

(2012) 08 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 383 of 2012

Prem Ratan Modi

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Citation : (2013) 1 CDR 76 : (2013) 136 FLR 212 : (2013) LabIC 1039 : (2013) 1 RLW 700

Hon'ble Judges : Narendra Kumar Jain, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Lokesh Mathur, for the Appellant; M.A. Siddiqui, Government Counsel and Mr. Khet Singh for Mr. Tarun Joshi, for the Respondent-RPSC, for the Respondent

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this intra-court appeal, the petitioner-appellant seeks to question the order dated 01.03.2012 passed in CWP No. 1494/2012 whereby the learned Single Judge of this Court declined his prayer for relaxation of age in the recruitment in question and dismissed the writ petition. The petitioner-appellant filed the writ petition aforesaid with reference to an advertisement dated 17.05.2011 as issued by the respondent Rajasthan Public Service Commission, Ajmer ("the RPSC") for holding combined competitive examination for recruitment to the post of Lower Division Clerk ("LDC") under the Rajasthan Secretariat Ministerial Service Rules, 1970 ("the Rules of 1970") and the Rajasthan Public Service Commission (Ministerial and Subordinate Services) Rules and Regulations, 1999 ("the Rules of 1999"). The petitioner-appellant referred to the fact that the maximum age for competing in the examination aforesaid was stated in the manner that a candidate should not be more than 35 years of age as on 01.01.2012 for the services under the RPSC and not more than 35 years of age as on 01.04.2012 under the Secretariat but, an age relaxation of maximum 3 years was provided in terms of the notification

issued by the Government on 23.09.2008. The petitioner-appellant, with his date of birth as 07.06.1973, having completed 35 years of age on 07.06.2008, and not getting the benefit even under the aforesaid relaxation of 3 years for having completed the age of 38 years as on 07.06.2011, stated the grievance against the limited age relaxation allowed in the recruitment in question; and prayed for the following relief:-

A] By an appropriate writ order or direction the respondents may be directed to provide age relaxation of 13 years under the advertisement dated 17/5/2011 for the posts of LDC's and the respondents may be directed not to reject the candidature of the petitioner as being age-barred.

2. The appellant contended in the writ petition that since after the year 1999, no vacancies were notified by the respondents for the aforesaid post of LDC under the Rules of 1970 and the Rules of 1999 and, in this period, a large number of candidates became over-aged for none of their fault; and that appropriate age relaxation ought to be granted for the period elapsed when the respondents failed to carry out the requirements of the said Rules of 1970 and 1999 of yearly determination of vacancies and holding recruitments.

3. The learned Single Judge of this Court referred to the fact that 3 years" age relaxation had been provided under the Rules and with reference to the ratio in the decision of the Hon"ble Supreme Court in the case of Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, observed that the relaxation could be granted only as permissible under the rules and not beyond.

4. Questioning the order aforesaid, the learned counsel for the petitioner-appellant has strenuously argued that the mandate of the law has been that the recruitment would be made every year; and when the respondents failed to carry out the requirement of yearly determination of vacancies and yearly recruitment, the candidates like the petitioner cannot be allowed to suffer for the age bar that has come into operation only for inaction on the part of the respondents.

5. The learned counsel referred to Rule 13 of the Rules of 1999 and submitted that when the requirement had been of yearly determination of vacancies on first day of April every year, the provision whereby the age relaxation is limited only up to 3 years rather runs contrary to the scheme of the Rules. The learned counsel contended that the notification dated 23.09.2008 does not take care of the situation where a direct recruitment does not take place for more than 3 years; and in the present case, where the recruitment had not taken place since last 13 years, limiting the age relaxation to 3 years was wholly unjust and unfair. The learned counsel also referred to clause (6) of Rule 33 of the Rules of 1999 to submit that in case of promotion, it has clearly been provided that the cases of all such persons who would have been eligible in the year to which the vacancies relate, irrespective of the year of holding the meeting of DPC, are to be considered eligible; and such promotions are governed by the criteria applicable in the year to which the vacancies relate. It has been contended that on the

parity, the persons like the petitioners, who were eligible in the year to which the vacancies relate, ought to be considered within the required age-limit.

