present writ applications have prayed that the upper age limit for entry into the service of Constable (Civil) as has been provided in the impugned advertisement be amended in the light of the amendment made on 7.11.2022 to the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989.

9. In the writ application, it has also been averred that the age relaxation which was granted by the State by amending Rules, 1989 on 7.11.2022 has been extended to almost all services in the State of Odisha and, accordingly, it has been prayed that the same benefit be extended to the present Petitioners. Moreover, it has also been stated in the writ application that the relaxation of upper age limit has already been granted to the candidates, who had applied for appointment to the post of Traffic Constables under the Commerce and Transport Department, Government of Odisha. Further, it has been stated that since age relaxation was not given to the candidates, who have applied to the post of Warder in the Odisha Sub-Ordinate Jail Service, such candidates approached this Court by filing a writ application bearing W.P.(C) No.28377 of 2022. This Court while issuing notice, as an interim measure, allowed such candidates to fill up the form and to appear in the recruitment test.

10. Additionally, it has also been stated in the writ application that the Order-17 of the Odisha Police Service (Method of Recruitment and Conditions of Service of Constables) Order, 2021 (in short “Police Order, 2021”) also provides that the Government has power to grant relaxation in respect of any of the provisions contained in the said order in respect of any class or category of employees. For better appreciation, the said provision is quoted hereinbelow:-

“17. Relaxation: Where the Government on a reference made by the Director General and Inspector General of Police or otherwise, are satisfied that it is necessary or expedient so to do in the public interest, it may by order, for reasons to be recorded in writing, relax any of the provisions of these Order in respect of any class or category of employees.”

11. A counter affidavit has been filed on behalf of the Opposite Parties No.1 to 4. In the said counter affidavit, the Opposite Parties have not disputed the factual aspect with regard to steps taken by the Opposite Parties to fill up vacant posts of 4790 Constables in different districts in the State of Odisha under Odisha Police. They have also admitted about the publication of the advertisement by

the State Selection Board inviting applications from eligible candidates to appear in the recruitment test. Further, it has been stated that the eligibility criteria prescribed in the said advertisement as per the Police Order, 2021, the upper age limit as fixed by the Government for Civil posts in terms of Orissa Civil Services (Fixation of Upper Age-Limit) Rules, 1989 as amended in the year 2022 is not applicable to the post of Constable. The recruitment of Constables by the Odisha Police is governed under the Police Order, 2021 which has been framed by the Government in exercise of power conferred under Section-2 of the Police Act, 1861. Therefore, the relaxation in upper age limit as claimed by the Petitioners is not admissible under the law.

12. In reply to the averment made in paragraph-6 to 8 of the writ application, it has been stated in the counter affidavit that the Orissa Civil Service (Fixation of Upper Age Limit), Rules, 1989 is applicable only to the Recruitment Rules which has been framed by Government in exercising powers conferred under Article-309 of the Constitution of India. The explanation clause under Rule-2 of the said rules is as below:-

"Explanation: The expression "Recruitment Rules" shall mean the rules framed under the proviso to Article 309 of the Constitution of India regulating the recruitment to any Civil Service of Civil Post under the State and include executive orders and instructions issued by the competent authority for that purpose."

Therefore, it has been stated in the counter affidavit that the Police Order, 2021 which has been framed by the Government in exercise of power conferred under Section-2 of the Police Act, 1861 is a special rule under a central statute like the Police Act, 1861. Hence, the upper age limit fixed for Civil post under Rules, 1989, which is admittedly rule framed under the proviso to the Article-309 of the Constitution of India, is not applicable for recruitment to the post of Constable. In the aforesaid context, the provision of Section-2 of the Police Act, 1861 has also been quoted in the counter affidavit and the same is extracted hereinbelow:-

"2. Constitution of the force:- The entire police-establishment under a State Government shall, for the purpose of this Act, be deemed to be one police-force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

[Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the State Government]."

13. With regard to Article-309 of the Constitution of India and the rules framed under the provision to Article-309, it has been stated in the counter affidavit that such provisions in the Constitution are all general in nature and the same does not aim at providing detail rules for recruitment or conditions of service of the Union or of the State service employees. In other words, the power conferred

under proviso of Article-309 of the Constitution of India is an enabling provision and is in the nature of stop gap arrangement. To be more specific, the proviso to Article-309 of Constitution of India could be resort to where there is no regular rule governing the field and the life of the rule framed under proviso to Article-309 of the Constitution of India is upto the time when a regular rule is framed under the relevant statute. Further, the said proviso under Article-309 of the Constitution of India does not cast any objection on the State legislature to enact any rule or on the President or the Governors to make rule with regard to condition of service of civil servant.

14. In the counter affidavit, it has also been highlighted that the framers of the Constitution have consciously separated the field of legislation between the State and the Union. The Police Act, 1861 is a Central Act which comes under List-1 of the 7th Schedule of Constitution of India. Further, under the Police Act, power has been conferred on the State to regulate the service condition of police force by enacting rules by the State legislature. Therefore, the Opposite Parties in the counter affidavit have assailed that the Police Order, 2021 which has been framed by the State Government in exercise of power conferred under Section-2 of the Police Act stands independently and the same also occupies the field and, therefore, the amended provisions of the Rules, 1989 shall have no application to the police service which is governed under the Police Act and the Police Order, 2021. In such view of the matter, it has been specifically averred in the counter affidavit that the amended Rules, 2022 of the Rules, 1989 shall have no application to the recruitment process which is under challenge in the present writ applications.

