

[2022 LiveLaw \(SC\) 286](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

DR DHANANJAYA Y CHANDRACHUD; J, A S BOPANNA; J, HIMA KOHLI; J.

Civil Appeal No 2016 of 2022 (Arising out of SLP (C) No 4452 of 2022) W I T H Civil Appeal Nos 2017-2020 of 2022 (Arising out of SLP (C) Nos 4432-4435 of 2022); March 14, 2022

High Court of Delhi *Versus* Devina Sharma Respondent

Constitution of India, 1950; Article 233,235 - The High Courts are well within their domain in prescribing a requirement which ensures that candidates with sufficient maturity enter the fold of the higher judiciary. The requirement that a candidate should be at least 35 years of age is intended to sub-serve this - The Constitution does not preclude the exercise of the rule making power by the High Courts to regulate the conditions of service or appointment - Age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to liberty and justice. (Para 26)

Delhi Higher Judicial Service - In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations. (Para 29)

Service Law - The prescription of a rule providing for a minimum age requirement or maximum age for entry into service is essentially a matter of policy - Determination of cut-offs lies in the realm of policy. (Para 25)

Delhi Higher Judicial Service - The deletion of the minimum age requirement of 35 years in 2019 may have been guided by the need to attract a larger pool of applicants to DHJS. But the reinstatement of a minimum age requirement of 35 years is a matter of policy. This conforms to the recommendation of the Shetty Commission. (Para 27)

(Arising out of impugned final judgment and order dated 08-03-2022 in W.P.(C) No.3914/2022 passed by the High Court of Delhi at New Delhi)

For Petitioner(s) Mr. A.D.N. Rao, Sr. Adv. Mr. Gautam Narayan, AOR

For Respondent(s) Mr. Devadatt Kamat, Sr. Adv. Mr. Rajesh Inamdar, Adv. Mr. Pai Amit, Adv. Ms. Pankhuri Bhardwaj, Adv. Ms. Ripul Swati, Adv. Mr. Ranjan Nikhil Dharnidhar, AOR Ms. Amarjit Singh Chandhiok, Sr. Adv. Mr. Karan Dalal, Adv. Mr. Suryavir, Adv. Mr. Additya Kapoor, Adv. Ms. Manika Goswamy, Adv. Ms. Medha Tondon, Adv. Mr. Deepkaran Dalal, AOR Ms. Anitha Shenoy, Sr. Adv. Mr. Vivek Singh, AOR, Mr. Dama Seshadri Naidu, Sr. Adv. Mr. Namit Saxena, AOR Mr. Manish Rohilla, Adv.

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. Leave granted.

2. These appeals arise from orders of a Division Bench of the High Court of Delhi dated 4 March 2022 and 8 March 2022. The petitions before the High Court under Article 226 of the Constitution have raised issues pertaining to the validity of:

(i) The upper age limit of 32 years for appearing for the Delhi Judicial Service ["DJS"] examination; and

(ii) The minimum age requirement of 35 years for appearing for the Delhi Higher Judicial Service ["DHJS"] examination.

3. The High Court of Delhi issued notifications for conducting the examinations for DJS and DHJS on 23 February 2022. For the DJS, the last date for submission of forms is 20 March 2022 and the examination is scheduled to take place on 27 March 2022. For DHJS, the last date for submission of forms was 12 March 2022 while the date of the examination is 20 March 2022.

4. The bone of contention pertains to Rule 14(c) of the Delhi Judicial Service Rules 1970. Un-amended Rule 14(c) stipulated that a candidate shall be eligible to appear at the examination if he is not more than 32 years of age on the 1st day of January following the date of commencement of the examination. The above rule was amended on 11 February 2022 so as to stipulate that a candidate shall be eligible to appear at the examination if he is not more than 32 years of age on the 1st day of January of the year in which the applications for appointment are invited. The High Court of Delhi conducted the last examination for recruitment to the DJS in 2019. It is common ground that no examination was held in 2020 for institutional reasons and in 2021 due to the onset of the Covid-19 pandemic.

