



Mr. Rishabh Purohit  
Mr. Ramesh Kumar

For Respondent(s) : Mr. Sunil Beniwal, AAG with  
Mr. Kunal Upadhyay

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Order**

**19/05/2023**

Heard learned counsel for the parties.

Since the controversy involved in the present writ petitions is similar, therefore, they are being decided by this common order.

For brevity, the facts of S.B. Civil Writ Petition No.16998/2022 "Jagdish Chand Sharma Vs. State of Rajasthan & Ors." are being taken into consideration for deciding the controversy involved in these cases.

Briefly, the facts giving rise to the present writ petition are that the respondent- Rural Development and Panchayati Raj Department issued a Notification dated 20.09.2007 (Annex.1) for appointment on the post of Senior Technical and Gram Sahayak on contractual basis. The petitioner, being eligible, was appointed on the post of Gram Sahayak on the fixed remuneration of Rs.2,500/- p.m. He performed the work of Gram Sahayak for more than five years. In the year 2013, the respondents invited online applications for appointment on the post of Lower Division Clerk (L.D.C.). The last date for filling up the application form was 22.03.2013. Considering himself falling within the age limit as prescribed in Condition No.8 of the Advertisement, the petitioner applied for the post of L.D.C. However, the respondents rejected



the candidature of the petitioner being overage. Hence, the present writ petitions.

Learned counsel for the petitioners submit that the petitioners were working on different posts in the respondent-Department on contract basis for a period of more than five years, thus, they are entitled for relaxation in the upper age limit for a period of five years as per Condition No.8 (xi) of the Advertisement and a further relaxation of three years as per the Advertisement on account of the fact that no recruitment process was conducted by the respondents preceding to the year 2013.

In nutshell, the argument of the learned counsel for the petitioners is that as per the conditions prescribed in the Advertisement, general relaxation of three years' period in the upper age limit to all the persons, irrespective of the fact that whether a person belonging to a particular category or not, has been granted on account of the fact that no recruitment was conducted by the respondents in preceding three years of 2013. Learned counsel for the petitioners further submit that since the petitioners have performed the contractual engagement with the respondents on different posts for more than five years, therefore, they are entitled for five years' relaxation in the age in addition to the three years' period.

Learned counsel for the petitioners further submit that relying upon the conditions of the Advertisement, a number of persons have been appointed who are similarly situated having the age more than the upper age limit prescribed in Rule 265 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as the 'Rules of 1996').



In support of their submissions, learned counsel have relied upon a judgment of this Court rendered in ***S.B. Civil Writ Petition No.13347/2017 "Bheem Singh Udawat Vs. The State of Rajasthan & Ors."*** decided on 11.10.2022.

Learned counsel, therefore, pray that the present writ petitions may be allowed and the respondents may be directed to consider the cases of the petitioners giving them the relaxation in the upper age limit to the extent of eight years.

Per contra, Mr. Sunil Beniwal, learned Additional Advocate General, while opposing the arguments advanced by the learned counsel for the petitioners, submits that recruitment and appointments in the respondent-Department are governed by Rule 265 of the Rules of 1996. He submits that as per the normal rule, the minimum age permissible for appointment in the State of Rajasthan is 18 years and maximum 35 years, however, under certain circumstances, the relaxation in the upper age limit has been provided by the State Government to different categories/classes. Learned Additional Advocate General further submits that if there is any variation to the rules in the Advertisement, then the conditions mentioned in the Advertisement will not prevail and the Rules will be taken into account while giving appointment on the different posts by the State Government. He submits that as per Rule 265 of the Rules of 1996, a person is entitled for relaxation in the upper age limit under one of the provisos as provided under Rules 265 and clubbing of more than one proviso is not permissible. Learned Additional Advocate General further clarified that a general relaxation of three years for non-holding of the recruitment



process in the State of Rajasthan has been provided as per proviso (x) of Rule 265 of the Rules of 1996. A person is entitled to relaxation under one of the provisos provided under Rule 265 of the Rules of 1996. In the present case, since the petitioners being entitled to get the benefit of upper age limit as per proviso (xi) of Rule 265 of the Rules of 1996, they have already been granted the benefit of age relaxation for working with the respondents for more than five years on contract basis, therefore, once the benefit of said proviso has been granted to the petitioners, they are not entitled to extend the benefit of any other proviso giving age relaxation as mentioned in other provisos to Rule 265 of the Rules of 1996.