15. In the counter affidavit, the Opposite Parties have also stated that the orders under Annexure-4 and Annexure-6 are meant for Civil Services and Civil Posts and not for Constable posts in the Police Department. Therefore, the enhancement of upper age limit for entry into Government services upto 38 years by the G.A. Department Notification dated 11.01.2022 read with Notification dated 15.01.2022 for the advertisement made during calendar year 2021, 2022 and 2023 in cases where upper age limit for entry into Government services is 32 years is not applicable to the recruitment into police force as has been done under the impugned advertisement by the State Selection Board.

16. In reply to the averments made in paragraph-9 of the writ application, it has been categorically stated in the counter affidavit that the last recruitment to the post of Constable was held during the year 2018. The present advertisement which was issued on 30.12.2022 has been published by taking into consideration the age as on 01.01.2022. Further, the age criteria prescribed under the Recruitment Rules for recruitment to the rank of Constable is 18 to 23 years. Therefore, there is a gap of 5 years between minimum and maximum age limit prescribed. Since the recruitment which is being made now pursuant to advertisement dated 30.12.2022, the same is after a gap of 4 years from the last recruitment in the year 2018. In the counter affidavit, it has been asserted that

no revision in upper age is required since the gap of 4 years in between two recruitment tests is adequately covered within the minimum and maximum age limit provided in the advertisement. In such view of the matter, the Opposite Parties in the counter affidavit have tried to justify that no prejudice has been caused, as a result of delay in conducting the recruitment test after a gap of 4 years. Moreover, it has also been stated in the counter affidavit that considering the fact that the recruitment is sought to be made to the rank of constable and post recruitment the constable are required to perform field duty. Therefore, it is necessary to recruit young and energetic youth so that they can serve the citizens better by remaining active and agile.

17. Heard Mr. S.D. Routray, learned counsel appearing for the Petitioners in W.P. (C) Nos.314 and 341 of 2023 and Mr. Rajib Rath, learned counsel appearing for the Petitioners in W.P.(C) No.880 of 2023 and also other learned counsels appearing for the Petitioners in the connected writ applications. On behalf of the State-Opposite Parties, Mr. B.P. Tripathy, learned Additional Government Advocate advanced arguments. Perused the pleadings of the parties as well as the written note of submissions submitted by both the sides.

18. Mr. S.D. Routray, learned counsel appearing for the Petitioners in W.P.(C) Nos.314 and 341 of 2023, at the outset, submitted that the fixation of upper age limit in the impugned advertisement under Annexure-3 dated 30.12.2022 (W.P. (C) No.314 of 2023) providing for upper age limit under Clause-4.a of the advertisement and thereby candidates who are not less than 18 years and not more than 23 years as on 01.01.2022 have been allowed to participate in the recruitment test for appointment to the rank of Constable. In the said context, Mr. Routray, learned counsel appearing for the Petitioners in W.P.(C) Nos.314 and 341 of 2023 contended that the fixation of such upper age limit of 23 years is in direct conflict with the Notification issued by the G.A. & P.G. Department dated 11.1.2022. Further referring to the said Notification under Annexure-6, he submitted that the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989 has been amended on 11.1.2022 by inserting following lines through Rule-2 of 1989:-

“Provided further that for advertisement made during calendar years 2021, 2022 and 2023, the said upper age limit shall be thirty eight years.”

In the aforesaid context, learned counsel for the Petitioners submits that the Notification dated 11.01.2022 has been issued in exercise of power conferred under the proviso to Article-309 of the Constitution of India and, accordingly, the existing rule, i.e., Rules, 1989 has been amended and in respect of 3 recruitment year, i.e., 2021, 2022 and 2023, any advertisement to be made in the aforesaid 3 years, the upper age limit shall be 38 years. In such view of the matter, learned counsel for the Petitioner further contended that the Rules, 1989 as amended in the year 2022 being a rule framed under the proviso to Article-309 of the Constitution of India is binding and shall apply to all recruitments in the State of Odisha. He further contended that so far the recruitment to the post of

Constable under the impugned advertisement dated 30.12.2022 is concerned, the aforesaid rule has not been taken into consideration while publishing the advertisement. Thus, learned counsel for the Petitioners contended before this Court that the advertisement which is under challenge in the present batch of writ applications is illegal, arbitrary and the same is required to be set aside.

19. Learned counsel for the Petitioners in W.P.(C) No.314 and 341 of 2023 further argued that in view of the extraordinary situation that arose due to outbreak of Covid-19 pandemic in the entire country including the State of Odisha, no recruitment test was conducted during that time by any of the agencies in the State of Odisha. Keeping the said fact in mind, the G.A. & P.G. Department of Government of Odisha came forward with a Notification dated 11.1.2022 thereby amending the upper age limit as has been prescribed in the Rules of 1989 and, accordingly, for all recruitment in the State of Odisha to which 1989 Rules is applicable, the upper age limit for such recruitment in respect of the recruitment year 2021, 2022 and 2023 have been enhanced to 38 years, i.e. by giving a relaxation of 6 years to all candidates by enhancing the upper age limit from 32 years to 38 years for recruitment to be made in the aforesaid 3 years only.

20. In view of the aforesaid amendment to the Rules, 1989, learned counsel appearing for the Petitioners in W.P.(C) No.314 and 341 of 2023 argued that the Odisha Police has committed a gross illegality by not granting such relaxation in upper age limit to the recruitments in police service including the recruitment sought to be made through the advertisement dated 30.12.2022. It was also argued that the Rules, 1989 being a rule to Article-309 of the Constitution of India is applicable to all recruitment made in the State of Odisha. Therefore, the police services are also included under the said rules and they are bound to follow the rules of 1989 with amendment in the year 2022. On such ground, Mr. Routray, learned counsel appearing for the Petitioners in W.P.(C) No.314 and 341 of 2023 submitted that the impugned advertisement is not in consonance with rules of the year 1989. Accordingly the same is liable to be quashed by this Court.