5. The grievance of the petitioners before the High Court is that candidates who would have qualified in terms of the upper age limit of 32 years for DJS, as stipulated in Rule 14(c), would now cease to be eligible by virtue of the fact that the examination is being held in March 2022. In terms of amended Rule 14(c) they would have crossed the age of 32 years on the 1st day of January of the year in which the applications for appointment are invited. In other words, it has been urged that if the High Court had conducted the examination on schedule in 2020 and 2021, such candidates would have qualified for the examination since they were within the age limit of 32 years for the relevant year.

6. When the petition was moved before the High Court, the Division Bench by its interim order dated 8 March 2022 directed that the date for receiving applications shall be rescheduled to a date after the next date of hearing and the date of holding the examination shall also be postponed. The proceedings were directed to be listed on 7 April 2022 before the same Bench which was seized of an earlier writ petition, Writ Petition (Civil) No 3636 of 2022 after obtaining the orders of the Chief Justice. Effectively therefore, by the interim order of the High Court, the examination for DJS which was scheduled to take place on 27 March 2022 would stand postponed.

7. Aggrieved by the interim order of the High Court, the jurisdiction of this Court under Article 136 of the Constitution has been invoked by the High Court of Delhi on the administrative side.

8. The earlier petition before the High Court related to the recruitment process for DHJS which resulted in an interim order of the Division Bench dated 4 March 2022. The backdrop of the grievance before the High Court was that in 2019, the High Court had amended the DHJS Rules by a notification dated 26 December 2019. Rule 9(3) specifies the qualifications for direct recruits. The requirement of a minimum age of 35 years was deleted by the notification of the High Court dated 26 December 2019. Subsequently, by a notification dated 8 February 2022, Rule 9(3) was amended so as to stipulate the requirement that the candidate must have attained the age of 35 years. Rule 9(3) also provides that the candidate should not have attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited. The submission is that under Article 233 of the Constitution, the only qualification for being appointed as a District Judge is continuous practice of seven years as an advocate or a pleader. Hence, the submission is that though the Constitution does not prescribe a minimum age limit for appointment as a District Judge, Rule 9(3) introduces such a requirement which would be in breach of the constitutional requirement.

9. The High Court by its interim order dated 4 March 2022 held that since the minimum age limit had been reintroduced after a hiatus of two years, the matter would require consideration. While directing that the petition should be listed on 7 April 2022, the High Court has directed that the date for filling up the online application forms should be extended beyond the next date of hearing. Effectively, as a consequence of the interim order of the High Court, the examination which was scheduled to be held on 20 March 2022 would stand postponed. The High Court on its administrative side is before this Court in proceedings under Article 136 of the Constitution.

10. On 11 March 2022, while issuing notice in the Special Leave Petition [SLP (C) No 4452 of 2022] relating to the DJS examination, this Court passed the following order:

“The Court is convened through Video Conferencing.

Heard learned senior counsel appearing on behalf of the petitioner as also the respondent, who has appeared in person.

Issue notice.

The respondent, who appeared in person, accepts notice. The respondent is directed to file her response by 12.03.2022.

The respondent claims that because of pandemic, she did not have opportunity to appear in the Delhi Judicial Services Examination for the last two years. She, accordingly, prays that as she has crossed the prescribed age limit of 32 years in the process, she may be permitted to appear in the present examination.

However, learned senior counsel appearing on behalf of the petitioner submits that approximately 5,700 candidates have applied for the said examination and the time schedule has already been fixed for the same.

Taking into consideration the fact that the time schedule of the above-mentioned examination has already been fixed by the Delhi High Court, we deem it appropriate to hear the matter and dispose of the same in accordance with law without stalling the examination process.

However, taking into consideration the facts and circumstances of the instant case, we permit the respondent to submit her application for the aforesaid examination which shall remain subject to the outcome of this petition.

List the matter on 14.03.2022.

The petitioner is directed to supply a copy of the petition to the respondent-in-person immediately.”

11. Likewise, while entertaining the Special Leave Petitions [SLP (C) Nos 4432-4435 of 2022] pertaining to the DHJS examination, this Court passed the following order on 11 March 2022:

“The Court is convened through Video Conferencing.

Heard learned senior counsel appearing on behalf of the petitioner.

Issue notice.

Dasti, in addition, is permitted.

