

(2018) 03 BOM CK 0181
In the Bombay High Court
Case No : Writ Petition No. 714 Of 2008

Shri Dilip V. Sawant

APPELLANT

Vs

State of Goa, through its Chief Secretary, having office at
Secretariat, Porvorim, Bardez-Goa And Anr

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Recruitment Rules, 1988 — Rule 3, 5, 6
Central Civil Services (Pension) Rules, 1972 — Section 30

Citation : (2018) 03 BOM CK 0181

Hon'ble Judges : Nutan D Sardesai, J; Prithviraj K. Chavan, J

Bench : Division Bench

Advocate : Devidas J. Pangam, Deep Shirodkar, Amir Jamadar, Pankaj Vernekar,
Abhishek Sawant

Final Decision : Dismissed

Judgement

'''

N. M. Jamdar, J",'''

1. The Petitioner, who was working as a Draughtsman, Grade-II in Town And Country Planning Department, Government of Goa, had applied for the post of",''' Deputy Town Planner pursuant to an advertisement.Â His application was rejected on the ground that he was age barred, being forty five years and five",''' months old on the relevant date.Â According to the Petitioner, since he isÂ a Government Servant belonging to Other Backward Class, he is entitled to",''' relaxation of age upto to forty eight years.Â He asserts that age relaxation meant for Government Servants has to be read cumulatively with the age",''' relaxation meant for the Other Backward Class candidates.Â Whether he is right in his interpretation is the short question to be decided in this petition.,'''

2. Since the year 1990 the Petitioner is working in the Town and Country Planning Department in the Government of Goa. An advertisement was issued by,,,

the Goa Public Service Commission on 11 January 2008 for filling up the post of Deputy Town Planner in the Town And Country Planning Department.Â,,,

The educational qualifications were prescribed as Degree in Regional/Town Planning from recognized University, two years experience in a planning of",,,

Architectural office, knowledge of Konkani and certain other qualifications, were also prescribed.Â The last date of submitting the applications was 31",,,

January 2008.Â The Advertisement referred to Age Relaxation for certain categories.,,,

Pursuant to the advertisement the Petitioner applied on 29 January 2008.Â The Petitioner did not receive any intimation for interview which was scheduled,,,

on 25 April 2008.Â The Petitioner came to know that the Petitioner was not being considered for the post on the ground that he was forty five years and,,,

five months old on the relevant date, which was beyond the age of forty five years,Â the age limit prescribed for the Government Servants.Â The Petitioner",,,

made various representations that since he belongs to Other Backward Class, he is entitled to age relaxation upto eightÂ years.Â The candidature of the",,,

Petitioner was not considered.Â The selection process continued and the Respondent no. 3 was appointed as Deputy Town Planner.Â The Petitioner, being",,,

aggrieved by the action of the Department in notÂ granting age relaxation upto eight years and the consequent appointment of Respondent no. 3, filed the",,,

present Petition.Â The Petitioner has prayed that the appointment of Respondent no. 3 be set aside and the Respondent authorities should hold fresh,,,

interview and relaxation in age on the relevant date should be granted to the Petitioner.,,,

3. The Reply affidavit has been filed on behalf of the Town And Country Planning Department.Â Copy of the Government of Goa, Town and Country",,,

Planning Department, Group 'A' Gazetted posts, Recruitment Rules, 1988Â are placed on record alongwith the affidavit.Â It is the stand of the",,,

Respondents that the age relaxation for two categories â??Government Servantâ? and â??Other Backward Classesâ? is to be read separately and not,,,

cumulatively.Â It is contended that neither the Advertisement nor the Rules contemplate that the relaxation periods are to be read cumulatively.Â The,,,

Petitioner as a Government Servant was entitled age relaxation upto five years,

and since the Petitioner was beyond even the extended period, he was not",,, considered.,,,

4. We have heard Mr. D. J. Pangam, the learned Counsel for the Petitioner, Mr. Deep Shirodkar, learned Additional Government Advocate for Respondent",,,

no. 1, Mr. Amir Jamadar, Additional Government Advocate for Respondent no. 2 and Mr. Pankaj Vernekar,Â learned Counsel for Respondent no. 3.",,,

5. Mr. Pangam, the learned Counsel for the Petitioner contended thatÂ since the Petitioner belongs to the Other Backward Class he is entitled to the age",,,

relaxation of three years as provided under the Rules.Â He submitted that this relaxation is pursuant to the reservation policy of the State, itÂ willÂ have to",,,

be read cumulatively alongwith age relaxation provided for general candidates, i.e. the Government Servants.Â He submitted that if this distinction is not",,,

made and the age relaxation is not considered cumulatively, it will amount to denial of the benefits conferred on the candidates belonging to Other Backward",,,