21. Mr. Rajib Rath, learned counsel appearing for the Petitioners in W.P.(C) No.880 of 2023 asserted the impugned judgment by submitting that the last recruitment to the rank of Constable in the State of Odisha took place in the year 2018. Thereafter, no recruitment test took place till the impugned advertisement published on 30.12.2022. Therefore, it was contended by him that from 2018 to 2022 many eligible candidates have crossed upper age limit without getting an opportunity to participate in the recruitment test. Therefore, such candidates were denied an opportunity to be considered for appointment to the post of Constable although they have all other eligibility criteria to be considered for appointment to the rank of Constable.

22. At the outset, Mr. Rath, learned counsel appearing for the Petitioners in W.P. (C) No.880 of 2023 supplemented the argument advanced by Mr. S.D. Routray, learned counsel appearing for the Petitioners in W.P.(C) Nos.314 and 341 of 2023

with regard to applicability of the Rules, 1989 as amended in the year 2022. He also contended that 1989 Rules specifically deals with fixation of upper age limit and by virtue of the amendment on 11.1.2022, the upper age limit for all categories for appointment in the State of Odisha was enhanced from 32 years to 38 years for recruitment to be made in the years, 2021, 2022 and 2023 recruitment years. It was also argued that the said rule has been enacted under the proviso under Article-309 of the Constitution of India. Therefore, the same will override all other rules in force prescribing the upper age limit including the Police Order, 2021. Furthermore, the amendment to 1989 Rules in the year 2022 being a latter one and a specific rule enacted taking into consideration the Covid-19 pandemic scenario, it was argued that the same will have overriding effect on all other relevant rules in the State of Odisha prescribing the upper age limit to enter into Government service in the State of Odisha. Since the advertisement dated 30.12.2022 has not taken into consideration the amendment to the 1989 Rules while fixing the upper age limit, in such view of the matter, the learned counsel for the Petitioners in W.P.(C) No.880 of 2023 submitted that the fixation of upper age limit at 23 years is illegal and arbitrary.

23. In the aforesaid context, Mr. Rath, learned counsel appearing for the Petitioners in W.P.(C) No.880 of 2023 further contended that the advertisement dated 30.12.2022 under Annexure-7 to W.P.(C) No.880 of 2023, no age relaxation has been granted to the aspiring candidates, although relaxation has been granted by enhancing upper age limit from 32 years to 38 years in respect of all category of Group-C post. He further contended that such relaxation has been extended for recruitment to the post of Traffic Constable by enhancing their upper age limit upto 38 years. The fixation of upper age limit being a policy decision of the State Government, it is not expected from the State Government to act in an illegal and arbitrary manner while taking such policy decision. Further, it was contended that right to be appointed/selected is not a fundamental right. However, right to be considered for such promotion is a right which flows from Article 14 and 16 of the Constitution of India and non-consideration of the candidature for selection can always be a subject matter of judicial review.

24. It was also argued by Mr. Rath that Home Guards have no other source of employment except to avail the reservation extended to them for recruitment to the post of Forest Guard, Traffic Constable, Warder, Constable and Excise Constable. Since no recruitment test took place since last 4½ years due to outbreak of Covid-19 pandemic, therefore, the fixation of upper age limit at 23 years is very harsh, arbitrary and discriminatory and, as such, the same is unsustainable in law. So far Home Guards are concerned, the upper age limit has been confined to 28 years and no age relaxation has been granted to the Home Guards who could not participated in any recruitment test in between 2018 to 2022 as no recruitment test took place during the said period. Therefore, most of the candidates have become over aged without even getting single opportunity to appear in the recruitment test for appointment to the rank of Constable.

Additionally, in the Police Order, 2021 under Order-5 Clause-III, there is a stipulation that any Home Guard deserving to apply for appointment to the post of constable must have completed 3 years of service without any interruption. In sum and substance, Mr. Rath, argued that in view of the eligibility requirement as well as the outbreak of Covid-19 pandemic and non-holding of the recruitment test for last more than 4 years, many genuine and eligible Home Guard candidates have been illegally debarred to participate in the recruitment test.

25. Additionally, it was contended by learned counsel appearing for the Petitioners in W.P.(C) No.880 of 2023 that the Home Guard Rules, 1962 under Annexure-6 provides in Rule-3 that the entry level age is 20 years and the retirement age is 60 years and the educational qualification as prescribed provides that the Home Guard must have passed lower primary examination. On the contrary, the advertisement dated 30.12.2022 and the Police Order, 2021 stipulates that for entry into service under the Home Guard category, a Home Guard must have passed +2 Examination or any Examination equivalent thereto and he must have completed 3 years of enrollment without any interruption on the date of advertisement for recruitment. Further, a Home Guard must not be above the age of 28 years as on 1st day of January of the year of advertisement. In view of the provisions contained in Police Order, 2021, no age relaxation whatsoever provided to the candidates under the Home Guard Category although they were performing their duties even during Covid-19 pandemic days. Such candidates did not get any opportunity in between 2018 to 2022 as no recruitment test was held during those years. As such, it was argued that the impugned advertisement dated 30.12.2022 is grossly discriminatory and arbitrary and unsustainable in law.

