

(2014) 09 AHC CK 0180
In the Allahabad High Court
Case No : Writ-A No. 41595 of 2014

Pramod Kumar Singh

APPELLANT

Vs

High Court of Judicature

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 146, 16, 16(1), 187

Citation : (2014) 8 ADJ 496 : (2015) 1 ALJ 705 : (2014) 106 ALR 738 : (2014) 6 AWC 6111 : (2014) 4 UPLBEC 3009

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Vivek Saran, Advocate for the Appellant; Manish Goyal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—The scope and extent of the power of the Chief Justice of a High Court under Article 229 of the Constitution vis-?-vis the Rules framed under the proviso to Article 309 is subject matter of consideration in the instant writ petition. The case of the petitioner is that he is entitled to participate in the selection for the post of Assistant Review Officer, advertised by the High Court on 19.7.2014, notwithstanding the fact that he is 37 years of age, in view of the provisions of Rule 2 of the Uttar Pradesh Recruitment to Services (Age Limit) (Tenth Amendment) Rules, 2012 (for short "Rules, 2012"), whereby, Rule 2 of the Uttar Pradesh Recruitment to Services (Age Limit) Rules, 1972 (for short "Rules, 1972"), was amended, thereby enhancing the upper age limit from 35 to 40 years. It is contended that Rule 25 of the Allahabad High Court Officers & Staff (Condition of Service & Conduct) Rules, 1976 (for short "Rules, 1976"), framed by the Chief Justice of this Court, in exercise of power under Article 229 of the Constitution, prescribing upper age limit to 35 years for candidates for direct recruitment on various posts in the establishment shall stand superseded, in view of Rule 4 of the Rules, 1972, which has overriding effect over any

contrary provision contained in the Service Rules. It is urged that any other interpretation will be violative of Article 14 of the Constitution. Accordingly, it is prayed that the advertisement dated 19.7.2014, to the extent it prescribes upper age limit of 35 years for recruitment to the post of Assistant Review Officer, be quashed and the petitioner be permitted to appear in the selection process. A further relief has been claimed for quashing the advertisement, in so far as it includes 98 backlog posts of Assistant Review Officer, by contending that these posts belong to the recruitment held in the year 2009, which is still subject matter of lis pending before the Apex Court.

2. Per contra, learned counsel for the respondents submitted that the Chief Justice of the High Court is the supreme authority in the matter of appointment of the officers and servants of that High Court and there can be no interference by the Legislature or the executive, except to the extent provided under Article 229 of the Constitution. It is submitted that it is only in case of Article 229(2), which relates to conditions of service, that the power of the Chief Justice is subject to law made by the Legislature. However, in matter of appointments, his authority is supreme. It is submitted that the Rules, 1972, which have been framed under the proviso to Article 309 will not in any manner abridge the power of the Chief Justice under Article 229 of the Constitution or the Rules framed by him in exercise of such power. It is further contended that the employees and staff of the High Court establishment form a separate and distinct class and thus, Article 14 will have no application.

3. I have considered the rival submissions made by learned counsel for the parties. The following issues arise for consideration before this Court :-

(i) What is the scope and power of the Chief Justice under Article 229, in matter of appointments of officers and employees in the establishment of High Court? Is it subject to rules framed under Article 309?

(ii) Whether Rule 25 of the Rules, 1976 offends Article 14 of the Constitution ?

(iii) Whether inclusion of 98 backlog vacancies relating to the recruitment held in the year 2009, in the impugned advertisement, is illegal, and vitiates the selection process ?

I proceed to examine the issues one by one.

4. Issue No. (i) : Power of the Chief Justice under Article 229 vis-?-vis Rules framed under Article 309, in the matter relating to appointments:-

Article 229 is the repository of the power of the Chief Justice in the matter relating to appointments on the posts in the establishment of the High Court. It provides as under :-

229. Officers and servants and the expenses of the High Court-(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct :

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose;

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

Article 229 operates in two different fields : (i) in the matter of appointments [clause (1)], and (ii) in the matter pertaining to conditions of service [clause (2)].

