

(1998) 02 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1777 of 1995

Smt. Oma Purohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Citation : (1998) 1 RLW 592 : (1998) 2 WLC 685 : (1998) 1 WLN 128

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—In the present writ petition, the petitioner questions communication/order dated 16.5.1995 Annx. 1 to the writ petition,

issued by the Rajasthan Public Service Commission, Ajmer communicating to her that she is not eligible to be appointed on the post of Lecturer

(School Education) as she is found to be over-age even after giving relaxation upto age of 40 years as permanent Government employee.

2. Indisputably, the petitioner possessed requisite qualification for direct recruitment on the post of Lecturer (School Education) except age on the relevant date, under the Rules application to her, which is condition precedent for her appointment.

3. The brief facts for disposal of the present writ petition are that in pursuant to advertisement published by respondent No. 2 inviting applications

from the eligible candidates for direct recruitment to the post of Lecturer (School Education) in various subjects including Hindi, the petitioner

applied for the said post in Hindi. It is alleged that no letter for interview was issued to the petitioner. Aggrieved against inaction of respondent No.

2 and also aggrieved from communication order Annx. 1, the present writ petition was filed.

4. At the stage of admission, respondent No. 2 was directed by the learned Single Judge of this Court to allow the petitioner to participate

provisionally in the interview. In pursuant to Court's order, she was allowed to participate in the interview provisionally but her result has not been

declared as yet.

5. After service of notice, respondent No. 2 has filed detailed reply to the writ petition denying the averments made therein whereas, irrespective of

sufficient service respondent No. 1 has not filed reply to the writ petition.

6. I have heard learned Counsel for the parties.

7. Perused the averments made in the writ petition as well as reply filed thereto by respondent No. 2. With the assistance of learned Counsel for

the parties, examined the material available on record.

8. A core question involved in the present writ petition is as to whether after giving age relaxation to the petitioner under the Rules applicable to her

she is eligible to be appointed on the post of Lecturer (School Education) in Hindi?

9. It is strenuously urged by learned Counsel for the petitioner before me that respondent No. 2 has committed manifest error of law in not giving

benefit of age relaxation to the members of Rajasthan Educational Services for the purpose of direct recruitment to the post of Lecturer (School

Education) whereas such age relaxation upto 15 years is being given to the members of Rajasthan Educational Services for the purpose of direct

recruitment on the post of Head Masters. Although, the petitioner is also governed from the same Rules of 1970, as amended in the year 1990,

which have been made enforceable with effect from 1.9.1988 yet 15 years age relaxation is being denied to her. According to the submission of

learned Counsel for the petitioner, the petitioner's age on the relevant date was 31 years, therefore, after giving relaxation of 15 years, she is

eligible to be appointed on the post of Lecturer (School Education) in Hindi upto 46 years whereas even in reply, filed by the respondent No. 2,

her age on the relevant date is disclosed to be only 42 years 7 months and 9 days.

10. The aforesaid argument advanced by the learned Counsel for the petitioner is vehemently opposed by the learned Counsel appearing on behalf

of respondent No. 2. It is urged by learned Counsel for respondent No. 2 that according to the objective test of eligibility prescribed under the

statutory Rules of 1970 regarding age of the petitioner she was required to complete 40 years on 1.7.1994 for direct recruitment on the post of

Lecturer (School Education) in Hindi whereas on the relevant date her age was found to be 42 years 7 months and 9 days. Thus, according to the

learned Counsel for respondent No. 2 petitioner is not entitled to be appointed on the post of Lecturer (School Education) in Hindi, as postulated

under proviso (vi) of Rule 10 of the Rajasthan Educational Services (Amended) Rules, 1970 (hereinafter referred to as "the Rules of 1970").

11. It is urged by learned Counsel for the respondent No. 2 that the direct recruitment of the petitioner to the post of Lecturer in Hindi is not

governed under Sub-rule (1) of Rule 10 of the Rules of 1970 in the present case but it is governed by proviso (vi) of Rule 10 of the said Rules

which starts from non-obstante clause and provides that where the posts are filled up by direct recruitment through competitive examination or

through Commission, the upper age limit for the persons serving in connection with the affairs of the State in substantive capacity shall be 40 years.

12. I have given my thoughtful consideration to the rival contentions raised at the Bar.

13. I am of the view that the correct interpretation of the amended Rule 10 of the Rules of 1970 would be that in any event, after giving relaxation

of age to a person serving in connection with the affairs of the State in substantive capacity, it should not exceed the upper age limit of 40 years. It

is to be noticed that proviso (vi) of Rule 10 of the Rules of 1970 begins with the expression-"notwithstanding anything contained contrary in these

Rules" with a view to give over-riding effect over other non-obstante clauses of Rule 10 of the said Rules regarding age relaxation to a person

holding permanent post under the State. To my mind, it is equivalent to say that in spite of other provisions regarding relaxation of age under the

Rules of 1970, proviso (vi) will have its full operation. There is no ambiguity in provisions of proviso (vi) of Rule 10 of the Rules of 1970,

therefore, it is not possible for me to cut down its scope by taking resort of other provisions of Rules regarding age relaxation.

14. The learned Counsel for the petitioner invited my attention towards Sub-rule (1) of Rule 10 of the Rules of 1970 wherein it is contemplated

that in case of members of Rajasthan Education Sub-ordinate Services the relaxation of age shall be 15 years for the post mentioned in item-1 of

Group "F" of the Schedule. Suffice it to say in this regard that argument of learned Counsel for the petitioner is attractive but it is fallacious. In the

backdrop of interpretation of non-obstante proviso (vi) of Rule 10 of the Rules of 1970 in the preceding paragraph of this judgment, it is held that

in event of any conflict with the said proviso and Sub-rule (1) of Rule 10 of the said Rules, the non-obstante proviso (vi) would prevail. My

aforesaid interpretation of non-obstante proviso (vi) of Rule 10 of the Rules of 1970 is buttressed by two decisions rendered by Supreme Court

reported in AIR 1983 SC 1022 Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, Chandavarkar Sita Ratna Rao v. Ashalata S. Guram.

15. As a result of the aforesaid discussion the instant writ petition lacks merit and it is hereby dismissed with costs assessed to Rs. 2000/-