26. In course of his argument, Mr. Rath had drawn the attention of this Court to the recruitment process of the Central Government to the post of Constable (GD) in Central Armed Forces (CAPFs), SSF, Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau Examination, 2022 and, accordingly, it was demonstrated before this Court that the Central Government by taking into consideration the extraordinary situation that had arise due to outbreak of Covid-19 in the entire country and, accordingly, age relaxation upto 3 years had been granted by the Central Government in the advertisement which was published in the month of October, 2022. A copy of the notice issued by the Government of India, Ministry of Personnel, Public Grievance and Pension was also placed before this Court. On perusal of the said notice, it appears that the notice was published in October, 2022 wherein the last date of submission of online application was fixed to 30.11.2012 and the examination has been fixed in January, 2023. On scrutiny of the said notice, it appears that the Government of India through concerned Administrative Department had intended to recruit 24369 Constables (GD) in respect of the services mentioned hereinabove. Further, Clause-5 of the said advertisement prescribes the age limit and the same indicates that the age limit is 18 to 23 years as on 01.01.2023. However, the note appended to the Clause-5 reads as follow:-

"Note: Due to unprecedented 'Covid Pandemic', it has been decided by the Government to grant three (03) years age relaxation beyond respective prescribed upper age limit for all categories of the candidates as one-time measure for this recruitment."

It is also relevant to mention here that the aforesaid three years relaxation has been allowed as a one-time measure in addition to the special relaxation granted to the categories of SC/ST, OBC, Ex-Servicemen and other deserving categories as mentioned in the said notice.

Referring to the aforesaid notice published in the year 2022 by the concerned Administrative Department of Government of India for recruitment of Constables in Central Armed Forces, learned counsel for the Petitioners in W.P.(C) No.880 of 2023 submitted that the forces under the Central Government are required to perform much tougher job and under the most adverse conditions. Therefore, physical fitness of the personnel to be recruited under the said notice is a paramount consideration. Even in such background, the Government of India took a policy decision and decided to grant relaxation in upper age limit while recruiting Constables to the Central Forces preliminary on the ground of outbreak of Covid-19 and failure to conduct recruitment examination during such period. Therefore, it was contended that Government of Odisha and Odisha Police by borrowing a leaf from the policy book of the Government of India should have adopted the same in respect of the recruitment in the State of Odisha to the rank of Constable (Civil) in the larger interest of justice. The Opposite Parties having failed to give such age relaxation in the present matter have acted in an unreasonable, arbitrary and discriminatory manner. Therefore, the age fixed in the advertisement dated 30.12.2022 is illegal and arbitrary.

27. Similarly, a copy of the Gazettee Notification dated 25th February, 2013 was also placed before this Court for consideration. By virtue of the said Notification, the concerned department of the Government of Odisha framed a set of rules in exercise of power under proviso to Article-309 of the Constitution of India, which is known as Odisha Transport-Traffic and Enforcement (Method of Recruitment and Conditions of Service) Rules, 2013. On careful scrutiny of the said rules, it appears that the upper age limit for appointment under the said rules under Rule-6 has been provided to be 21 years to 32 years on the 1st day of January of the year of recruitment. Referring to the said Rules, 2013, learned counsel for the Petitioners in W.P.(C) No.880 of 2023 submitted that Traffic Constables coming under Rule-39(e) are to be selected by taking into consideration their eligibility criteria as provided under Rule-6(b), i.e., the candidate must have attained the age of 21 years and must not be above the age of 32 years. Therefore, it was contended by the learned counsel for the Petitioners in W.P.(C) No.880 of 2023 that the conduct of the Opposite Parties in fixing upper age limit at 23 years in the advertisement dated 30.12.2022 is highly discriminatory and illegal.

28. Finally, Mr. Rath, learned counsel for the Petitioners in W.P.(C) No.880 of

2023 concluded his argument by submitted that undoubtedly the fixation of upper age limit is a policy decision of the State Government. However, while fixing such upper age limit, it is not open to the State Government to fix a separate upper age limit, so far the candidates in the present case are concerned and on the contrary, adopting another set of criteria fixing the age limit for recruitment to other services in the State of Odisha. Such conduct of the Opposite Parties is not only opposed to the public interest at large, but the same also creates a hostile discrimination between two sets of employees in Group-C posts, i.e., one for the recruitment to the Civil Post where the upper age limit has been enhanced upto 38 years and another set for recruitment to the post of Constables under Police Order, 2021 wherein the Petitioners age limit has been fixed at 23 years. In such view of the matter, learned counsel for the Petitioners in W.P.(C) No.880 of 2023 urged before this Court that this Court should intervene in the mater and modify the upper age limit as has been provided in the advertisement dated 30.12.2022 as per Annexure-7 and suitable relaxation be granted to the Petitioners and other aspiring candidates.

29. Mr. B.P. Tripathy, learned Additional Government Advocate appearing on behalf of the State-Opposite Parties submitted at the outset that the issue involve in the present writ applications are that (i) whether the Orissa Civil Service (Fixation of Upper Age-Limit) Rules, 1989 as amended in the year 2022 fixing the upper age limit to 32 years is ipso facto applicable to Police Order, 2021; and (ii) whether the Petitioners are entitled to any relief for relaxation of age by Order-17 of Police Order, 2021.