6. With reference to the decision of the Hon''ble Supreme Court in the case of Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others, , the learned counsel further contended that the respondents cannot deny consideration of appointment in public employment due to lack of notification of the existing vacancies in time.

7. The learned counsel further submitted that the learned Single Judge has not correctly applied the ratio of the decision in Malik Mazhar Sultan's case (supra) wherein the Hon''ble Supreme Court has emphatically laid down that timely steps should be taken by the State Government for filling up the vacant posts. The learned counsel has also referred to the decision of the Hon''ble Supreme Court in the case of State of Maharashtra Vs. Jagannath Achyut Karandikar: AIR 1989 SC 1133 wherein it was held by the Hon''ble Apex Court that due to default of the Government to hold departmental examination in time, the employee cannot be penalized by denying the benefit of promotion particularly when the Government was under an obligation to hold the examination every year. The learned counsel has also referred to the Division Bench decision of this Court in the case of Prakash Chand and Others Vs. That State of Rajasthan and Another, holding that if the vacancies for direct recruitment could not be filled-in on account of administrative difficulties, the candidates who were within the age limit with reference to the vacancies of the particular year, must be treated as eligible even if selection is held subsequently.

8. The learned counsel yet further submitted that the other submission made on behalf of the petitioner in relation to Rule 49 of the Rules of 1999 regarding power of the Government to relax any of the provision regarding the age if the same causes undue hardship, has not been given due consideration by the learned Single Judge. It is, therefore, submitted that the learned Single Judge has erred in proceeding on the assumption that there was no power to relax the condition of age under the Rules and the impugned order deserves to be set aside.

9. Per contra, the learned counsel for the respondents have duly supported the impugned order and particularly submitted that under Rule 14 (ix) of the Rules of 1999, relaxation has been given to the extent of 3 years and the age relaxation cannot be claimed beyond what has been provided in the Rules. The learned counsel have referred to the decision of the Hon''ble Supreme Court in the case of Rajasthan Public Service Commission Vs. Smt. Anand Kanwar & Ors.: Civil Appeal No. 52/1993, decided on 08.02.1995 and submitted that with the ratio of the said decision read with that of Malik Mazhar Sultan's case (supra), the law remains settled that the age relaxation cannot be claimed beyond the Rules and even if the posts had not been filled-in yearwise, a right of age relaxation beyond the Rules if not available.

10. After having given a thoughtful consideration to the rival submissions and having examined the record, we are unable to find any reason to show interference in this matter except making observations so as to leave the matter for consideration of the Government for age relaxation as per Rules, when claimed by the petitioner-appellant by way of a proper representation.

11. In the case of Jagannath Achyut Karandikar (*supra*), the State Government prescribed departmental examinations as a condition precedent for promotion to the cadre of Superintendents; and the examinations were required to be conducted every year; and the officials were required to pass the same within the stipulated period. Those who could not pass within the time frame were to lose their seniority but they were to be promoted as and when qualifying. The Government could not hold the examinations every year but did not pass any order extending the period prescribed for passing the examinations nor promoted the seniors subject to their passing the examination. On the other hand, the juniors who qualified were promoted overlooking the case of the seniors; and the seniors were only promoted upon their passing the examination. In the cadre of Superintendents, however, the Government revised the seniority list so as to reflect the rankings in the lower cadre irrespective of the date of promotion.

12. In the given fact situation, the Hon''ble Supreme Court held that the person who had not exhausted the available chances to appear in the examination could not be deprived of his seniority; and it would be unjust and unreasonable to penalise a person for the default of the Government to hold the examination every year. The Hon''ble Court held that if the examination was not held in any year, the person who had not exhausted all the permissible chances had a right to have his case considered for promotion even if he had completed 9 years of service. The Government, instead of promoting such persons in their turn, made them to wait until they passed the examination. To remove the hardship caused to them, the Government restored their original seniority in the promotional cadre. The Hon''ble Apex Court held that there was nothing improper or illegal in the action of the State Government. The said decision in Jagannath (*supra*) operates in an entirely different arena and has no application to the present case.