Learned Additional Advocate General, in support of his contentions, has relied upon a Division Bench judgment of this Court rendered in ***D.B. Civil Special Appeal (Writ) NO.1141/2008 "Alsa Ram Meghwal Vs. Rajasthan Public Service Commission, Ajmer & Anr."***.

Learned Additional Advocate General by way of submitting an Additional Affidavit informed this Court that any appointment made in violation of Rule 265 of the Rules of 1996, a notice of termination has been served to such candidates and even till date, if any appointment made de hors the Rule 265 is brought to the notice of the respondents, appropriate action in accordance with law will be taken against such candidates.

So far as the judgment relied upon by the learned counsel for the petitioners in the case of ***Bheem Singh Udawat*** (supra) is concerned, the learned Additional Advocate General submits that an appeal being ***D.B. Special Appeal (Writ) No.1114/2022***



**"The Secretary, Rajasthan Subordinate and Ministerial Service Selection Board Vs. Bheem Singh & Ors."** has been filed before the Hon'ble Division Bench and the Division Bench vide its order dated 04.02.2023, has stayed effect and operation of the order dated 11.10.2022 passed in the case of **Bheem Singh Udawat** (supra).

I have considered the submissions made at the Bar and have gone through the relevant record of the case.

For proper adjudication of the case, the condition giving age relaxation in the Advertisement reads as under:-

"राजस्थान पंचायती राज नियम 1996 के नियम 265 के अनुसार आवेदन प्रस्तुत करने की अंतिम दिनांक तक न्यूनतम आयु 18 वर्ष पूर्ण करली हो तथा दिनांक 01.01.2014 को 35 वर्ष की आयु पूर्ण नहीं किया होना चाहिये। नियम 265 (X) राजस्थान पंचायती राज नियम 1996 के अनुसार गत 3 वर्षों से अधिक अवधि से कनिष्ठ लिपिक भर्ती परीक्षा आयोजित नहीं होने के कारण आवेदकों को 3 वर्ष की अतिरिक्त छूट आयु सीमा में प्राप्त होगी अर्थात् दिनांक 01.01.14 को आवेदक की आयु 38 वर्ष से अधिक नहीं होनी चाहिये।

**निम्नलिखित श्रेणी के अभ्यर्थियों को निम्नानुसार आयु सीमा में छूट देय है:-**

- i. राजस्थान राज्य के अ.जा/ अ.ज.जा. तथा अन्य पिछड़ा वर्गों (नोन क्रीमिलेयर) के पुरुष अभ्यर्थी या सामान्य प्रवर्ग की महिला अभ्यर्थी के लिये ऊपरी आयु सीमा में 5 वर्ष की छूट।
- ii. राजस्थान राज्य की अ.जा/ अ.ज.जा. तथा अन्य पिछड़ा वर्गों (नोन क्रीमिलेयर) के महिला अभ्यर्थी के लिये ऊपरी आयु सीमा में 10 वर्ष की छूट।
- iii. भूतपूर्व सैनिकों के लिए ऊपरी आयु सीमा 50 वर्ष होगी।
- iv. पंचायतों के सचिवों के रूप में पहले से कार्य कर रहे व्यक्तियों के लिए उपरी आयु सीमा, तीन वर्षों की अधिकतम सीमा के अधीन रहते हुए, पंचायत सचिव के रूप में की गयी सेवा की कालावधि तक शिथिलनीय होगी।
- v. विधवाओं एवं तलाकशुदा महिलाओं के मामलों में कोई आयु (अधिवार्षिकी तक) सीमा नहीं होगी।