5. A constitutional bench of the Apex Court in the case of *M. Gurumoorthy Vs. Accountant-General, Assam and Nagaland and Others*, considered the power of the Chief Justice of a High Court, in the matter relating to appointments of the officers and servants of High Court. It has been held as under :-

"7. We may now refer to the constitutional provisions for determining the power and authority of the Chief Justice of a High Court in the matter of appointment of officers and servants of that court. Clause (1) of Article 229 provides that appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the court as he may direct i.e. his nominee. The proviso empowers the Governor of the State to require by Rule in certain cases to make appointment after consultation with the State Public Service Commission. Clause (2) of the Article contains two important provisions. The first is that conditions of service of officers and servants of a High Court shall be such as may be prescribed by Rules made by the Chief Justice or his nominee. This is, however, subject to the provisions of any law made by the legislature of the State. The second is that the Rules so far as they relate to salaries, allowances and pensions require the approval of the Governor. Clause (3) declares that the administrative expenses of a High Court including all salaries, allowances etc. in respect of officers and servants of the court shall be charged upon the Consolidated Fund of the State. Under Article 202, the Governor shall, in respect of every financial year, cause to be laid before the House or Houses of the legislature of the State a statement of the estimated receipts and expenditure for that year. Under clause (2), the estimates of expenditure shall show separately (a) the sums required to meet expenditure

described by the Constitution as expenditure charged upon the Consolidated Fund of the State and (b) the sums required to meet other expenditure. Clause (3) gives the expenditure which shall be charged on the Consolidated Fund of each State. Clause (f) reads "any other expenditure declared by this Constitution or by the legislature of the State by law to be so charged". Under Article 203, the estimates which relate to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the legislative assembly. Article 204 relates to Appropriation Bills. The bill to provide for appropriation out of the Consolidated Fund of the State must include the expenditure charged on that Fund. Clause (2) prevents any amendment being proposed to an Appropriation Bill which will have the effect, inter alia, of varying the amount or altering the destination of any grant or varying the amount of expenditure charged on the Consolidated Fund of the State. Article 146 contains provisions relating to officers and servants of the Supreme Court in terms analogous to Article 229, the other provisions being also similar.

8. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This was essentially to secure and maintain the independence of the High Courts. The anxiety of the constitution makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the court at the same level as the salaries and allowances of the judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval.

9. It is significant that the Comptroller and Auditor General unlike the Chief Justice of a High Court has not been given the power to prescribe the conditions of service of persons serving in the Indian Audit and Accounts Department in the same terms as are embodied in Article 229(2). There the Rules have to be made by the President after consultation with him. Article 187 may also be noticed. Clause (2) of that Article provides that the legislature of a state may by law regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the House or Houses of legislature. Clause (3) is to the effect

that until provision is made under clause (2) the Governor may, after consultation with the Speaker of the legislative assembly or the Chairman of the Legislative Council, make rules regulating the recruitment and the conditions of service or persons appointed to the secretarial staff of the Assembly of Council. Thus, Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. Apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception; it is abundantly clear, has to be made because the finances have to be provided by the Government and to the extent there is any involvement of expense, the Government has to approve of it. "

(emphasis supplied)

6. Thus, the Apex Court in unequivocal terms has held that in the matters relating to appointments of officers and servants of High Court, covered by clause (1) of Article 229, the authority of the Chief Justice is supreme. Even the Legislature cannot abridge or modify the powers conferred on the Chief Justice. It is only under clause (2) of Article 229, that the rules made by the Chief Justice prescribing conditions of service of officers and servants of the High Court, which are subject to the provisions of law made by Legislature of the State.

7. Rule 25 of the Rules, 1976 framed by the Chief Justice, in exercise of power under Article 229 reads as under :-

"25 Age: A candidate for direct recruitment must have attained the age of 18 years in case of class IV and Routine Grade Clerk posts and 21 years in case of other posts, and must not have attained the age of more than 35 years on the 1st day of July of the year in which advertisement is published:

Provided that the maximum age limit shall, in the case of candidate of the Scheduled Castes, Scheduled Tribes, dependents of Freedom Fighters and Backward classes, be greater by five years:

Provided further that the Uttar Pradesh Government Servants shall be eligible for direct recruitment to the post of Personal Assistant up to the age of 45 years:

Provided also that in the case of members of the High court Staff a relaxation by five years may, in suitable cases be made by the Chief Justice:

Provided also that no candidate shall, by virtue of relaxation in age under this rule, have more than three opportunities to appear at the competitive examination or selection.

Rule 2 and 4 of Rules, 1972 as amended by Rules, 2012, framed under the proviso to Article 309, which are relevant for the controversy in hand, are reproduced below :-

"2. Maximum Age limit.--The upper age limit for recruitment to all such services and posts under the rule making power of the Governor, for which the upper age limit is thirty two years, shall be forty years:

Provided that where advertisement has been made before the commencement of the Uttar Pradesh Recruitment to Services (Age Limit) (Tenth Amendment) Rules, 2012, the upper age limit be as it existed before the commencement of the said rules."

