

(2009) 12 DEL CK 0102

In the Delhi High Court

Case No : Writ Petition (C) 13736 of 2009

Vinod Kumar Mantoo

APPELLANT

Vs

High Court of Delhi

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Constitution of India, 1950 — Article 148, 309

Delhi Higher Judicial Services Rules, 1970 — Rule 22, 9, 9(3)

Citation : (2009) 12 DEL CK 0102

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Alok Singh, for the Appellant; Chetan Lokur, for Viraj R. Datar, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the letter dated 16.11.2009 issued by the High Court whereby the petitioner has been informed that his application to appear in the Delhi Higher Judicial Services Examination, 2009 has been rejected on the ground that he was "overage". The plea of the petitioner is that he is entitled to relaxation of the upper age limit for recruitment under the Residents of Kashmir Division in the State of Jammu and Kashmir (Relaxation of Upper Age Limit for Recruitment to Central Civil Services and Posts) Rules, 1997 (hereinafter referred to as "the said Rules") as amended up to date, issued under Article 309 and Clause (5) of Article 148 of the Constitution of India by the Department of Personnel and Training by a notification dated 07.12.2007. The learned Counsel for the petitioner pointed out that the principal rules were notified on 10.04.1997 vide No. GSR 208 (E) in the Gazette of India. It was subsequently amended as under:

(i) GSR 826 (E) dated the 27th December, 1999

(ii) GSR 919 (E) dated the 22nd December, 2001

(iii) GSR 879 (E) dated the 10th November, 2003

(iv) GSR 707 (E) dated the 6th December, 2005

According to the learned Counsel for the petitioner the amendments extended the date appearing in Rule 1(3). The date stipulated in Rule 1(3) of the said Rules was the terminal date upto which the rules were to remain in force. Initially, the said date was 31.10.1999. The same was extended by the subsequent amendments and, ultimately, by the amendment notified on 07.12.2007 whereby the operation of the said rules was extended up to 31.12.2009.

2. The case of the petitioner is that the said rules are applicable and that Rule 6 thereof would come to his aid. Rule 6 of the said Rules reads as under:

6. Amendment of recruitment rules. -- All rules regulating the recruitment of persons to Central Civil Services and posts including those in the Indian Audit and Accounts Department and the rules governing competitive examinations therefore shall be deemed to have been amended to the extent provided for in these rules.

According to the petitioner he is a resident of Jammu and Kashmir and he had already annexed his domicile certificate along with the application. The petitioner was born on 01.04.1963 and would be 45 years and 9 months old as on 01.01.2009, which is the relevant cut-off date for the Delhi Higher Judicial Services Examination, 2009. The normal upper age limit for the said examination is 45 years as per Rule 9(3) of the Delhi Higher Judicial Service Rules, 1970 (hereinafter referred to as "the DHJS Rules"). According to the petitioner the rules providing for relaxation in respect of residents of the State of Jammu and Kashmir ought to be applicable and, therefore, he should be given age relaxation of five years as per Rule 6 of the said Rules. Consequently, he should be permitted to appear in the examination and the rejection letter dated 16.11.2009 be set aside.

3. The learned Counsel appearing on behalf of the petitioner also referred to the Instructions for the Guidance of Candidates for direct recruitment to the Uttar Pradesh Higher Judicial Service, 2007. He drew our attention to paragraph 4 thereof, which reads as under:

4. A candidate for direct recruitment must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January 2008; in other words, he must have been born on or after 01.01.1963 and not later 02.01.1973. Provided that the upper age limit shall be higher by three years in case of candidates belonging to Scheduled Castes and Scheduled Tribes and such other categories as may be notified by the Government from time to time.

(underlining added)

In particular, he drew out attention to the last portion of the said paragraph 4

which stipulates that the upper age limit shall be higher by three years in case of candidates belonging to Scheduled Castes and Scheduled Tribes and "such other categories as may be notified by the Government from time to time". According to the learned Counsel for the petitioner, the petitioner would be covered under the expression "such other categories as may be notified by the Government from time to time" because of the said rules applicable to the residents of Jammu and Kashmir. It is his case that, therefore, a person such as the petitioner would be eligible for age relaxation for appearing in the Uttar Pradesh Higher Judicial Services. Consequently, a similar relaxation should be given to him in respect of the Delhi Higher Judicial Service Examination.

