
(2012) 05 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7026/11

Rameshwar Chauhan

APPELLANT

Vs

The Secretary, School Education and Others

RESPONDENT

Date of Decision : 16-05-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 5

Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 — Rule 6

Citation : (2012) 4 MPLJ 626

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Piyush Shrivastava, for the Appellant; Vinita Phaye, GA Respondent No. 1 and Mr. V.P. Khare Respondent Nos. 2 and 3, for the Respondent

Judgement

Hon'ble Shri N.K. Mody, J.—The prayer in the petition is to direct the respondent No. 2 to allow the petitioner to appear in the interview commencing from 29/08/11. Learned counsel for the petitioner submits that an advertisement was published by respondent No. 2 for recruitment of 9 posts of Deputy Director, Public Education on 29/12/08. It is submitted that the petitioner being the member of Schedule Caste Category also applied for the same. It is submitted that the petitioner cleared the written test, as the petitioner was selected vide order dated 11/07/11 provisionally and thereafter date was fixed by the respondent No. 2 for interview. It is submitted that mistakenly the date of birth of the petitioner was mentioned as 10/07/59, while correct date of birth of the petitioner is dated 10/01/57. It is submitted that on 10/03/2000 Rule 6 of Civil Services (General Condition of Service) Rule, 1961 has been amended, according to which no candidate is eligible for appointment to a service on the post who has married before the minimum age fixed for marriage i.e. 21 years. It is submitted that this fact was not disclosed by the respondent No. 2 before appearance in examination. It is submitted that since the marriage of the petitioner took place on 10/05/78 i.e. prior to amendment in the Hindu Marriage Act, which came in force w.e.f. 01/10/1978, therefore, the amendment is not

applicable to the petitioner. It is submitted that since the petitioner was appointed initially on 23/01/1985 in Government service, therefore, amendment in Service Rules, which came in force on 10/03/2000 will not affect the case of the petitioner. It is submitted that the order dated 02/02/2012 passed in WP.No. 1635/08 in the matter of Ajay Kumar Parsandiya Vs. MP Public Service Commission will not affect the case of the petitioner, as the same is distinguishable. It is submitted that this aspect of the case has not been taken into consideration in the matter of Ajay Kumar Parsandiya (Supra) that if the marriage of the petitioner is solemnized prior to the amendment in the Hindu Marriage Act, then what will be the effect. Learned counsel also placed reliance on a decision in the matter of T.R.Kapur Vs. State of Haryana, 1986 (Supp) Supreme Court Cases 584 wherein Hon"ble Apex Court held that benefits acquired under rules made under proviso to Article 309 regarding qualifications for promotion cannot be taken away retrospectively by an amendment to the disadvantage of a Government servant. It is submitted that in the facts and circumstances of the case, petition filed by the petitioner be allowed and necessary directions be issued.

2. Learned counsel for the respondents submits that the petitioner has taken two stands in his petition. First stand of the petitioner is that the date of birth of the petitioner has wrongly been written in the service record as 10/07/59, which ought to have been 10/01/57. It is submitted that thus the petitioner wants to show that the petitioner was of the marriageable age at the time when marriage was solemnized as per amended provisions of Hindu Marriage Act. It is submitted that the other contention of the petitioner is that since the petitioner was in service prior to amendment in Service Rules, therefore, amended Service Rules cannot be used against the petitioner, which is disadvantageous. It is submitted that so far as the date of birth is concerned, whether it is 10/01/57 or 10/07/59 is a disputed fact, which cannot be determined in the writ petition. It is submitted that the petition filed by the petitioner be dismissed.

3. Undisputed facts of the case are as under:-

Sr.No.

Event

Date of Event

1

Date of Birth

10/07/1959

2

Date of marriage

10/05/1978

3

Amendment in Sub-section (iii) of Section 5 of Hindu Marriage Act

01/10/1978

4

Date of Joining in Govt. Service

23/01/1985

5

Date of Amendment of Service Rules

10/03/2000

4. In the matter of Ajay Kumar (Supra) whereby number of petitions were decided, Divisional Bench of this Court held that the provision of the Act for fixing the age of eligibility of marriage was required to be obeyed since 1978 almost 22 years before the impugned sub-rule was inserted. It was also observed that it cannot be held that the petitioners/candidates who were married before insertion of the sub-rule are not affected by it or that it would be unreasonable or arbitrary to hold them disqualified. In the matter of Gendlal Patel Vs. M.P. Public Service Commission passed in WA.No. 112/08 wherein Divisional Bench vide order dated 27/02/08 has upheld the disqualification of a candidate for State service on the ground that he married before the minimum age fixed for marriage despite the fact that his marriage took place much prior to the date of coming into force of sub-rule (5). Section 5 of Hindu Marriage Act, 1955 reads as under:

5. Conditions for a Hindu Marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) xxxx

(ii) xxx

(iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage.

6. Sub-clause (iii) of Section 5 has been amended w.e.f. 02/10/78. Rule 6 of the Civil Services Rules, 1961 has been amended w.e.f. 10/03/2000. The date of marriage of the petitioner is 10/05/78. Thus, on 10/05/78 it was not necessary for the petitioner to be of 21 years of age. Since on the date of marriage, there was no Law which lays down that the age of bridegroom should be 21 years, therefore, it cannot be said that the petitioner has married before the minimum age fixed for marriage. Since this aspect of the case was not taken into consideration before Hon''ble Divisional Bench in the matter of Gendlal Patel (Supra), therefore, the law laid down in the matter of that case is not relevant for just decision of this case. In view of this, petition filed by the petitioner is

allowed and the respondent No. 2 is directed to allow the petitioner to appear in the interview. With the aforesaid observations, petition stands disposed of.