4. Overriding effect on the rules.--(1) Notwithstanding anything to the contrary contained in the relevant Service Rules, these rules shall have effect in all cases except in cases where advertisements for Recruitment have been issued before February 24, 1983.

(2) If advertisement have issued or applications have been invited for selection to any post before the promulgation of the Uttar Pradesh Recruitment to Services (Age Limit) (Second Amendment) Rules 1983, computation of age will be made from the same date which was specified in the advertisement or in the order inviting applications."

8. The Rules, 1972, have been framed by the Governor of the State in exercise of power under proviso to Article 309. These Rules, prescribing upper age limit for recruitment, are evidently in relation to matters concerning appointments. It has already been held above that in the realm of appointment to any post in the establishment of High Court, it is the Chief Justice which is the supreme authority. It may further be noticed that Rule 2 of Rules, 1972, itself stipulates that it applies only to such services and posts, to which the rule making power of the Governor extends. Thus, it will not apply to the posts in the establishment of High Court, in relation to which, the Chief Justice of the High Court, has power to make rules, and not the Governor.

9. Sri Vivek Saran, learned counsel for the petitioner placed reliance on the Apex Court judgment in the case of K.K. Parmar and Others Vs. H.C. of Gujarat thr. Registrar and Others, particularly paragraph 17 thereof, which is quoted below :-

"17. A bare perusal of the purported resolution adopted by the Government of Gujarat on 20.3.1982 clearly shows that the same was applicable only in relation to the Heads of the Departments. A rule framed by the State in exercise of its power under proviso appended to Article 309 of the Constitution of India may be applicable to the employees of the High Court but the executive instructions issued would not be and in particular when the same is contrary to or inconsistent with the rules framed by the Chief Justice of the High Court in terms of Article 229 of the Constitution of India. The resolution dated 20.3.1982 ex facie applies to the cases of appointment by promotion to the posts of Head of the Department. It, therefore, had no application to promotion to the post of Section Officer, who are not Head of the Department."

In that case, the question for consideration before the Apex Court was, whether

the resolution by the State of Gujarat passed on 20.3.1982 confining the zone of consideration for promotion to three times the number of vacancies would override the rules framed by the Chief Justice under Article 229. The Apex Court held that, firstly, the resolution of the State Government dated 20.3.1982, is only in relation to Heads of the Department and not applicable to the Section Officers and second, the executive instructions issued by the Government cannot override the rules framed by the Chief Justice under Article 229 of the Constitution. In the said judgment, there was no controversy regarding interpretation or scope of any rule framed under the proviso to Article 309. Further, the observation made by the Apex Court that "rules framed by the State in exercise of its power under proviso appended to Article 309 of the Constitution may be applicable to the employees of the High Court" was apparently in the context of clause (2) of Article 229, as it was a case of promotion to the post of Section Officer and thus related to the conditions of service, which are subject to law made by the Legislature of the State. However, aforesaid observation of Apex Court, is not referable to the power of Chief Justice under clause (1) of Article 229, and will thus have no application to the facts of the present case.

10. From the discussion made above, it is clear that though the rule making power of the Chief Justice under clause (2) of Article 229 relating to conditions of service is subject to law of Legislature, but in the matter of appointments, Article 229(1) does not brook interference from the Legislature or the Executive, except to the limited extent covered by proviso. Admittedly, present dispute is not covered by the proviso. Accordingly, this Court is of the firm opinion that Rule 2 of the Rules, 2012, framed under the proviso to Article 309, will neither supersede nor in any manner abridge the scope and extent of Rule 25 of the Rules, 1976, framed under Article 229(1) of the Constitution.