**स्पष्टीकरण:** उसे विधवा होने के मामले में सक्षम प्राधिकारी से अपने पति की मृत्यु का प्रमाण पत्र देना होगा और तलाकशुदा होने के मामले में नियमानुकूल तलाक का सबूत (सक्षम न्यायालय की



डिक्री अथवा काजी द्वारा जारी तलाकनामा मय दो स्वतन्त्र साक्षियों के शपथ पत्र सहित, जो भी लागू हो) देना होगा।

- vi. जो व्यक्ति किसी पंचायत समिति या किसी जिला परिषद के अधीन अपनी अस्थायी नियुक्ति के समय विहित आयु सीमा के भीतर थे, उनके लिए उपरी आयु सीमा, पंचायत समिति या जिला परिषद के अधीन उनके द्वारा की गयी सेवा की कालावधि तक शिथिलनीय होगी।
- vii. ऐसे भूतपूर्व कैदी के मामले में जो उसकी दोषसिद्धि से पूर्व किसी भी पद पर अधिष्ठायी आधार पर पंचायत समिति व जिला परिषद के अधीन सेवा कर चुका है और इन नियमों के अधीन वह नियुक्ति का पात्र हो उस पर ऊपरी आयु सीमा लागू नहीं होगी।
- viii. ऐसे भूतपूर्व कैदी जो अपनी दोषसिद्धि से पूर्व अधिक आयु का नहीं था और इन नियमों के अधीन नियुक्ति का पात्र था, कारावास की अवधि के बाबत कालावधि तक शिथिलन देय है।
- ix. नियम 259 के उपनियम 5 ख के अधीन हैण्डपम्प मिस्त्रियों के रूप में नियुक्त व्यक्तियों के लिये कोई ऊपरी आयु सीमा नहीं होगी। बशर्ते ऐसे व्यक्तियों ने अधिवार्षिकी की आयु प्राप्त नहीं की है।
- x. राजस्थान निःशक्तजन व्यक्तियों का (समान अवसर, अधिकारों का संरक्षण और पूर्ण भागीदारी) नियम 2011 के प्रावधानों के अनुसार सामान्य वर्ग / अन्य पिछड़ा वर्गों तथा एस.सी./एस.टी. के विकलांग अभ्यर्थियों को ऊपरी आयु सीमा में क्रमशः 10, 13 व 15 वर्ष की छूट देय है।
- xi. कार्यक्रम अधिकारी/सहायक कार्यक्रम अधिकारी, वरिष्ठ तकनीकी सहायक प्रोग्रामर, सहायक लेखाधिकारी, कनिष्ठ तकनीकी सहायक, कनिष्ठ अभियन्ता, ग्राम रोजगार सहायक डाटा एन्ट्री आपरेटर, कनिष्ठ लिपिक, लेखा सहायक, समन्वयक, आई ई सी. समन्वयक प्रशिक्षण, समन्वयक पर्यवेक्षण तथा कम्प्यूटर आपरेटर विथ मशीन (नियोजन अभिकरण के माध्यम से लगे हुआ के सिवाय) के रूप में या समन्वित जल ग्रहण प्रबन्धन कार्यक्रम / राष्ट्रीय जल ग्रहण विकास कार्यक्रम / डी.डी.पी. / डी.पी.ए.पी. के अन्तर्गत जल ग्रहण विकास दल के अभियान्त्रिकी, कृषि, पशुपालन या समाज विज्ञानी सदस्य अथवा निर्मल भारत अभियान (सम्पूर्ण स्वच्छता कार्यक्रम) के अन्तर्गत जिला समन्वयक स्वच्छता/SWSHE, ब्लॉक कोर्डिनेटर/लेखाकार या कम्प्यूटर / एम.आई.एस. असिस्टेंट के पद पर संविदा आधार पर लगातार कार्य कर रहे किसी व्यक्ति के लिये उपयुक्त वर्णित ऊपरी आयु सीमा, उसके द्वारा की गई संविदा आधारित कार्मिक नियोजन के समय राज्य सेवा में आयु सीमा के अन्तर्गत थे उस स्थिति में कनिष्ठ लिपिक की भर्ती के दौरान आयु सीमा में स्वीकार किये जायेंगे (कार्मिक विभाग की आई.डी.संख्या 16 दिनांक 8.1.2013 से अनुमोदनानुसार)।