30. Mr. Tripathy, learned Additional Government Advocate while justifying the stand of the State-Opposite Parties, defend the advertisement dated 30.12.2022. He has refereed to clause-v of Order-5 of the Police Order, 2021 which specifically provides the age limit for recruitment to the rank of Constable, i.e., at the time of entry into the service, the age of the candidate must not be less than 18 years of age and not more than 23 years of age on the 1st day of January for the year in which the advertisement for recruitment is published. In the proviso to Order-5 of Police Order, 2021, the relaxation in respect of reserved category candidates has been preserved and protected. In reply to the Petitioners contention that the fixation of upper age in the advertisement dated 30.12.2022 is illegal and arbitrary and the same is contrary to the Rules, 1989 as amended in the year 2022, it was argued that a bare reading of the provisions of the Rules 1989, particularly Rule-2 would reveal that the same is applicable for recruitment in civil services and/or civil posts in pensionable establishments under the State Government and the upper age limit for entry in to Government Service shall, therefore, be 32 years. Therefore, it was contended by Mr. Tripathy, learned Additional Government Advocate that the Rules, 1989 and the amendment thereto are applicable only to Civil Services and Civil posts in pensionable establishments and that the same has no applicability to the facts of the present case. Further, referring to the explanation to Rule-2, it was argued that the expression "recruitment rule" means the rule framed under the proviso to

Article-309 of the Constitution of India regulating recruitment to any civil service or civil post under the State. In such view of the matter, learned Additional Government Advocate contended before this Court that neither the Rules, 1989 nor the amended thereto in the Year 2022 vide Gazettee Notification dated 11.1.2022 giving age relaxation of upto 38 years in respect of the advertisement made for recruitment in the calendar years 2021, 2022 and 2023 is applicable to Civil Services or Civil Posts and that to the same has no applicability, so far present recruitment to the post of Constable (Civil) is concerned.

31. In his reply, Mr. Tripathy, learned Additional Government Advocate argued before this Court that to fill up 4790 vacancies in the rank of Constable in different districts of Odisha, the advertisement dated 30.12.2022 was published by the State Selection Board inviting application form eligible candidates to appear in the recruitment test. He further contended that the advertisement contains clauses as has been provided in the Police Order, 2021. Since the present recruitment process is being carried out under the Police Act and the Police Order, 2021, the provisions of the Rules, 1989 and any amendment thereto has no application to the facts of the present case.

32. It was also contended by Mr. Tripathy, learned Additional Government Advocate that in exercise of power conferred under Section-2 of the Police Act, 1861, the Police Order, 2021 has been framed by the State. Therefore, no question can be raised with regard to the competence of the State of Odisha in enacting the Police Order, 2021. He further contended that the Police Act being a central statute enacted by the Parliament and the said Act by virtue of Section-2 has conferred power on the State to frame any rules to regulate the police service in the State. As such, the upper age limit prescribed in the Police Order, 2021 is applicable to the exclusion of all other rules.

33. Learned Additional Government Advocate, in course of his argument, very fairly admitted that the last recruitment to the post of Constable was in fact made in the year 2018 and thereafter, no recruitment test has taken place till the advertisement dated 30.12.2022 published. Further, Referring to the calculation of age as on 1.1.2022 and the age criteria prescribed in the advertisement, it was argued that the gap between the two recruitments is 4 years, therefore, the age gap of 5 years between the upper and minimum age limit covers all the candidates. Therefore, the Petitioners are no way prejudiced as each one of them must have got one opportunity to participate in the recruitment examination. Further, in view of the aforesaid argument, learned Additional Government Advocate tried to justify that equal opportunity have been provided to all the candidates.

34. Learned Additional Government Advocate referred to Article 309 of the Constitution of India and by reading out the entire article submitted before this Court that the Article-309 of the Constitution of India deals with recruitment conditions of services of persons serving in a Union or a State and that the parent provision in Article-309 of the Constitution of India confers power upon

the Union or the State, as the case may be, to regulate the service condition of their employees. Referring to the proviso under Article 309 of the Constitution of India, it was argued that power has been conferred under the President or the Governors to make rules regulating the recruitment and conditions of service of persons until the appropriate legislature enacts a legislation covering the subject matter in issue. He, therefore, argued that the rules framed either by the President or by the Governors, as the case may be, is a stop gap arrangement and the same shall remain valid till the appropriate legislature enacts the rules in respect of the subject matter in issue. In such view of the matter, learned Additional Government Advocate contended before this Court that the Police Order being a special rule framed by the State in exercise of power under Section-2 of the Police Act shall governed the field and, therefore, the field is already occupied. Hence, the Rule, 1989 as amended in the year 2022 is not allowed to operate on the field which has already been occupied by a regular set of rules enacted by the State legislature.

35. With regard to grant of relaxation in upper age limit, the learned Additional Government Advocate contended that the relaxation in upper age limit which have been granted to the Civil Services/Civil Posts are not applicable to the police service including to the posts of Constable, as is the case of the present writ applications. In support of such contention, learned Additional Government Advocate further argued that the nature of duty performed by the police is very unique and mostly they are required to perform field duties, for which, their physical fitness is of paramount consideration. Therefore, the post in police services cannot be equated with any civil post. In the said context, he also referred to Section-2 of the Police Act, 1861 which provides for constitution of police forces in the State and to impress upon this Court that such forces stand in a different footing than any other civil services/civil posts in the State. Learned Additional Government Advocate further led emphasis on the nature of job performed by the Constables like the law and order and in the Anti-Naxal operations etc. Keeping in view of the level of fitness, i.e. required to perform such type of duties, the legislatures in their wisdom have enacted the police order wherein they have provided the upper age limit to be 23 years at entry into police service under the Police Order, 2021.