11. Issue no. (ii) : Whether Rule 25 of the Rules, 1976 offends Article 14 of the Constitution ?

It is contended that in view of Rules, 1972, as amended, whereby, age limit for various posts in connection with the affairs of the State, has been enhanced to 40 years, similar benefit should be extended for selection to the post under the High Court establishment, as otherwise, it will be violative of Article 14. It is submitted that even if rules framed under Article 309, are not applicable, but the Chief Justice is bound by Article 14 of the Constitution. In this regard, reliance has been placed on larger Bench judgment of this Court reported In Re : Regularisation of Class IV Employees of High Court of Judicature At In Re: Regularization of Class IV Employees, wherein, it is held as under :-

"85. Having given our thoughtful considerations, but with due deference to the aforesaid observations of the full bench in Diwakar Singh's case and the division bench judgment in the case of High Court Vs. Devendra Kumar Pandey (supra), we are the least persuaded to approve the same. The pronouncement appears to be authoritative but it lacks the substance of consideration of Article 14 and Article 16 of the Constitution of India. Howsoever high a dignitary may be, once

the power conferred is governed by the Constitution, the laws made thereunder and the rules framed, then the authority is bound to act within the rules and not ascribe to himself an authority to act beyond it or else the exercise of power will be a camouflage to act arbitrarily in the solemn name of discretion.

86. The higher the dignitary, the more objectivity is expected to be observed. This does not mean that the power should be curtailed, but at the same time it should be stretched only to the width of the constitutional and legal limits. The observance of law has to be calibrated-doing what you need to, no more no less. The presumption and the presupposition of the validity of orders on the administrative side are dependent on the alleged constitutional violation and its judicial scrutiny. They are not immune to law nor to judicial review. The residuary powers of the Chief Justice under Rule 8, Rule 41 and Rule 45 of the 1976 Rules and similar powers under the 2000 Rules are supposed to be exercised notwithstanding contained in the rules, but the same cannot be construed to mean notwithstanding the fundamental rights and obligations under the Constitution. Giving the interpretation as suggested by the said decisions would belittle the esteem of the office of the Chief Justice thereby reducing its respect."

12. The question for consideration before the Larger Bench was, whether the Chief Justice, in exercise of power under Rule 45, which empower him to make such orders as he may consider fit, in respect of service matters of the employees of the High Court, can direct regularisation of services of daily wagers. It is held that any rule or order conferring preferential right in favour of daily wagers, for getting appointed against substantive posts, defeats the rights of the other eligible persons and offends Article 14 and 16 of the Constitution. It was in that context that the larger Bench held that the Chief Justice being a creature of Constitution is not above it and his power is to be exercised within the limitation prescribed by Article 14 and 16 of the Constitution. If it offends the doctrine of equality, enshrined under the Constitution, it could be struck down.

13. In the instant case, the question for consideration is whether by prescribing upper age limit of 35 years for selection on posts under the establishment of High Court, the right of the petitioner under Article 14 and 16 has been offended. It is now well settled that the equality clause contained in Article 14 requires that all persons subject to any legislation should be treated alike under like circumstances and conditions. Equals should be treated equally and unequals should not be treated equally. While that Article forbids class legislation, it does not forbid the classification for the purpose of implementing the right of equality guaranteed by it. (Motor General Traders and Another Vs. State of Andhra Pradesh and Others, The three Judges Bench of the Apex Court in the case of Unikat Sankunni Menon Vs. The State of Rajasthan, , while repelling the claim of higher pay to the members of Rajasthan Secretariat Services in comparison to their counterparts in Rajasthan Administrative Services held as under :-

"6. The methods of recruitment, qualifications, etc., of the two Services are not identical. In their ordinary time-scale, the two Services do not carry the same

grades. Even the posts, for which recruitment in the two Services is made, are, to a major extent, different. The members of the R.S.S. are meant to be employed in the Secretariat only, while members of the R.A.S. are mostly meant for posts which are outside the Secretariat though some posts in the Secretariat can be filled by members of the R.A.S. In such a case, where appointment is made to the posts of Deputy Secretaries of government servants belonging to two different and separate Services, there can arise no question of a claim that all of them, when working as Deputy Secretaries, must receive identical salaries, or must necessarily both be given special pay. It is entirely wrong to think that every one, appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Art. 14 or Art. 16 of the Constitution."

14. In a more recent judgment in case of Nagaland Senior Govt. Employees Welfare Association and Others Vs. The State of Nagaland and Others, the Apex Court turned down challenge to constitutional validity of the Nagaland Recruitment from Public Employees (Second Amendment) Act, 2009, in so far as it provided for retirement from public service on completion of 35 years of service or on attaining 60 years, whichever ever was earlier, by holding that it is not violative of Article 14 qua similar provisions in other States, where the employees are to be superannuated only on attaining the age of 60 years. It was held as under :-

"57. Merely because some employees had to retire from public employment on completion of 35 years of service although they have not completed 55 years of age does not lead to any conclusion that the impugned enactment is arbitrary, irrational, unfair and unconstitutional. The fact that the provision such as the impugned provision that allows the retirement from public employment at the age of 35 years" service is not to be found in other States is of no relevance. As a matter of fact, retirement policy concerning public employment differs from State to State. Kerala retires employees from the public employment at the age of 55 years. In any case there is nothing wrong if the legislation provides for retirement of the government employees based on maximum length of service or on attaining a particular age, whichever is earlier, if the prescribed length of service or age is not irrational."