नोट :- (1) उपरोक्त पैरा के प्रावधान (i) से (x) तक पर वर्णित आयु सीमा में छूट के प्रावधान **Non cumulative** है। अर्थात् अभ्यर्थियों को उपरोक्त वर्णित किसी भी एक प्रावधान का अधिकतम आयु सीमा में छूट का लाभ दिया जायेगा। एक से अधिक प्रावधानों को जोड़कर छूट का लाभ देय नहीं होगा।

(2) उपरोक्तानुसार आयु सीमा में छूट का लाभ सक्षम प्राधिकारी से जारी प्रमाण पत्र प्रस्तुत करने पर ही उपलब्ध होगा।”

It is true that at the time of issuance of the Advertisement for filling up the vacancies of L.D.Cs, the petitioners were performing the duties on different posts with the respondent-Department for more than five years on contractual basis, thus, their candidature was required to be considered by the respondents in pursuance of the Advertisement issued. However, the candidature of the petitioners for grant of appointment is required to be considered in accordance with the Rules governing the recruitment and appointment.

The main contention of the learned counsel for the petitioners is that the petitioners are entitled for age relaxation on two counts:

- (i) for not making the recruitment for three years preceding 2013; and
- (ii) serving the respondents on contractual basis for a period of five years is required to be considered in accordance with the provisions governing the field on the subject.

For ready reference, Rule 265 of Rajasthan Panchayati Raj Rules, 1996 is reproduced hereunder:-

“Rule 265. Age.-A candidate for direct recruitment must have attained the age of eighteen years and must not have attained the age of [thirty five] years on the first day of January





following the last date fixed for receipt of applications:

Provided that:-

[(1) The upper age limit for a male candidate belonging to Scheduled Caste or a Scheduled Tribe or Other Backward Classes or women candidates belonging to general category shall be relaxed by five years.

(ia) The upper age limit for women candidates belonging to Schedule Caste or Scheduled Tribe or Other Backward Classes shall be relaxed by 10 years.]

(ii) The upper age limit for ex-servicemen shall be fifty years,

(iii) The upper age limit for persons already working as Secretaries of Panchayats shall be relaxable upto the period of service rendered as a Panchayat Secretary subject to a maximum limit of three years,

(iv) There shall be no age limit in the case of widows and divorced women,

Explanation - In the case of widow, she will have to furnish a certificate of death of her husband from the competent authority and in the case of a divorcee, she will have to furnish the proof of divorce,

(v) The upper age limit for persons who were within the prescribed age limit on their temporary appointment under a Panchayat Samiti or a Zila Parishad shall be relaxable upto the period of service rendered by them under Panchayat Samiti or a Zila Parishad,

(vi) The upper age limit mentioned above shall apply in the case of an ex-prisoner, who had served under the Panchayat Samiti's and Zila Parishads on a substantive basis on any post before his conviction and was eligible for appointment under these rules,

(vii) The upper age limit mentioned above shall be relaxed by a period equal to the term of imprisonment served in the case of an ex-prisoner, who was not over- age before his conviction and was eligible for appointment under these rules.

[(viii) The candidate who crossed the upper age limit after 1-1-1999, shall be eligible for recruitment as Primary and Upper Primary School Teacher (General Education/Special Education) in Government Service upto 23-5-2007.]





[(ix) There shall be no age limit for persons appointed as Hand Pump Mistries under sub- Rule (SB) of Rule 259 provided such persons do not attain the age of superannuation.]