36. Learned Additional Government Advocate in support of his contention that the Police Order, 2021 is the only legal root through which recruitment are to be made to the post of Constable (Civil) in Odisha Police Service and no other rule can intervene contrary to conditions laid down in the Police Order, 2021. In the said context, learned Additional Government Advocate relied upon the judgments of the Hon'ble Supreme Court in the cases of B.S. Vandara Vrs. Union of India, reported in 1969 AIR 118; A.B. Krishna and Others v. State of Karnataka and Others, reported in (1998) 3 SCC 495; D.R. Yadav and Another v. R.K. Singh and Another, reported in (2003) 7 SCC 110; and Union of India & Others v. Somasundram Viswanath & Others, reported in (1989) 1 SCC 175. Since the proposition of law sought to be advanced by the learned Additional Government

Advocate is a well settled principle of law and the judgments relied upon by the learned Additional Government Advocate deals with a common proposition of law, this Court deems it proper not to repeat the same here.

37. Learned Additional Government Advocate argued that the grant of relief in any writ application is directly link to the nature of rights possessed by the Petitioners and the said context, he further submitted that a writ of mandamus can only be granted in case where right flows from a statutory provision in favour of the Petitioner or any case where such legal right has been infringed by the conduct of the Opposite Parties.

38. In reply to Order-17 of the Police Order, 2021 providing for grant of relaxation, learned Additional Government Advocate contended that such a power can only be exercised by the Government subject to satisfaction that exercise of such power is necessary and expedient to do so in the public interest. Therefore, the relaxation clause can only be invoked in the present circumstances by the State in a manner as has been provided under Order-17 of the Police Order, 2021. He further contended that such relaxation can not be claimed as a matter of right. It is also contended that the grant of relaxation of rule is an exception and such power is to be exercised sparingly. Further, the power of relaxation of rule cannot be exercised to accommodate a few persons simultaneously denying equal opportunity to all other eligible persons. Accordingly, the learned Additional Government Advocate prayed for dismissal of the writ application.

39. Having heard the learned counsel for the respective parties and upon careful consideration of the rival contentions raised and upon a careful scrutiny of the pleadings as well as the materials placed before this Court for consideration, this Court is of the view that preliminary two questions are involved in the present writ applications which requires to the adjudication are (i) with regard to applicability of 1989 Rules as amended in the year 2022 to the present recruitment which is admittedly being done under the Police Order, 2021 and pursuant to the advertisement dated 30.12.2022; and (ii) whether in view of the admitted position that the last recruitment to the post of Constable (Civil) took place in July, 2018 and also in view of the fact that no recruitment could take place in view of the outbreak of Covid-19 pandemic and similar relaxation have been granted in respect of other services either by the State Government or by the Central Government where such relaxation can be granted to the present Petitioners?

40. So far the first question is concerned, this Court upon a careful perusal of the Rules, 1989 and the amendment in the year 2022 observed that the 1989 Rules is a rule framed under the proviso to Article-309 of Constitution of India by the Governor of Odisha. Such rule clearly provides that the same has been framed to regulate the method of recruitment in Civil Services and/or Civil Post in pensionable establishment under the State-Government. Further, the explanation added to the Rule-2 also provides that the expression "Recruitment Rules" shall

mean the rules framed under the proviso to Article 309 of the Constitution of India regulating the recruitment to any Civil Service of Civil Post under the State and including executive orders and instructions issued by the competent authority. Therefore, there is no doubt that 1989 Rules was framed by the Governor of Odisha under proviso to Article-309 of the Constitution of India to regulate and fix the upper age limit, so far the Civil Services and Civil Posts in the State of Odisha are concerned, whereas the Police Order, 2021 has been framed by the State in exercise of the power conferred under Section-2 of the Police Act which specifically provides that subject to the provisions of Police Act, the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government. Further, in exercise of such power conferred upon the State Government, the State Government has framed the Police Order, 2021 to regulate the pay and all other conditions of service of Constables in the State of Odisha. It is to mention here that the Police Order, 2021 specifically provides that minimum age limit for appointment as a Constable is 18 years and the upper age limit for such appointment shall be 23 years. Accordingly, the Opposite Parties have issued the advertisement dated 30.12.2022 which is in consonance with the eligibility criteria prescribed in Police Order, 2021. On the contrary, the Rules, 1989 being a rule under the proviso to Article-309 of the Constitution of India is basically in the nature of interim arrangement/stop gap arrangement till the regular rules are framed by the appropriate legislature. Once the appropriate legislature enacts the rules, then the field of legislation becomes occupied and no other legislation shall governed the field except the relevant rules which have been framed by the appropriate legislature to govern the field. The legislative competence of the State to enact the Police Order, 2021 remains undisputed. Therefore, since a valid enactment in the shape of Police Order, 2021 is holding the field by applying the principle of occupied filed, all other legislations that makes an attempt to encroach upon the said field are void and unconstitutional. In such view of the matter, the 1989 Rules as amended in the year 2022 shall have no application to the present recruitment process and this Court is of the considered view that the Opposite Parties have rightly proceeded by following the Police Order, 2021, so far impugned advertisement is concerned. Accordingly, this Court holds that the 1989 Rules as amended in the year 2022 has no applicability to the facts of the present case.

41. Moving on to the next question, i.e., whether the Petitioners and other eligible aspirants, who have crossed the upper age limit of 23 years, are eligible to get any relaxation in upper age limit needs to be considered at this stage.

42. On perusal of the Police Order, 2021, this Court observes that Order-17 provides for relaxation in applicability of the rules under Police Order, 2021 subject to certain conditions. Further upon a scrutiny of the Order-17 of Police Order, 2021 reveals that where the Government on a reference made by the Director General and Inspector General of Police or otherwise, which means that on a reference made by the Director General and Inspector General of Police or

otherwise upon satisfaction that it is necessary or expedient so to do in the public interest can relax any other provision in the Police Order, 2021. Therefore, Order-17 confers power on the State Government to exercise the power of relaxation on its own or upon getting information from any other source other than reference made by Director General and Inspector General of Police. Therefore, it is not necessary that the Director General and Inspector General has to make a reference in each and every case.