15. On the other hand, learned counsel for the petitioner placed reliance on the Apex Court decision in the case of Amita Vs. Union of India (UOI) and Another, wherein, the petitioner Amita, a handicapped person challenged the action of the bank in rejecting her application for being provided with a scribe, during her entrance test as Probationary Officer, to be violative of Article 14 and 16 of the Constitution. The Apex Court found as a matter of fact that the nature of duty of a Probationary Officer can be undertaken by visually impaired candidate and some visually impaired candidates were also selected on such posts in the past.

In view of it, it was held that the rejection of her application for appearing in the written examination amounts to violation of Article 14 and 16 of the Constitution. It was observed as under :-

"12..... In this case, the writ petitioner was in the first instance denied equal opportunity as given to other applicants from appearing in the entrance examination on the ground of disability which was not mentioned as a condition in the advertisement. That apart, the writ petitioner, although a visually impaired lady had not asked for any special favour for the post of Probationary Officer for selection in the post of Probationary Officer. The writ petitioner without asking for any favour had only applied for writing the examination for selection not as a reserved handicapped candidate but along with general candidates who were allowed by the Board to sit and write the examination. Since the writ petitioner was similarly situated with other general candidates, and the writ petitioner had not asked for any advantage for being a visually impaired candidate, we failed to understand why she was not permitted to sit and write the examination for the post of Probationary Officer in the Bank.

13. At the risk of repetition, it may be reiterated that writ petitioner fulfilled all the conditions mentioned in the advertisement for the post. The primary object which is guaranteed by Art. 16(1) is equality of opportunity and that was violated by the Board by debarring the writ petitioner from appearing in the examination on the mere fact of disability which was not mentioned in the advertisement and which according to the writ petitioner is not an impediment for the post. We are therefore of the view that the action of the Board was arbitrary, baseless and was in violation of the right of the writ petitioner under Art. 16(1) of the Constitution..... "

16. Even in the said judgment, the Apex Court while considering the scope of Article 14 and 16 ruled that amongst the equals, the law should be equally administered. It does not forbid different treatment of unequals. It was observed as under :-

11..... Before we deal with this aspect of the matter, we may take into consideration yet another aspect of the matter, namely, whether denial of permission to the writ petitioner to sit and write the examination for the post of Probationary Officer in the Bank offends Articles 14 and 16 of the Constitution of India. Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right..... "

(emphasis supplied)

17. It has already been discussed above that an employee appointed in the establishment of the High Court, form a separate and distinct class and are governed by Rules framed under Article 229 of the Constitution. They cannot claim parity with the employees working in connection the affairs of the State. The distinction between the staff and employee of the High Court vis-?-vis those engaged in connection with the affairs of the State, was succinctly brought about in a judgment of this Court in the case of Km. Archana Mehta vs. Hon"ble the Chief Justice, Allahabad High Court and others Kumari Archana Mehta Vs. Hon"ble the Chief Justice, High Court of Judicature at Allahabad and another, by holding as under :-

27. The basic question, therefore, is whether "service" under the Rules, 1976, which is "Public Service" is under "State Government". If these services are not under "State" the said Government Order shall not be at all relevant to the facts of the case in hand.

28. Article 214 to 231, under Part V of the Constitution of India deals with the High Court in the State. Article 229 deals with officers and servant and existence of a High Court.

29. On the other hand, Part XIV of the Constitution deals with "Service under the Union and the States". Article 309 deals with "Recruitment and conditions of Service of persons serving the Union or a "State".

30. Article 309 read along with Article 229 of the Constitution of India clearly shows that services under High Courts are distinct and, dealt differently. These cannot be treated as services under "State".

(emphasis supplied)

18. Thus, keeping in view the constitutional scheme, it is clear that the staff and employees working in the establishment of the High Court cannot be equated with the employees working in connection with the affairs of the State.