13. The reference to clause (6) of Rule 33 of the Rules of 1999 is also misplaced as the same relates to promotion within the department and the principles therein cannot be imported in the case relating to direct recruitment.

14. The decision in Ashok Kumar''s case (*supra*) also operates in a different field where the observations were made against the procedure adopted in appointing the persons in wait list on the vacancies which had arisen subsequently, without notifying the same for recruitment.

15. In our view, the claim as made for age relaxation for the entire period recruitments had not taken place, cannot be countenanced for being not in accord with the Rules.

16. In Malik Mazhar Sultan''s case (*supra*) even when emphasizing on the

requirement of timely determination of the vacancies and timely appointments in relation to the U.P. Judicial Services, so far the age requirement was concerned, the Hon''ble Supreme Court held as under: -

17. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

(Emphasis supplied)

17. Moreover, in Anand Kanwar''s case (supra), even while noticing that the recruitments were not held during the years 1983 to 1989, the Hon''ble Supreme Court said,-

Be that as it may, the High Court was not justified in taking the clock back to the period when unfilled vacancies were existing and holding that since the respondent was eligible on the date when vacancies fell vacant, she continued to be so till the time the vacancies are filled. Due to inaction on the part of the State Government in not filling the posts year-wise, the respondent cannot get a right to participate in the selection despite being over-aged.

(Emphasis supplied)

18. In view of the law laid down by the Hon''ble Apex Court in Malik Mazhar Sultan and Anand Kanwar, the decision in Prakash Chand''s case (supra) as rendered by a Division Bench of this Court is of no help to the appellant.

19. The submission as made by the learned counsel for the appellant that limiting the age relaxation only upto 3 years operates contrary to the provisions of the Rules does not carry force. The aspects of yearly determination of vacancy and even yearly holding of recruitment do not ipso facto lead to the position that every person within the age limit as on the date of occurrence of the vacancy or determination of vacancy ought to be treated within the age irrespective of the other provisions of the Rules and irrespective of the time of recruitment.

20. In the ultimate analysis, age relaxation for the direct recruitment, if to be granted, would be a matter for the Government to prescribe in the relevant Rules; and beyond what has been prescribed, cannot be claimed as a matter of right. It appears that in order to mitigate against the hardship likely to be faced by the prospective candidates but at the same time maintaining the balance of

the requirements of services, the Government has provided age relaxation upto 3 years by way of notifications of amendment as issued on 23.09.2008. Taking for example the recruitment in question, the maximum age limit as prescribed in the Rules is 35 years and it gets extended to 38 years with the relaxation provided. If at all the factor of not holding of recruitment for 13 years is taken into consideration and the relaxation for all the years of not holding recruitment is provided as suggested, it would be something like allowing a person even at about 48 years of age to enter into the service as an LDC. The Government, in its wisdom, if has chosen to restrict the relaxation to 3 years beyond the age as prescribed, it cannot be said that anything unreasonable or irrational has been provided.

21. We need not dilate further on the aforesaid aspect in the present case as the validity of Rules was not in challenge in the writ petition filed by the petitioner. In the existing scheme of Rules, the petitioner was not entitled to the relief as claimed; and hence, the learned Single Judge cannot be faulted in dismissing the writ petition.

22. So far the other submission made by the learned counsel for the appellant regarding relaxation in case of hardship per Rule 49 of the Rules of 1999 is concerned, such an aspect does not appear having been placed for consideration before the learned Single Judge. However, in the interest of justice, it does appear appropriate to observe in this regard that if at all the petitioner-appellant makes, within two weeks from today, specific representation for consideration of his case on the anvil of Rule 49 and other co-related rules applicable to the case for relaxation in regard to the age, the same may be considered by the respondents in accordance with law; and for that matter, any observations made in this order shall not be of an impediment in independent and objective consideration of such representation. Subject to the observations and the requirements foregoing, this appeal fails and is, therefore, dismissed. No costs.