43. After coming to a conclusion that the Government has power to grant relaxation on its own motion or upon getting intimation from any genuine or bona fide source can grant such relaxation subject to the condition that the Government is satisfied that the exercise of such power is in public interest and such relaxation can only be granted by a reasoned order recording therein the reasons of satisfaction and such relaxation can be granted in respect of any of the provisions of the order. Therefore, there is no doubt that the State Government has power to grant such relaxation in the upper age limit provided the same is considered to be in public interest. It is a matter of record that last recruitment test to the rank of Constable took place in the year 2018. Thereafter, no recruitment test whatsoever was held for appointment to the rank of Constables in the State of Odisha. Further, the scenario during the period of Covid-19 pandemic in the entire State is no unknown to anybody. Many candidates who have attained the majority of 23 years, i.e., upper age limit between 2018 to 2022 must not have got the opportunity to appear in the recruitment test. Therefore, they were debarred from getting an opportunity to be considered for selection and appointment to the post of Constable in Odisha Police.

44. In the context of relaxation of upper age limit, learned counsel for the Petitioners relied upon a judgment of this Court in the case of Sujit Kumar Padhy v. State of Odisha & Ors. (W.P.(C) No.36126 of 2021 decided vide judgment dated 23.12.2022). In the aforesaid case, the Petitioners sought for a direction from this Court to the Opposite Parties to accept their application to participate in the recruitment test for the post of Odisha Education Service Officers in Group-B under School & Mass Education Department. The case of the Petitioner was that he was eligible to be appointed such post. However, his application was not accepted as he was over aged by 6 months. On perusal of the judgment, it appears that the age limit in the said case was 21 years to 32 years with 5 years relaxation for special category candidates like S.C. & S.T., S.E.B.C. and Ex-Servicemen etc. The Petitioner who belong to Ex-Servicemen Category applied for the post. However, at the time of application, he was 37 years 6 months old. Therefore, he was over aged by 6 months. In the ultimate analysis, a coordinate Bench of this Court observed that the advertisement which was intended to be issued in the year 2019 has to be postponed owing to the Covid-19 pandemic and, accordingly, it was decided to consider the case as a special case and further taking into consideration the fact that the vacancies are to be filled up every year and the same having not been followed in that case, the coordinate

Bench by referring the judgment of the Hon'ble Supreme Court in the case of High Court of Delhi vs. Devina Sharma (Civil Appeal No.216 of 2022, arising out of SLP (C) No.4452 of 2022) concluded that the case of the Petitioner deserves to be considered sympathetically in the facts and circumstances of the case and, accordingly, allowed the writ petition by granting opportunity to the Petitioner as a one-time measure.

45. Learned Additional Government Advocate referred to an order dated 17.03.2022 passed by this Court in W.P.(C) No.6900 of 2022 (Pratap Kumar Bhuyan v. State of Odisha and others) and, accordingly, submitted that the Division Bench of this Court was considering grant of age relaxation to the candidates, who were interested to appear in Odisha Judicial Service (OJS). The Division Bench of this Court vide its order did not interfere and did not grant the relief sought for by the Petitioner on the ground that the Notification of the G.A. Department dated 11.1.2022 ipso facto does not apply to the recruitment of OJS officers and the recruitment of OJS officer are governed by a separate set of rules and the power for relaxation under the 2007 Rules in the shape of Rule-47 reveals that relaxation can only be granted by the Government in consultation with the High Court. On perusal of the said order, this Court is of the considered view that the said order does not indicate the factual background of the case and it only considered the applicability of Notification dated 11.1.2022 to the recruitment of OJS Officers. Further, no issue was finally adjudicated vide order dated 17.3.2022. Therefore, this Court is of the considered view the said oral order cannot be treated as having any binding precedent moreover the facts of the said case are unknown. Therefore, the aforesaid order dated 17.03.2022 has no applicability to the facts of the present case.

46. In the case of High Court of Delhi (supra), the Hon'ble Supreme Court was called upon to adjudicate the validity of upper age limit of 32 years for appearing in the Delhi Higher Judicial Service Examination and the minimum age requirement of 35 years for appearing in the Delhi Higher Judicial Service Examination. In the Delhi Judicial Service Rules, 1970, it has been stipulated that a candidate shall be eligible to appear at the examination if he is not more than 32 years of age on the 1st day of January following the date of commencement of the examination, which was subsequently amended and it was provided that the candidate shall appear at the examination if he is not more than 32 years of age on the 1st day of January of the year in which the applications for appointment are invited. It is noteworthy to mention here that the High Court of Delhi conducted the last examination for recruitment to the DJS in 2019.

47. A common ground was taken before the Court that no examination was held in the year 2020 for institutional reasons and in 2021 due to the onset of the Covid-19 pandemic. The specific stand taken was taken before the High Court that the candidates who would have qualified in terms of the upper age limit of 32 years for DJS would now cease to be eligible by virtue of the fact that the

examination is being held in March 2022. It was argued before the High Court that had the candidate been allowed to appear in the examination on schedule in year 2020 and 2021, then they would have got an opportunity to participate in the examination since they were within the age limit of 32 years for the relevant years. The Delhi High Court, as an interim measure, directed the date for receiving applications shall be rescheduled to a date after the next date of hearing and the date of holding the examination shall also be postponed. Aggrieved by such interim order of a Division Bench of the Delhi High Court, the Delhi High Court approached the Hon'ble Supreme Court by filing the SLP as noted hereinabove. Thereafter, to adjudicate the matter finally, the Hon'ble Supreme Court transferred all the pending writ applications to the Supreme Court and the matter was taken up for final hearing on merit.