Classes.Â It was contended that the Rule 6 of the Recruitment Rules of 1988 provide that the relaxation in age limit provided by the Central Government to",,,

other special categories of persons such as Scheduled Caste, Scheduled Tribe, shall be protected.Â He submitted that the Advertisement is itself very clear",,,

that the age relaxation for Government Servants and candidates belonging to Other Backward Class has to be read cumulatively.Â It was contended that",,,

because the Petitioner is a Government Servant he does not lose his status as member of Other Backward Class and, therefore, he is entitled to the age",,,

relaxation of eight years.Â Mr. Pangam also contended that since the post is reserved for the Other Backward Class, if the Petitioner claims that he falls in",,,

the category of Government Servant and claims exemption accordingly, he will not be claiming exemption as member of Other Backward Class, which will",,,

affect his claim to the reserved post.Â Mr. Pangam submitted that hence the reading of the rules of advertisement conjointly, in light of Rule 6 of the Rules",,,

of 1988, would indicate that a member of Other Backward Class, such as the Petitioner, who is a Government Servant, will be entitled to age relaxation of",,,

eight years.Â He contended that since the Petitioner has been wrongly deprived, reliefs prayed for be granted in his favour.",,,

6. Mr. Deep Shirodkar, the learned Additional Government Advocate submitted that the framing of Rules is within the domain of the Government being a",,,

policy matter.Â He submitted thatÂ the age relaxation period, more particularly in respect of Government Servants as a class, are matters of policy of" ,,,

Government the interference of the Court should be limited to the exception where the policy is ex-facie arbitrary.Â He relied upon the decision of the Apex ,,,

Court in the case of Union of India vs. Shivbachan Rai(2001) 9 SCC 356.Â He submitted that neither the Rules nor the Advertisement have made any ,,,

distinction amongst the Government Servants, which form an independent class. He submitted that the Rules and the Advertisement does not contemplate" ,,,

cumulative reading of age relaxation periods and therefore the Petitioner has been rightly given exemption only of five years and not eight years as ,,,

claimed.Â Mr. Shirodkar relied upon the decisions in the case of Sudhansu Kumar Behera vs. Orissa Public Service Commission & Ors., 2014 SCC OnLine" ,,,

Ori 443 and Alsa Ram Meghwal vs. Rajasthan Public Service Commission, Ajmer & Anr., 2016 (4) RLW 3106, (Raj.).Â" ,,,

7. Thus, the limited issue that arises for our consideration is whether under the relevant Rules and the Advertisement, the Petitioner is entitled to exemption" ,,,

as the relaxation of five years or eight years.Â To be more precise, whether the Petitioner is entitled to contend that the age relaxation for the Other" ,,,

Backward ClassÂ of three years has to be added to the age relaxation of five years for the Government Servants.Â ,,,

8. Before we embark on the discussion to find a solution, we must remind ourselves of certain basic positions.Â Â First, the Court has to consider the claim" ,,,

within the ambit of Statutory Rules and Circulars.Â Secondly, the service conditions are generally considered as matters of policy and the interference by" ,,,

the Courts is limited, within well defined boundaries." ,,,

9. The State of Goa has framed the Goa Town and Country Planning Department Group 'A' Gazetted posts,Â Recruitment Rules, 1988.Â These Rules" ,,,

govern the post in question that is, Deputy Town Planner.Â The Rules of 1988 deal with the method of recruitment, age limit and other qualifications.Â The" ,,,

Rule 3 lays down method of recruitment, age limit and other qualifications stating that they will be specified in the Schedule appended to the Rules.Â Rule 3" ,,,

reads thus: ,,,

â??3. Method of recruitment, age limit and other qualifications.-- The method of

recruits.", "Not exceeding 35(40) years. (Relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government)."

in India (other than those in Andaman and Nicobar Islands and Lakshadweep).",

added years of service

of the C.C.S.

[illegible] $\hat{A}''$

qualifications required

i) Degree in Regional/Town Planning from a recognised University/ Institution or equivalent.

of the U.P.S.C. in case of candidates otherwise well qualified.

candidates belonging to",

Scheduled Tribes if, at any stage of selection, the U.P.S.C. is of the opinion that sufficient number of candidates from

these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved

for them.