4. The learned Counsel appearing for the Delhi High Court placed before us a decision of a Division Bench of this Court in the case of Rajpal Singh v. Hon^{ble} Delhi High Court WP(C) 4885/2007 decided on 13.07.2007. In that case also the question for consideration was whether a person belonging to a Scheduled Caste would be entitled to age relaxation? We are not so much concerned as to whether the candidate belongs to a Scheduled Caste or Scheduled Tribe or some other category which may be notified by the Government, but, we are concerned with the question as to whether any age relaxation at all is permissible under the DHJS Rules. As mentioned above, the exact question came up for consideration before this Court in the said case of Rajpal Singh (supra). The Division Bench held that since Rule 9 of the DHJS Rules does not provide for any relaxation, the petitioner therein would not be entitled to any age relaxation. Reference was also made to an earlier Division Bench decision of this Court in the case of P.K. Bhasin v. Union of India 1991 (4) SLR 480. One of the questions that was decided by the Division Bench in P.K. Bhasin (supra) was-- whether, by virtue of Rule 22 of the DHJS Rules, relaxation in the age limit would be permissible in respect of a candidate belonging to a Scheduled Caste or a Scheduled Tribe? The answer given by the Court was that there was no provision for any age relaxation for such candidates in view of the specific provision of Rule 9(3) of the DHJS Rules.

5. Rule 9 of the DHJS Rules is as under:

9. The qualifications for direct recruits shall be as follows:

(1) must be a citizen of India.

(2) must have practiced as an Advocate for not less than seven years.

(3) must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.

(underlining added)

6. It was argued both in P.K. Bhasin (supra) and Rajpal Singh (supra) that because of Rule 22 which provided for reservation of posts for the Scheduled Castes and Scheduled Tribes, there was an inbuilt provision for age relaxation. Rule 22 of the DHJS Rules reads as under:

22. The reservation of posts for the Schedule Castes and Schedule Tribes shall be in accordance with the orders issued by the Central Government from time to time.

In P.K. Bhasin (supra), it was observed that under the existing rules, there could be no variation from the upper age limit of 45 years as provided by Rule 9 and that the general Rule 22 would not cover the matter. However, this Court in P.K. Bhasin (supra) did not disqualify the already selected candidates in view of the past practice and a specific advertisement having been issued indicating that age relaxation would be given. Anyhow, as observed in Rajpal Singh (supra), this Court in P.K. Bhasin (supra) held in no uncertain terms that because of Rule 9(3) there was no scope to hold that the relaxation in the upper age limit as provided by the Office Memoranda issued by the Government of India, would be applicable. The Court also observed that, in P.K. Bhasin (supra), reasons to justify the provision contained in Rule 9(3) for not providing age relaxation were also given. One of the reasons being that it would not be appropriate to have persons entering service at the age of 50 years, when the retirement age itself was 58 years.

7. From the aforesaid discussion, it is absolutely clear that there is no provision under the DHJS Rules, as existing today, for relaxation of the upper age limit, whether the candidate belongs to the general category or to the category of Scheduled Castes or Scheduled Tribes or any other category. This position has been settled by the decisions in P.K. Bhasin (supra) and Rajpal Singh (supra).

8. The learned Counsel for the petitioner drew our attention to paragraph 102 in P.K. Bhasin (supra), where it was observed that the matter be left to the administrative decision by the High Court whether or not to undertake amendment of the recruitment rules in terms of the office memorandum No. 36011/9/76.Estt. (STC) dated 14.07.1976 and No. 36011/9/76-Estt. (STC) dated 07.03.1978. But, this aspect has also been considered in Rajpal Singh (supra) in paragraph 8 thereof wherein it was observed as under:

8. It would be relevant to mention that after the observations of the Division Bench as contained in para 102 and quoted above, the Full Court Meeting was held on 7th September, 1991. The matter regarding making of provision in the Delhi Higher Judicial Service Rules, 1970 for relaxation of upper-age limit for Schedule Castes/Schedule Tribes candidates for recruitment to the DHJS from the Bar, came up for consideration but the Full Court decided to drop the same. The effect of this decision was that the Full Court decided not to carry out any amendment in Rule 9 which could provide relaxation in the age to SC/ST candidates. Thus conscious decision is taken by the Full Court not to alter Rule 9 as it exists and interpreted by this Court.

(underlining added)

9. In view of the foregoing discussion, it is clear that the High Court on the administrative side considered the matter and did not bring about any alteration

in Rule 9(3) of the DHJS Rules. The said Rule 9(3) specifically stipulates the upper age limit to be 45 years on the first day of January of the year in which the applications for appointment are invited. There is no provision for relaxation of the upper age limit in the DHJS Rules. Therefore, no parity can be claimed by the petitioner with the instructions issued by the High Court of Judicature at Allahabad, on which he was relying upon.

10. Apart from this, we also make it clear that the said rules, which are sought to be invoked by the petitioner for seeking relaxation, are only in respect of the Central Civil Services and posts thereunder. Rule 6 of the said Rules makes it clear that they are applicable in respect of recruitment of persons to Central Civil Services and posts including those in the Indian Audit and Accounts Department and the rules governing competitive examinations therefore. The said Rules do not extend to judicial services and certainly not to the Delhi Higher Judicial Service.

For all these reasons, the writ petition has no merit and is dismissed. No order as to costs.

Dasti.