48. In paragraph-19 of the judgment of the Hon'ble Supreme Court, it has been observed as follows:-

"19. Having regard to the fact that the recruitment examination for DJS has been last held in 2019 and two recruitment years have elapsed in the meantime, we are of the view that the suggestion of the High Court should be accepted for this year. The consequence of the acceptance of the suggestion by this Court, would be that candidates who would have fulfilled the upper age limit of 32 years, for the recruitment years 202 and 2021 would be eligible to participate in the examination for the ensuing recruitment year 2022. The age bar which they would now encounter is not of their own volition. The real element of hardship faced by such candidates has been remedied by the High Court and there is no reason for this court not to accept the suggestion. The examination cannot however, be postponed indefinitely nor can the candidates who have applied be left in a state of uncertainty. The existing candidates can have no grievance by the widening of the competition. In order to facilitate this exercise, we accept the suggestion of the High Court that the last date for the receipt of application forms shall be extended to 3 April 2022 and the examination shall be held on 24 April 2022. We direct that no impediment shall be caused in the conduct of the examination and no court shall issue any order of stay at variance with or contrary to the above directions of this Court."

49. In paragraph-28 of the judgment of the Hon'ble Supreme Court, it has been observed as follows:-

"28. During the course of the hearing, this Court has been apprised of the fact that several applicants for the higher judicial service examination would have qualified in terms of the upper age limit of 45 years in 2020 or, as the case may be, 2021. As a matter of fact, Mr. A D N Rao indicates that he has instructions to the effect that some of those candidates may already have or would be in the process of moving petitions before the High Court. The reasons which have weighed with this Court in allowing the High Court, as a one-time measure, to permit candidates for the DJS examination who had qualified in terms of the upper age limit of 32 years during the recruitment years 2020 and 2021, should

on a parity of reasoning be extended to candidates for the DHJS examination who would have qualified in terms of the upper age limit of 45 years during the recruitment years 2020 and 2021 during which no examinations could take place for the reasons which have been noticed earlier.”

50. Further, in paragraph-29 of the judgment of the Hon’ble Supreme Court, it has been observed as follows:-

“In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations.”

With the aforesaid conclusion, the Hon’ble Supreme Court extended the last date of receipt of application to 26th March 2022 while the examination was directed to be held on 3rd April 2022, in those terms as has been stated before the court.

51. In view of the judgment delivered by the Hon’ble Supreme Court in the case of Devina Sharma’s case (supra), this Court is of the considered view that the factual background with regard to relaxation of upper age limit is somewhat similar to the facts of the present case. In the present case, admittedly the last recruitment examination was conducted in the year 2018. Although vacancies must have arisen in the years 2018, 2019, 2020, 2021 and 2022, no recruitment examination was held during the aforesaid time. Further, due to onset of Covid-19 pandemic from March, 2020 till mid of 2022, no recruitment examination was held by any of the recruiting agency in the State of Odisha. Therefore, it is not a case that the candidates have missed the opportunity for their own fault, rather to their misfortune, the recruitment test could not be held during the aforesaid period. Keeping in view the mandates of the Constitution of India that everybody must be provided an equal opportunity to participate in the recruitment test for appointment to any Government job, this Court is of the considered view that the ratio laid down in Devina Sharma’ case (supra) squarely applies to the facts of the present case. Accordingly, this Court has no hesitation in directing the Government to grant age relaxation to the aspiring candidates by taking resort to the Police Order, 2021 in respect of the years 2018 to 2022, i.e., for a period of 4 years.

52. Since the benefit of age relaxation is being granted for a particular period to all eligible candidates, therefore, in the considered view of this Court, no candidate is likely to be affected and no prejudice would be caused to the candidates who have already submitted their application in the meantime.

53. Finally, with regard to the apprehension expressed by the learned Additional Government Advocate that by permitting older candidates above 23 years of upper age limit, the Police Department would have to compromise with fitness of the persons likely to be appointed as Constables. Such apprehension according to this Court, is baseless. The candidates found otherwise eligible are required to undergo rigorous physical fitness test. Only after clearing such fitness bar, the

candidates are going to be finally selected and appointed. This Court only proposes to grant age relaxation not the fitness relaxation as would be fixed by the competent body. Therefore, such apprehension of the learned Additional Government Advocate has no substance in it and the same is accordingly discarded.

54. In view of the aforesaid analysis, this Court directs that the Additional Chief Secretary to Home Department, Government of Odisha in exercise of power under Order-17 of the Police Order, 2021 shall grant relaxation in the upper age limit upto 4 years as a one-time measure by taking into consideration the grounds stated hereinabove. It is further directed that there is no necessity to cancel the entire advertisement, instead the State Selection Board shall publish a proposed Corrigendum by granting age relaxation of 4 years by 30th January, 2023. Further it be directed in the said Corrigendum that the application of the candidates, who come within the aforesaid upper age relaxation limit, shall be submitted through both online as well as (offline) manual mode by 10th February, 2023. Accordingly, a fresh date for holding the recruitment examination, as would be found suitable, be fixed afresh in the week commencing 20th February, 2023 and the same be notified by the State Selection Board. The applicants who have already submitted their applications need not apply afresh again.

55. With the aforesaid observations and directions, the writ applications are allowed. However there shall be no order as to cost.

56. Before parting with, this Court would like to make it clear that as an one-time measure and keeping in view the peculiar and extraordinary factual background of the present case, direction has been given to the Government to grant relaxation in the upper age limit for the recruitment examination involved in the present writ applications.

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