Desirable:

i) Associateship of the Institute of Town Planners (India) or equivalent membership of a professional Institution.

ii) Experience in the preparation of development plans.",

8, "Whether age &

Educational

Qualifications prescribed

for the direct recruit will

apply in the case of

promotees.", "Â Age: No.Â Â

Â EQ: Yes.

Â

Â",

9, "Period of probation, if

any", "i) 1 year for direct recruits.

ii) 2 years for promotee.",

10, "Method of recruitment

whether by direct

recruitment or by

promotionÂ or by

deputation/transfer and

percentage of the

vacancies to be filled by

various methods.", "Â 25% by promotion failingÂ which by direct recruitmentÂ and 75% by direct recruitment.

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11, In case of recruitment by, Promotion: Planning Assistant,
,"promotion/deputation/trans -
fer grades from which
promotion/deputation/trans -
fer is to be made.", "with 5 years' regular service in
the grade.

12, "If a D.P.C. exists, what is
its composition.", "Group 'A' D.P.C. (for considering promotion).

- i) Chairman/Member, U.P.S.C.?" Chairman.
 - ii) Chief Secretary, Government of Goa, Daman and Diu ?" Member.
 - iii) Administrative Secretary, Government of Goa,
Daman and Diu ?" Member.
 - iv) Chief Town Planner, Government of Goa,
Daman and Diu ?" Member.
- the

2. Group 'A' D.P.C. (for considering confirmation).

- i) Chief Secretary, Government of Goa, Daman and Diu ?" Chairman.
- ii) Administrative Secretary, Government of Goa, Daman and Diu ?" Member.
- iii) Chief Town Planner, Government of Goa, Daman and Diu ?" Member.",

13, "Circumstances in which

Union Public Service

Commission is to be

consulted in making

recruitment.", "Selection on each occasion shall be made in consultation with the Union Public Service Commission.,

13. In the case of of Sudhansu Kumar Behera the Division Bench of Orissa High Court dealt with a similar challenge. The Petitioner therein who had,,,

applied to the post Civil Judge in the Orissa Judicial Service was not considered on the ground that he was age-barred. The Petitioner therein was a,,,

Scheduled Caste candidate who contended that being Government Servant he should be given the benefit of age relaxation, both, as Government Servant

and",,,

as a Scheduled Caste candidate.Â The Division Bench of Orissa High Court repelled the challenge holding that the candidates who are not Government,,,

Servants and the Government Servants are two distinctly different streams.Â The Division Bench held that the InService persons constituted separate class,,,

and there was no question of any discrimination.Â In the case of Alsa Ram Meghwal, the Division Bench of Rajasthan High Court considered an Intra",,,

Court appeal against the order of Single Judge of the Court negating the claim of the Petitioner therein claiming relaxation in age of five years being,,,

member of Scheduled Caste over and above the upper age limit prescribed for the In-Service candidate.Â It was urged before the Division Bench that there,,,

cannot be any distinction between InService candidate and candidate belonging to other categories and such interpretation would be against the spirit of the,,,

Constitution of Â India which confers certain benefits on the members of the Scheduled Caste.Â The Division Bench considered the relevant Rules in,,,

question and observed that the 'Government Servant' is a separate category and the candidates who are not Government Servants, belonging to Scheduled",,,

Caste, Scheduled Tribe and Other Backward Class form a separate category.Â Holding thus, the Division Bench dismissed the Intra court appeal reiterating",,,

the limited scope the Courts have in the matter of the policies of the State in respect of age relaxation.Â,,,

14. Mr. Pangam, contended that in none of the above decisions, the Rule 6 of the present Rules was under consideration. According to Mr. Pangam, in view",,,

of Rule 6, the benefits which have been conferred on the members of Other Backward Class by the Central Government will apply and cannot be taken",,,

away.Â In this present Petition, there is no challenge to the Rules of 1988 on the ground that they deprive the candidate belonging to Other Backward Class",,,

the benefit of the status such candidate enjoys under the reservation policy.Â After the State Government filed its reply in the year 2015, till date there is no",,,

rejoinder.Â Therefore, we proceed on the basis of Rules and Advertisement.Â",,,

15. The clause 6 of the Rules of 1988 only provides that the Rule shall not affect any age relaxation provided for Other Backward Class.Â Learned Counsel,,,

have pointed out to us that when the Rules were framed, Goa was not a State and, therefore, reference is made to Central Government which now has to be",,,

construed as State Government.Â The Rules of the Central Government for some

of the posts are part of the record.Â These Rules admittedly do not apply,,, and they have been annexed by way of illustration.Â We notice therefrom that in tabular form, a distinction has been made in respect of Government",,,, Servant from general category, Government Servant from Other Backward Class, Government Servant belonging to Scheduled Caste, Scheduled Tribe and",,,, those who are not in Government service.Â Thus whenever such cumulative reading has been contemplated, it has been provided for.Â Â No such",,,, provision is found in the Rules in question. It also needs to be seen from the Advertisement that whenever additional age relaxation is to be granted it has,,, been specifically provided so, as can be seen for the Persons with Disability.",,,

