
(2009) 02 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4310 of 2007 (S)

Raghvendra Agrawal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Madhya Pradesh Public Prosecution (Gazetted) Service Recruitment Rules, 1991 — Rule 8
Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 43(1)
Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004 — Rule 8, 8(1)

Citation : (2009) ILR (MP) 1017 : (2009) 2 JLJ 45 : (2009) 2 MPJR 328 : (2009) 2 MPJR 238 : (2009) 2 MPLJ 447

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Jitendra Sharma, for the Appellant; Praveen Newaskar, Deputy Government Advocate and R.D. Jain and Rajmani Bansal for Respondent No. 2., for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J.

The Petitioner before this Court being aggrieved by an order dated 11th July, 2007 passed by the Madhya Pradesh Public Service Commission (hereinafter referred to as the MPPSC) by which his candidature for the post of Lecturer, Textile Design has been rejected has filed this present petition for issuance of appropriate writ or order or direction directing the Respondents to permit the Petitioner to participate in the process of selection by granting the benefit of the age relaxation in the upper age limit as he has served the State of Madhya Pradesh initially as the part-time Lecturer, Textile Design and thereafter as the Guest Faculty in the same subject at Government Women Polytechnic College, Gwalior.

The contention of the Petitioner is that he is holding the recognized Bachelor

Engineering degree as well as the Master of Technology degree and, in the year 2000, an advertisement was issued by the Respondent No. 3, the Principal, Government Women Polytechnic College, Gwalior inviting the applications for the academic session 2000-01 for the post of part-time Lecturer, Textile Design against a vacant post of Lecturer, Textile Design. The Petitioner pursuant to the aforesaid advertisement submitted his application and as he was possessing the qualifications prescribed by the All India Council for Technical Education, he was selected for the post of Lecturer, Textile Design (part-time) by an order dated 20th August, 2001. The Petitioner thereafter has continued as the Lecturer (part-time) and later on the designation of the post was changed and he is continuing as the Guest Faculty (Lecturer) in the subject of Textile Design. The Petitioner is still continuing as the Guest Faculty in the subject of Textile Design at the Government Women Polytechnic College, Gwalior. Relevant certificates to this effect certifying the continuance of the Petitioner as the part-time lecturer/guest faculty (lecturer) in the subject of Textile Design are enclosed as Annexure P-4 and Annexure P-5. It has been further stated by the Petitioner that the State Government in order to fill up the vacant post of lecturer has requested the MPPSC and the MPPSC has thereafter issued an advertisement dated 7 th November, 2005 (Annexure P-2) inviting the applications for various posts and one unreserved vacancy for the post of Lecturer, Textile Design was published and the qualification prescribed for the aforesaid post was a recognized degree in Bachelor of Engineering in the concerned subject with first division. The Petitioner contends that he possesses the requisite qualification for the aforesaid post as not only he is holding the bachelor degree in Engineering but also a master of technology degree in the subject concerned. It has been further stated that an application for appointment was submitted in the prescribed format, however, to his utter surprise by an order dated 11th July, 2007, his candidature has been rejected by the MPPSC on the ground that he is over age. The Petitioner at the time when the advertisement was issued by the MPPSC was aged about 37 years 24 days and, therefore, the MPPSC was of the opinion that the Petitioner is over age as per the advertisement and the recruitment rules. The contention of the Petitioner is that he is working right from the academic session 2000-01 as part-time Lecturer and still continuing in service as the guest faculty and, therefore, his application should not have been dismissed on being over age and, the necessary relaxation should have been granted in his case.

The learned Counsel for the Petitioner has argued before this Court that the Schedule II of the advertisement provides for age relaxation for a period of seven years upto a maximum period of seven years to a retrenched Government servant and his case stands on better footing than the retrenched Government servant, and, therefore, age relaxation should be granted to him.

The learned Counsel for the Petitioner in support of his contention has relied upon a judgment delivered by the apex Court in the case of Union Public Service Commission Vs. Dr. Jamuna Kurup and Others, , and prayed that as the Petitioner is still an employee and is serving the State of Madhya Pradesh, hence

entitled for the age relaxation.

Learned Counsel for the Petitioner has also relied upon a judgment delivered by the apex Court in the case of Dr. Ami Lal Bhat Vs. State of Rajasthan and others, , and has prayed that the Petitioner is entitled for grant of the age relaxation in the light of the judgment delivered by the apex Court.

Learned Counsel for the Petitioner has further relied upon the judgment delivered by this Court at the Main Seat, Jabalpur in the case of Dr. Narayan Dutt Tripathi and Ors. v. The State of M.P. and Ors. Writ Petition No. 882 of 2006 decided on 10th August, 2006 wherein this Court has granted the age relaxation to guest lecturers for the period they have rendered service with the Respondent-State.