[(x) If a candidate would have been entitled in respect of his/her age for direct recruitment in any year in which no such recruitment was held, he/she shall be deemed to be eligible in next following recruitment, if he/she is not over age by more than 3 years.]

[(xi) the upper age limit mentioned above, for the person who is continuously working on contract basis under any scheme of the Department of Rural Development and Panchayati Raj as Junior Technical Assistant, Junior Engineer, Gram Rozgar Sahayak, Data Entry Operator, Computer Operator with Machine (except engaged through placement agency), LDC, Lekha Sahayak, Co- ordinator IEC, Co-ordinator Training, Co-ordinator Supervision or on any post, shall be relaxed by a period equal to the service rendered by him, subject to maximum of 5 years.]”

A bare perusal of the aforequoted Rule makes it abundantly clear that a person who has attained the age of 18 years and must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of applications will be entitled for appointment on the post advertised by the State, however, certain provisos prescribe the upper age limit for grant of relaxation in the age.

The Rule itself takes care of the situation that if the State fails or is unable to conduct the recruitment process for some years (longer period), proviso (x) to Rule 265 of the Rules of 1996 provides for age relaxation to such candidates to the extent of three years in upper age limit. In the present case, since the recruitment was not conducted for a period of three years, therefore, the persons similarly situated to the petitioners were entitled for grant of relaxation to a period of three years.





Simultaneously, proviso (xi) also provides for grant of maximum five years' period of age relaxation to the persons who are working on different posts in the State of Rajasthan in different departments on contract basis. The Rule does not prescribe anything, whereby it can be said that if a candidate is falling in more than one category, the age relaxation can be granted considering two different proviso for the benefit of that candidate. The Rule envisages the conditions in which a person is entitled to age relaxation and if benefit is granted to a person who is falling in a particular category, he cannot ask for the operation of another category to his benefit/credit.

For example, if a Scheduled Caste woman candidate is working with the respondent-Department on contractual basis, then as per the contention of the learned counsel for the petitioners, she is required to be given relaxation in upper age limit of 18 years (10 yrs. for SC Category, 5 yrs. for working on contractual basis & 3 yrs. for not conducting recruitment) i.e. upto the age of 53 years (35 yrs. + 10 yrs. + 5 yrs. + 3 yrs.). The intention of the legislature is not to be taken in such a fashion that it breaches the basic and fundamental principle of consideration of the age as provided in the rule itself which clearly prescribes the age of a candidate to be considered between 18-35 years only and proviso provides for certain relaxations in certain conditions.

Thus, this Court is of the view that the recruitment process undertaken by the respondents is required to be adhered to and governed under the set of rules, more particularly with respect to the relaxation of age as per Rule 265 of the Rajasthan Panchayati Raj Rules, 1996. The petitioners who are getting the age



relaxation as per their working in the State Government for a period of five years on contract basis are entitled to get relaxation in upper age limit of five years and not for any additional benefit of upper age limit to the extent of three years for non-holding of recruitment process by the State for three years.

The view taken by this Court is fully supported by the Division Bench of this Court in the case of ***Alsa Ram Meghwal*** (supra), whereby the Division Bench in identical situation held as under:-

"14. As a general rule, in terms of Rule 13, the candidate for direct recruitment to the post to be filled in by Combined Competitive Examination must have attained the age of 21 years and must not have attained the age of 33 years. But then, as noticed hereinabove, under provisos (1) to (14) to Rule 13, while extending the benefit of relaxation in age in respect of the specified classes or relaxing the age limit as such, a different upper age limit has been prescribed for distinct classes. Apparently, the relaxation in age by 5 years in case of woman candidate and candidates belonging to the Scheduled Castes and Scheduled Tribes of Rajasthan, relates to the upper age limit as prescribed under Rule 13 in respect of the candidates in general, aspirant to appear at the Combined Competitive Examination and the same cannot be read as provisos to the various provisos to Rule 13 of the Rules, which prescribe a different upper age limit for the classes specified. It is pertinent to note that under Rule 13, the upper age limit of 40 years has been prescribed not only for the persons serving in connection with the affairs of the State or Panchayati Samiti and Zila Parishad in substantive capacity, who are entitled to compete for recruitment to the post against 7% vacancies reserved under proviso to Rule 4(1) of the Rules but