16. It is the contention of the Petitioner that the benefits conferred on the Other Backward Class will be continued to be attached to him and will be protected,,, by virtue of clause 6 even though he becomes a Government Servant.Â We do not find that clause 6 is meant to confer any additional benefit over and,,, above what has been granted to the members of the Backward Classes. Clause 6 only protects the concession already granted.Â As we have stated above,,, and as has been made clear in the Advertisement and also by the affidavit of the State Government, the 'Government Servant' forms a separate class.Â The",,,, three years age relaxation has been provided to the 'candidate' belonging to Other Backward Class.,,,,

It is this age relaxation that is protected under Rule 6.Â,,,

17. The argument of the Petitioner proceeds on a fallacious presumption thatÂ category 'Government Servant' is akin to General Category.Â In the context,,, of the present case it is not.Â In the present case, 'Government Servant' forms a distinct class than a 'Candidate'. Thus the 'Candidate' referred to as",,,, belonging to Other Backward Class clearly means a non-Government Servant.Â We find support in the view expressed by the Division Bench of the,,, Rajasthan High Court and the Orissa High Court.Â The upper age limit has been provided for Government Servants, treating them as a distinct class and no",,,, further division can be made amongst this class.,,,,

18. To re-state the Rules of 1988 read with the Advertisement, the three years age relaxation meant for Other Backward Class is clearly meant for those",,,, who are not in service.Â If a member of the Other Backward Class is in Government service, he will fall within the category 'Government Servant' and thus",,,,

entitled to age relaxation upto five years.Â There is no question of further dissecting the class 'Government Servant' and inserting 'Other Backward Class,,, Government Servant' to confer age relaxation of eight years.Â,,,

19. Mr. Pangam then submitted thatÂ ifÂ theÂ Petitioner seeks age relaxation as a Government Servant, the Petitioner will not be considered eligible for",,,,

appointment to the post reserved for Other Backward Class.Â This apprehension is misplaced.Â The class 'Government Servant' has been referred to for a,,,

limited purpose to grant benefits of age relaxation.Â The eligibility of the Petitioner to be considered for the post reserved for Other Backward Class is not,,,

taken away merely because the Petitioner claims age relaxation as a Government Servant.Â Â It is also not clear why the Petitioner harbours this,,,

apprehension.Â It is not the stand of the State Government that the Petitioner will not be considered eligible to apply to the post reserved for Other,,,

Backward Class if the Petitioner claims exemption of five years being a Government Servant.Â It is also not the argument of the learned Additional,,,

Government Advocate.Â Thus the apprehension of the Petitioner is entirely misplaced and academic.Â,,,

20. As far as challenge to the appointment of Respondent no. 3 is concerned, Mr. Pangam made it clear that it is not the case of the Petitioner that",,,,

Respondent no. 3 is not qualified, but the argument is that the appointment should be set aside since Petitioner has a better claim.Â",,,,

21. In conclusion, we hold that the Advertisement and Rules do not contemplate that age relaxation of five years for the 'Government Servant' has to be",,,,

increased to eight years, i.e. five plus three, if the 'Government Servant' belongs to Other Backward Class. The age relaxation of three years provided for the",,,,

'Candidate' belonging to Other Backward Class, means one who is not in the Government service.Â Â Â",,,,

22. This being the position the Petitioner was entitled for age relaxation upto five years being a Government Servant.Â The Petitioner had to be forty five,,,

years old on the relevant date. Admittedly, the Petitioner was over forty five years on the relevant date.Â Â In these circumstances, since the Petitioner",,,,

was age-barred, he was correctly not considered.Â There is no error in this decision. Thus, the appointment of Respondent no. 3, which is challenged only",,,,

on the ground of non-consideration of the Petitioner, cannot be set aside and there is no question of directing fresh selection process.Â",,,,

23. The Writ Petition thus fails and is dismissed.Â Rule is discharged.Â No order as to costs.,,,