19. It is noticeable that the vires of Rule 25 of the Rules, 1976, is not under challenge in the instant writ petition. It is not the case of the petitioner that the upper age limit of 35 years, fixed thereunder is, per se illegal or arbitrary. It has been held by the Apex Court in the case of Jamaluddin Vs. State of Jammu and Kashmir and Others, that the service rule of a particular cadre of service prescribing upper age limit, cannot be relaxed on the ground that higher age limit is prescribed for another cadre of service. In the aforesaid case, the relevant service rules for recruitment of the candidate belonging to schedule caste, schedule tribe and other backward class for the Judicial Service Examination at the Munsif level was 35 years, while in case of Higher Judicial Service Examination, it was relaxable by a period of 2 years. It was held as under :-

"13. We have noted the submissions of both the counsel. We quite appreciate the submission made on behalf of the appellant, and we quite see that there is some kind of anomaly in the sense that there is no age relaxation at the level of Munsifs, though it is so provided at the level of entry into the Higher Judicial Service. The respondents have already given their explanation as to why this distinction is made and according to them the same stands to reason. That apart, the Rules made by the High Court will govern the recruitment at the Munsif level as well as at the level of the Higher Judicial Service, and they have the force of law in view of the provision of Article 234 of the Constitution of India as interpreted by this Court in State of Bihar and Another Vs. Bal Mukund Sah and Others, which is comparable 14. to section 110 of Constitution of Jammu and Kashmir.

14. Shri Ambrish Kumar, learned counsel for the appellant had contended that the provision for age relaxation available for recruitment to the services in the State Government should be deemed to be included in the Judicial Services Recruitment Rules. Sri Pachnanda on the other hand submitted that such a course of action was not permissible.....

15. In the present case, the advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time. That age limit applied to all the candidates. There was no belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them. The earlier resolution of the Full Court of the High Court passed in February 1982, will therefore, have to be read as providing only for the quantum and not for any age relaxation. If there is no age relaxation in the Rules, the same cannot be brought in by any judicial interpretation. In the circumstances we do not find any error in the judgment of the Single Judge or that of the Division Bench."

(emphasis supplied)

20. In view of the conclusion that the services under the High Court establishment form a separate and distinct class, governed by Rules framed by the Chief Justice under Article 229, in contradistinction to the services in connection with the affairs of the State, governed by law made under Article 309, the two cannot be equated with each other. Thus, plea of Article 14 and 16 cannot be pressed for enhancing the age from 35 to 40 years.

21. Similar plea taken in connection with recruitment to the Judicial Services in the State, was turned down by a Division Bench of this Court, in the case of Nitesh Kumar Srivastava and others vs. High Court of Nitesh Kumar Srivastava Vs. High Court of Judicature at Allahabad and Others, The said judgment has been upheld with dismissal of SLP by order dated 24.6.2013. The same analogy would apply to the present case.

22. In view of the foregoing discussion, there is no force in the submission of the petitioner that the impugned advertisement restricting upper age limit to 35

years, is violative of Article 14 and 16 of the Constitution.

23. Issue No. (iii) Whether inclusion of 98 backlog vacancies relating to the recruitment held in the year 2009, in the impugned advertisement, is illegal and vitiates the selection process ?

It is contended that 98 vacancies, which have been advertised, are backlog vacancies of the recruitment held in the year 2009, which was subject matter of challenge in writ petition no. 1922 of 2012 Ashish Singh vs. High Court of Judicature at Allahabad and others. The aforesaid writ petition was allowed and direction was issued for fresh evaluation of type sheets and to provide reservation as per Act and by not confining it to each category. The said judgment was challenged in Special Appeal No. 1753 of 2012 which was allowed by judgment and order dated 20.8.2013. It is submitted that the judgment passed in Special Appeal is under challenge in Civil Appeal Nos. 10524-27 of 2013 and thus, these 98 backlog posts of Assistant Review Officer, should not have been included in the impugned advertisement.

24. Indisputably, special appeal was allowed by judgment dated 20.8.2013. It is not the case of the petitioner that in Civil Appeals, pending before the Apex Court, the judgment passed in Special Appeal, has been stayed. In view of the above, merely because the judgment passed in Special Appeal, is subject matter of challenge before the Apex Court, does not prevent the respondents from advertising these backlog posts nor their inclusion in the impugned advertisement, will in any manner vitiate the selection process. However, needless to mention that the selection against these posts, shall be subject to the decision by the Apex Court in Civil Appeals, pending before it. Accordingly, there is also no force in the contention made by the petitioner, in this regard.

25. In view of the foregoing discussion, the writ petition lacks merit and is dismissed. No order as to costs.