

(2013) 04 MP CK 0113
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7036 of 2013

Urmila Rajak (Smt.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 70, 95

Citation : (2013) ILR (MP) 1057

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Ankit Agrawal, for the Appellant; Piyush Dharmadhikari, G.A., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.

Respondents in view of the issue raised does not wish to file reply, instead rely upon circular No.

C 3-11/12/1/3, dated 03-11-2012.

1. With consent therefore, heard finally. Being aggrieved by the action of respondents in denying the petitioner to participate in the counselling for appointment as Samvida Shala Shikshak Grade I on the ground that she is over age present writ petition has been filed seeking direction to the respondents to consider her for appointment by extending relaxation as per Rules.

2. Facts uncontroverted are that petitioner belongs to other Backward Class, presently working as Samvida Shala Shikshak Grade III under women's quota appointed since 16-09-2006 at Primary Schools, Bhita, Janpad Panchayat Shahpura (Bhitoni). That being a graduate and Post Graduate in Commerce and having the degree of Bachelor in Education, petitioner applied and participated in the eligibility test for appointment to the post of Samvida Shala Shikshak Grade I

and secured 186 rank in reserved open category (There is no material on record to suggest that the merit position obtained by the petitioner is under women category). That after having successfully passed the eligibility test the petitioner was called for verification and scrutiny of the requisite documents; whereon, she was informed that having crossed 35 years of age she is not eligible for appointment as Samvida Shala Shikshak Grade I because of her being overage. Petitioner is 48 years of age. Controversy starts here.

3. Contentions on behalf of petitioner are that being an other Backward Class Category woman candidate and having the experience of seven years as Samvida Shala Shikshak Grade HI, the petitioner is entitled for the relaxation of 17 years in age. Circular dated 10-01-2012 which stipulates the procedure and format for appointment of Samvida Shala Shikshak has been placed reliance on. The relevant clause relied upon is clause 2 and 3 of the format of advertisement for appointment of Samvida Shala Shikshak Grade I, stipulating the educational qualification and age in the following terms:--

4. Placing reliance on clauses 3(3) and 3(5) of the Circular dated 10-01-2012 it is contended on behalf of the petitioner that being a woman candidate she is entitled for relaxation in age by 10 years and further having satisfactorily worked as Samvida Shala Shikshak Grade III since 16-09-2006, petitioner is entitled for further relaxation of seven years (2006 to 2013). Thus, it is urged that the petitioner is entitled for total 17 years of relaxation, i.e. till she attains 52 years of age she is entitled for appointment as Samvida Shala Shikshak Grade I.

5. The respondents on their turn have denied the contentions raised on behalf of petitioner that the petitioner is entitled for relaxation of 17 years for appointment of Samvida Shala Shikshak Grade I. It is urged that a maximum limit of 45 years have been laid down by the circular issued vide No. 3-11

/12/1/3 dated 03-11-2012 whereby a person seeking employment through direct recruitment with all relaxation would be entitled for appointment upto 45 years and not beyond the same. It is contended that since the petitioner is 48 years she is not entitled for an appointment.

6. Considered rival submissions.

7. The Madhya Pradesh Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Rules, 2005 framed by the State Government in exercise of the powers conferred by sub-section (1) of Section 95 read with sub-section (2) of Section 70 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam. These Rules govern recruitment and condition of service of Samvida Shala Shikshak employed by Janpad Panchayat or Zila Panchayat as the case may be.

8. Sub-rule (4) and (8)(c) of Rule 6 provides for educational qualification, age and other requirements for appearing in the eligibility examination of Samvida Shala Shikshak to be as specified in Schedule II. Note (a) appended with

Schedule II lays down following qualification:--

Note.--(a) Qualification:--

(1) Any candidate, who have obtained minimum marks in the eligibility examination of Samvida Shala Shikshak as per sub-rule (5) of Rule 6, may apply to Panchayat for the employment as Samvida Shala Shikshak.

(2) The relaxation in maximum age limit in respect of Scheduled Caste, Scheduled Tribe and Other Backward Classes or any other class shall be according to Government rules in force at the time of employment.

(3) Women candidates shall have ten years relaxation in maximum age limit in addition to other relaxations.

(4) The Instructors/Supervisors of erstwhile Government Non Formal Education Centres, the Honorary Teachers appointed for Government schools, Guruji of Education Guaranty School and part time teacher of Vocational Education shall be given twelve years relaxation in maximum age limit (35 years).

(5) The candidate who have worked as Samvida Shala Shikshak and who apply fresh for employment as Samvida Shala Shikshak, shall be entitled to relaxation in maximum age limit to the extent of the period, they have worked previously as Samvida Shala Shikshak. On this basis, the relaxation shall be to a maximum of nine years, Provided their contract was not terminated due to their work being found unsatisfactory.

(6) Daily Wage Workers who are either working or retrenched by Government, shall have relaxation in maximum age limit equivalent to the period of service rendered by them subject to the condition that the candidate shall not have attained 40 years of age.

(7) The minimum and maximum age shall be counted with reference to 1st January of the calendar year in which the vacancies are advertised.

(8) The educational qualification for the employment of Samvida Shala Shikshak mentioned in column (7) Remarks of Schedule II, shall be acceptable also for other corresponding posts of Samvida Shala Shikshak.

9. Rule 14 of 2005 Rules provides for that the "power to "prescribe", wherever provided under these rules, shall be exercised by the Government by issuing executive orders. That sub-section (2) of Section 70 of 1993 Act provides for that "The qualification, method of recruitment, salaries, leave, allowance and other condition of service including disciplinary matters of such officer and servants shall be such as may be prescribed." Thus it is within the powers of the State Government to prescribe for minimum and maximum age of recruitment and even to amend the same by issuing executive order. These orders are issued by the State Government in the name of Governors as postulated under Article 166 of the Constitution that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. The State Government in

exercise of the powers so conferred issued circular dated 03-11-2012 fixing the maximum age limit in direct recruitment in service in the following terms:--

10. It is thus clear from above circular that for direct recruitment the maximum age till which a person can get an employment under the State including appointees in Janpad Panchayats, Zila Panchayats is 45 years. Though it is contended that the circular which lays down the maximum age limit for direct appointment issued on 03-11-2012 is not effective from a retrospective date, the submissions have been noted to be rejected. Merely because the circular effect those who have crossed the age limit prescribed for appointment on the date of issuance of circular, the same cannot be termed as retrospective. Furthermore that, there is no right to appointment. In view whereof the petitioner having earlier passed the eligibility test no vested right is created in her favour. As such the contention that the circular dated 03-11-2012 has adversely effected her right for appointment has no substance.

11. Thus, there being maximum age limit prescribed for direct recruitment, the petitioner having crossed the age limit of 45 years, has rightly been held not entitled for counselling for appointment to the post of Samvida Shala Shikshak Grade I. In view whereof petition fails and is dismissed. No costs.