

(2017) 04 RAJ CK 0012
In the Rajasthan High Court
Case No : 4417 of 2017

Rajesh Kumar Yadav S/o Shri Bhawani Shanker Yadav	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

[Rajasthan Educational Service Rules, 1970](#), [Rule 38](#) — Rule 38

Citation : (2017) 04 RAJ CK 0012

Hon'ble Judges : Kanwaljit Singh Ahluwalia

Bench : SINGLE BENCH

Advocate : Sandeep Kalwania, S.K. Gupta

Judgement

1. Present petition has been filed under Article 226 of the Constitution of India praying that the State Government be directed to grant relaxation in upper age limit prescribed to apply for the post of Lecturer (School Education).
2. The controversy raised in the present petition is no longer res integra and this court after hearing counsel for the parties qua the post of Librarian Grade-III, after reserving the judgment, had pronounced the same on 09.11.2016 in bunch of writ petitions, lead case being Suresh Chander Meena & Ors. v. Secretary, Rajasthan Subordinate & Ministerial Services Selection Board & Anr., S.B. Civil Writ Petition No.14934/2016.
3. Rule-38 of the Rajasthan Educational Service Rules,

1970 is also applicable to the post of Lecturer (School Education).

4. Operative portion of the judgment rendered by this

court in the case of Suresh Chander Meena & Ors. (supra), reads

as under:-

"In view of settled legal position, which has been propounded by the learned Single Judge in the case of Pawan Kumar Bardiya (supra) and various Division Bench of this Court in the cases of Prem Ratan Modi (supra), Gopal Lal Sharma (supra), Rajasthan Public Service Commission vs. Mahendra Kumar (supra), Manish Sharma (supra) and Hem Raj Gurhani (supra), this Court has no hesitation to hold that this Court cannot pronounce overage candidates as eligible. Hence, this Court cannot come to rescue of the petitioners.

Having held so, this court cannot ignore the rule 38 of the Rajasthan Education Subordinate Service Rules, 1971, pressed into service by the learned counsel for the petitioners.

In the reply filed in the case bearing no. S.B. Civil Writ Petition No.14649/2016 and S.B. Civil Writ Petition No.14803/2016, the respondent no.2 Selection Board has also acknowledged the right of the petitioners to represent to the State Government for relaxation of rules by making the following averment:-

"17 xxxxxxx xxx xxxx

With regard to the rule 38 of the Rajasthan Education Service Rules 1971 petitioners can file representation before the Government for his hardship and Government can decide the representation according to law."

The Selection Board has specifically admitted that the Government has power to relax the rules and therefore, considering the exceptional

circumstances and hardship faced by the candidate that the posts were not advertised for a long period of twenty-three years, petitioners/candidates can be relegated to approach the State Government to relax the rules in their favour, which prescribe maximum age. Prayer to relax the rule to make overage candidate/petitioners eligible can be made to State Government by making a representation, as averred by the Selection Board, the respondent no.2, in Para 17 of the replies filed.

A Division Bench of this Court in Prem Ratan Modi's case (supra) had also permitted the petitioners therein to approach the State Government for relaxation of the rules. Similar liberty was also granted by the learned Single Judge in the case of Pawan Kumar Bardiya (supra). Therefore, in the interest of justice, each petitioner is granted liberty to make representation to the State Government on the anvil of rule 38 of Rules of 1971 and other co-related rules applicable to the case of relaxation with regard to the age. It is ordered that in case the representation is filed by each petitioner in individual capacity within

two weeks from today, then the State Government shall take decision upon the representation so filed within a period of four weeks, independently without persuaded by any observation made by this Court. It is further ordered that till the representation to be made by the petitioners is considered by the State Government, the Selection Board respondent no.2 shall accept the application form of the petitioners offline and proceed with the process of recruitment considering the application of each petitioner to be in order.

It is further clarified that in case the State Government reject the representations of the petitioner or petitioners, candidature of the petitioner/petitioners shall be cancelled and they shall be at liberty to assail the decision of the State Government. However, in case the State accepts

representation and grant relaxation, the respondents shall proceed ahead with the matter. It is further clarified that the court has only ordered that till the decision of the representation, application of the petitioners shall be accepted offline without commenting upon the rights of the State Government to grant or refuse relaxation qua the age of a candidate.

In view of above, the present petitions stand disposed of."

5. Judgment rendered in the case of Suresh Chander

Meena & Ors. (supra) be read as part of this order.

6. Consequently, present petition is disposed of in same

terms as in the case of Suresh Chander Meena & Ors. v. Secretary, Rajasthan Subordinate & Ministerial Services

Selection Board & Anr., S.B. Civil Writ Petition

No.14934/2016, decided on 09.11.2016.