The learned Counsel for the Petitioner has also filed a rejoinder and it has been categorically stated in the rejoinder that the course of Textile Design was started in the State of Madhya Pradesh at the Government Women Polytechnic College, Gwalior and it is the only institution in the State of Madhya Pradesh running the said course. It has also been stated that the Petitioner is still working as the guest faculty in the subject of Textile Design and, there is no other regular faculty/lecturer appointed in the State of Madhya Pradesh in respect of the subject Textile Design. The contention of the Petitioner is that he is teaching the subject of Textile Design since the academic session 2000-01 and still continuing as the guest faculty. It has also been stated that pursuant to the advertisement, only two applications were received by the MPPSC, one person was selected for the Textile Design and the person who was selected by the MPPSC has declined to join the service of the State of Madhya Pradesh meaning thereby the post advertised by the MPPSC is still lying vacant.

The Petitioner has filed Annexure P-12 which is a notification issued by the State Government dated 23rd February, 2008 by which the State Government has granted three years relaxation in the upper age limit, i.e., 35 years in cases of examinations conducted by the MPPSC as no regular examination was being conducted by the MPPSC in the preceding years. The contention of the Petitioner is that his case stands on better footing because after introduction of the course in the year 1995, the advertisement was issued for the first time in the year 2005 and, he is continuing to teach the subject right from the academic session 2000-01 as temporary lecturer/ guest faculty in the institution and, therefore, in all fairness relaxation in age should have been granted for considering his candidature for the post of lecturer, textile design.

The MPPSC has filed a reply and it has been stated in the reply that the MPPSC has rightly rejected the candidature of the Petitioner as he was over age. It has also been stated in reply that the appointment to the post of lecturer in various faculties are done keeping in view the provisions of the Madhya Pradesh Technical Education Polytechnic College (Teaching Cadre) Service (Recruitment) Rules, 2004 (hereinafter referred as to "the Rules of 2004") and Rule 8 of the Rules of 2004 provides conditions of eligibility of direct recruitment and Rule 8(c)

provides for the upper age limit. It has been stated in the return that the Petitioner does not fall within the relaxation clause and, therefore, he is over age and his candidature has rightly been rejected. The stand of the MPPSC is that the Petitioner was aged 37 years 24 days and 35 years has been fixed as the upper age limit under the recruitment rules and in the advertisement also. Keeping in view the aforesaid, the Petitioner is not entitled for relaxation in the upper age limit and is not entitled to participate in the process of selection.

Shri R.D. Jain, learned senior counsel assisted by Shri Rajmani Bansal, counsel has argued that the visiting faculty (guest faculty) is not an employee of the State Government and, the Petitioner does not fulfil the condition of age relaxation, and therefore, the petition deserves to be dismissed.

In the present case, Shri R.D. Jain, learned senior counsel assisted by Shri Rajmani Bansal has relied upon a judgment delivered by a Division Bench of this Court in the case of D.R. Sharma v. State of M.R and Anr. 2008 4 MPJRE SN 11 wherein has been held that the age relaxation in the maximum age of appointments is the sole discretion of the Government, and therefore, the Courts cannot interfere in the policy matters.

Shri R.D. Jain, learned senior counsel assisted by Shri Rajmani Bansal has vehemently argued before this Court that this Court does not have jurisdiction to grant the age relaxation in the facts and circumstances of the present case and, the petition deserves to be dismissed by this Court.

The Respondent-State has filed a reply and it has been stated in the reply that no relief has been prayed by the Petitioner against the State Government and, therefore, the writ petition deserves to be dismissed as against the answering Respondent. The Respondent-State has further stated in the return that the Petitioner is not an employee of the State Government as he was engaged as a part-time lecturer/guest faculty from time to time and, therefore, he cannot be granted the age relaxation as per the advertisement. The contention of the Respondent-State is that as the Petitioner is not a regular employee in the regular establishment in the services of the State Government and, therefore, no case is made out for any interference and the writ petition deserves to be dismissed. The Respondent-State has further stated that the Petitioner is not entitled for the appointment/consideration of his candidature keeping in view the provisions of the Rules of 2004 and, therefore, the petition deserves to be dismissed by this Court.

Heard learned Counsel for the parties and perused the record.

In the present case, it is not in dispute that the Petitioner is holding a bachelor degree in Engineering from the Rajasthan University and also holding a post graduate degree of Master of Technology. The Petitioner has also obtained a first division in the Bachelor Engineering degree and fulfils the requisite educational qualification for the post in question as advertised by the MPPSC.

The only dispute before this Court is whether the Petitioner is entitled for the age relaxation as per the provisions of Rule 8 of the Rules of 2004 or not?