also, for the persons serving in the State Public Undertakings and Corporations in substantive capacity. Thus, it is apparent that in relaxation of the main provision, providing for the upper age limit as 33 years, for the aforesaid in-service candidates, who have spent a considerable period of their life in serving the State Government or its undertakings/organisations, treating them to be a distinct class, different upper age limit has been prescribed by incorporating proviso (6) to Rule 13, so as to give them a chance to improve their career.

15. In the considered opinion of this court, a different upper age limit having been prescribed for the in-service candidates, as aforesaid, treating them to be a distinct class, no distinction can be made between Government servants so as to make them entitled to claim relaxation under proviso (1) or (14) to Rule 13, being member of Scheduled Castes, Scheduled Tribes or Other Backward Classes, as the case may be. We are of the considered opinion that if the interpretation of Rule 13, as suggested on behalf of the appellant is accepted, it will amount to reading something in the rule, which is not there. It is well settled that the function of the court is only to expound the law and not to legislate and therefore, it is not possible to interpret the Rule 13 of the Rules, in the manner suggested on behalf of the appellant, so as to extend the applicability of relaxation in age as provided for under proviso (1) to Rule 13 of the Rules to the distinct classes as specified under various provisos to Rule 13 of the Rules. Thus, the upper age limit for the in-service candidates specified, aspiring to appear at Combined Competitive Examination, either against vacancies reserved in terms of Rule 4 (1) of the Rules or the remaining vacancies, remains the same i.e. 40 years, without there being any further entitlement for relaxation in age in terms of proviso (1) to Rule 13 of the Rules.

16. For the aforementioned reasons, we are completely in agreement with the learned Single



Judge that the relaxation in age by 5 years, as provided for under proviso (1) to Rule 13 of the Rules, in case of woman and candidates belonging to Scheduled Castes and Scheduled Tribes, is only qua the upper age limit prescribed for the candidates in general and such relaxation is not available to the persons serving in connection with affairs of the State in the substantive capacity, in whose respect, a different upper age limit has been prescribed under proviso (6) to Rule 13 of the Rules.

17. In view of the interpretation of Rule 13 as aforesaid, the explanatory note appended to clause (6) of the advertisement by RPSC, restricting the scope of relaxation in age under only one clause out of the various clauses specified, is absolutely in conformity with the mandate of Rule 13 of the Rules and cannot be said to be illegal.

18. In the result, this intra court appeal fails, it is hereby dismissed. No order as to costs."

It is well settled that when there is variance in the Advertisement and in the Statutory Rules, it is the Statutory Rules which take precedence. In **Malik Mazhar Sultan V. U.P. Public Service Commission reported in 2006 (9) SCC 507**, Hon'ble the Supreme Court clarified that an advertisement would not create a right in favour of applicants who act on such representation. The Court considered the eligibility criteria for the post of Civil Judge (Junior Division) under the U.P. Judicial Service Rules, 2001 against an erroneous advertisement issued by the U.P. Public Service Commission and held:

"The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible



age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.”

The same view was taken by Hon’ble the Supreme Court in the case of ***Ashish Kumar Vs. State of U.P. reported in (2018) 3 SCC 55*** and recently in the case of ***The Employees State Insurance Corporation Vs. Union of India & Ors. (Civil Appeal No.152/2022) decided on 20.01.2022.***

So far as the contention of learned counsel for the petitioners that certain persons have been appointed by the State Government de hors the rules is concerned, the State Government has already taken note of the situation and is proceeding against such candidates who have been appointed de hors the rules. Thus, no further direction is necessitated in this regard.

In view of the discussions made above, the writ petitions fail and the same are, therefore, dismissed.

**(VINIT KUMAR MATHUR),J**

20-35-/Vivek/-