In the present case, the course of Textile Design was started in the State of Madhya Pradesh at the Government Women Polytechnic College, Gwalior in the year 1995 for the first time and, it is the only institution which is imparting the education in the subject of Textile Design in the State of Madhya Pradesh. The Principal, Government Women Polytechnic College, Gwalior has issued an advertisement inviting applications from the eligible candidates for the academic session 2000-01 and the Petitioner has submitted his application for appointment as part-time lecturer. The Petitioner by virtue of his merit was selected to the post of part-time lecturer and an appointment order was issued on 20th August, 2001 which is on record as Annexure P-4. The appointment for the post of part-time lecturer was for a period of one academic session, however, the same was continued from time to time though the nomenclature was changed by the Respondents and the same was redesignated as the guest faculty/lecturer. The Petitioner has started to work as the part-time lecturer right from the academic session 2000-01 and still serving the Respondent No. 1-institution till date.

The MPPSC has issued an advertisement for filling up the regular vacancy of Lecturer, Textile Design and the Petitioner has submitted his candidature in response to the advertisement issued by the MPPSC dated 7th November, 2005. However, the candidature of the Petitioner was turned down by the impugned order dated 11th July, 2007. It is also noteworthy to mention that according to the Petitioner only three applications were received by the MPPSC for the post of Lecturer, Textile Design and the Petitioner's application has been rejected by the impugned order dated 11th July, 2007. According to the Petitioner, one other person who was selected by the MPPSC has declined to join the duties for the reasons best known to him and, therefore, the fact remains that the vacancy has not been filled up in pursuance to the advertisement dated 7th November, 2005 issued by the MPPSC.

The State Government in exercise of the powers conferred under Sub-section (1) of Section 43 of the Madhya Pradesh Society Registration Act, 1973 has framed the Rules of 2004. The learned Counsel for the parties have submitted before this Court that these are the Rules which are governing the recruitment in the Government Polytechnic College in the State of Madhya Pradesh in respect of different teaching posts.

Rule 8 of the Rules of 2004 relates to conditions of eligibility for direct recruitment and Rule 8(1)(b) to (k) provides for relaxation in upper age limit in respect of various categories of persons. Rule 8(c) provides for relaxation in upper age limit in respect of the candidates who are serving or who were employees of the Madhya Pradesh Government to the extent and subject to the condition specified in Rule 8 itself. Rule 8 provides for maximum 7 years relaxation in case of the retrenched Government servants provided that the relaxation does not exceed more than 3 years upper age limit as provided under

Schedule IV item No. 53 and the same reflects that for the post of Lecturer, Textile Design (Non-Technical), the upper age limit is 35 years and, therefore, after providing 3 years relaxation, the same becomes 38 years in case of retrenched Government employee. Relevant extract of Rule 8 of the Rules of 2004 reads as under:

Conditions of eligibility of direct recruitment. - In order to be eligible to compete at the selection, a candidate must satisfy the following conditions, namely:

(1) Age. (a)(i) He must have attained the age as specified in column (3) of Schedule IV and not attained the age as specified in column (4) of the said Schedule, on the first day of January, next following the date of commencement of the examination/selection.

(ii) No candidate who has married before the minimum age fixed for marriage shall be eligible for appointment to a service or post.

(iii) No candidate who has more than two living children one of whom is born on or after the 26th January 2001 shall be eligible for appointment to a service or posts.

(b) the upper age limit shall be relaxable up to a maximum of 5 years if a candidate belongs to a Scheduled Castes, Scheduled Tribes and other backward classes.

(c) The upper age limit shall also be relaxable in respect of candidates who are or who have been employees of the Madhya Pradesh Government to the extent and subject to the condition specified below:

A candidate who is a retrenched Government servant will be allowed to deduct from his age the period of all temporary service previously rendered by him up to a maximum limit of 7 years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than three years.

Explanation: The term "retrenched Government servant" denotes a person who was in temporary Government service of this State or of any of the constituent units, for a continuous period of not less than six months and who was discharged because of reduction in establishment not more than three years prior to the date of his registration at the employment exchange or of application made otherwise for employment in Government service.

In the present case, the recruitment rules provide for relaxation of age in case of employees of the State Government though the word "employee" has not been defined under the Rules of 2004. The apex Court in the case of Dr. Jamuna Kurup and Ors. (supra), has dealt with a similar controversy wherein their Lordships were dealing with grant of age relaxation to the employees of the Municipal Corporation of Delhi. The apex Court while deciding the aforesaid case has held that the Delhi Municipal Corporation Act, 1957 does not define the word

"employee" nor in the advertisement the word "employee" was not defined. Their Lordships have held that the persons engaged on contract arrangement, short term and ad hoc employees fall within the ambit of the word "employee" including all persons employed by the MCD, whether permanent or contractual and consequently are entitled for the age relaxation. In the present case also, the recruitment rules, i.e., Rules of 2004 does not define the word "employee". Moreover, the word "employee" has not been defined in the advertisement issued by the MPPSC which has not been disputed by the Respondents. It has also not been disputed by the Respondent-State Government that the Petitioner is serving in the institution (Respondent No. 3) right from the academic session 2000-01 till date. The only stand of the Respondent-State is that the Petitioner is teaching in the institution in question as a guest faculty/part- time lecturer and does not fall in the category of "employee". The Petitioner is in fact teaching in the institution in question and imparting the education to the students in the subject of Textile Design as per the terms and conditions and regulations framed by the All India Council for Technical Education.

The Rules of 2004 grants relaxation in upper age limit to a retrenched Government servant who are no longer in service. In the present case, the Petitioner has continued to teach as the part-time lecturer/guest faculty tight from the academic session 2000-01 and his case stands on better footings. Keeping in view the judgment delivered by the apex Court in the case of Dr. Jamuna Kurup and Ors. (supra), this Court is of the considered opinion that the Petitioner is entitled for the age relaxation for the period of service he has served as the temporary/part-time lecturer/ guest faculty upto a maximum of seven years but not exceeding the upper age limit by 3 years, i.e., at par with the retrenched Government employees as the Rules of 2004 provides for relaxation in respect of the employees of the State Government.

The learned Counsel for the Petitioner has also relied upon a judgment delivered by this Court in the case of Dr. Narayan Dutt Tripathi and Ors. (supra). This Court while deciding the aforesaid case after taking into the judgment delivered by the apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has held as under:

However, as the Petitioners have served for long period as directed in Umadevi's case, State Government to fill up the post by way of regular recruitment as far as possible within 8 months, it is not proper to take the services on the basis of guest lecturers. Petitioners shall be given age relaxation for the period which they have rendered services with the Respondents. Respondents also to consider to give weightage to the experience which is possessed by them. Petitioners also to be considered for the academic sessions which is going on within 4 weeks. It is not proper to remove the earlier persons session wise and to appoint fresh persons every year. Writ petitions are disposed of. No costs.

This Court in the cae of Dr. Narayan Dutt Tripathi and Ors. (supra), has granted the age relaxation for the entire period, the Petitioners therein have served as

the guest lecturers. However, in the present case, the Rules of 2004 itself provides for further age relaxation upto 3 years, and therefore, the relaxation to the extent stated earlier shall be granted to the Petitioner. The judgment delivered by a Division Bench of this Court in the case of D.R. Sharma (supra), and relied by the learned senior counsel for the MPPSC has held that the age relaxation in the maximum age of appointment is the sole discretion of the Government. Their Lordships were dealing with a case of age relaxation in the matter of appointment of the Assistant Public Prosecutors. In the aforesaid case, the appointment to the post of the Assistant Public Prosecutor was regulated under the Madhya Pradesh Public Prosecution (Gazetted) Services Recruitment Rules, 1991 and as per the Schedule III framed under Rule 8, the maximum age limit is 30 years, however, under the advertisement maximum age limit was fixed as 35 years, and therefore, it was held by this Court that age relaxation has already been granted to the candidates appearing in the examination of Assistant Public Prosecutor and they are not entitled for any further age relaxation. This Court while deciding the aforesaid case has rightly held that it is the domain of the State Government to grant age relaxation in case of recruitments. Thus, the case cited by the learned senior counsel is distinguishable in the facts and circumstances of the case as in the present case, the age relaxation is provided under the recruitment rules itself, i.e., Rules of 2004.

Keeping in view the judgment delivered by the apex Court in the case of Dr. Jamuna Kurup and Ors. (supra), there is no distinction between the employees who are working on temporary posts or short term, contractual or ad hoc employees and they are at par with the regular employees in the matter of grant of age relaxation. In the present case, the Petitioner is working as temporary/part-time lecturer/guest faculty right from the academic session 2000-01 till date and, therefore, entitled for age relaxation at par with the Government employees as stated earlier in the preceding paragraphs.

Resultantly, the petition is allowed. The order passed by the MPPSC, Annexure P-1 dated 11th July, 2007 is hereby quashed. The Petitioner has brought to the notice of this Court that the post of Lecturer, Textile Design is still lying vacant and this fact has not been disputed by either of the parties, i.e., State Government and the MPPSC.

The MPPSC is directed to consider the application of the Petitioner for the post of Lecturer, Textile Design by granting the age relaxation upto 38 years and to hold a process of selection in respect of the Petitioner.

The Madhya Pradesh Public Service Commission shall conclude the process of selection by applying the same yardsticks which have been applied in case of identically placed persons, i.e., those who have applied for the post of Lecturer. The entire exercise shall be concluded within a period of three months from the date of receipt of a certified copy of this order. No order as to cost.