It is noted that the respondents who preferred writ petitions before the High Court have not submitted any application for the Delhi Higher Judicial Services Examination, which is going to be conducted on 20.03.2022. The respondents moved the Delhi High Court straightway for relaxation of their age to appear in the above-mentioned examination. The High Court while issuing notice, directed to extend the date for filling up the online application form beyond the next date of hearing i.e. 07.04.2022.

Having heard learned senior counsel appearing on behalf of the petitioner and taking into consideration the fact that already more than 1200 applications have been received for the aforesaid examination, we are prima facie of the view that it is not appropriate to extend the time limit which was prescribed.

Hence, we direct the learned senior counsel for the petitioner to inform the respondents through mobile phone or e-mail to submit their applications within the time limit prescribed by the High Court i.e. 12.03.2022, which shall, however, remain subject to the outcome of these petitions. Learned senior counsel is further directed to inform the counsel for the respondents about the instant order also.

List these matters on 14.03.2022.”

12. Following the interim order of this Court, the petitioners before the High Court have appeared through learned counsel. In addition, this Court is also seized of a number of intervention applications by persons who are not before the High Court, but claim the benefit of the directions contained in the interim orders dated 11 March 2022.

13. We have heard Mr A D N Rao, learned senior counsel appearing on behalf of the High Court of Delhi. On behalf of the respondents and the intervenors, we have heard Mr Devadatt Kamat and Mr Amarjit Singh Chandhiok, learned senior counsel. The intervenors have been represented in these proceedings by Mr Sidharth Luthra, Ms Anitha Shenoy and Mr Dama Seshadri Naidu, learned senior counsel and Mr Aditya Singh, Mr Amarjit Singh Chandhiok, Mr Ranjan Nikhil Dharnidhar and Mr Deepkaran Dalal, learned counsel. Mr Anuj Sharma, one of the intervenors has also appeared in-person.

14. We would deal with the issues pertaining to DJS and DHJS separately.

15. In order to enable the Court to render a full and complete adjudication of the proceedings, the writ petitions [WP (C) No 3914 of 2022 & WP (C) Nos 3636/2020, 3650/2022, 3665/2022 & 3684/2022] before the High Court under Article 226 of the Constitution stand transferred to this Court. We have had the benefit of the submissions urged on both the sides.

16. At the outset, Mr A D N Rao, learned senior counsel appearing on behalf of the High Court of Delhi has stated that the High Court did not conduct the examination which was scheduled to be held in 2020 and in 2021 for DJS. The examination for 2020 could not be held for procedural reasons since the process for the earlier recruitment year, 2019, had not been completed. As regards the examination for 2021, it has been stated by the learned senior counsel that the examination was not held due to the onset of the Covid -19 pandemic. In this backdrop, learned senior counsel submitted that candidates who would otherwise qualify in terms of the upper age limit of 32 years if the exams were held in 2020 and 2021, would now become age barred since the examination is being held pursuant to the notification which was issued on 23 February 2022.

17. Having regard to the above situation, it has been submitted by Mr A D N Rao that this Court may, particularly having regard to the interim order dated 11 March 2022, grant the same benefit to all candidates, who would have qualified for the examination, had the examination been conducted in 2020 and 2021 on the basis of the rules as they then stood. In order to effectuate this, it has been submitted on behalf of the High Court of Delhi that the last date for the acceptance of applications may be suitably postponed by this Court, with the consequence that the dates for the examination may be rescheduled. The High Court has stated that if this Court were to accept the suggestion, a communication would be uploaded on the website of the High Court for the intimation of all prospective applicants so that candidates who would have been eligible during the recruitment years 2020 and 2021 may be considered for the ensuing process as a one-on time measure.

18. The time schedule for conducting the recruitment process to the judicial service has been stipulated by the judgment of this Court in **Malik Mazhar Sultan (3) vs Uttar Pradesh Public Service Commission, (2008) 17 SCC 703**. The object and purpose

of the directions of this Court has been to ensure that the recruitment process for the judicial service is conducted on schedule every year, subject to the rules of each High Court. The High Court of Delhi held its last examination for recruitment to DJS in 2019. Admittedly, no examination has been held in 2020 or in 2021. The examination for 2020 could not be conducted since the process for 2019 was still to be completed. The examination for 2020 could not be held due to the onset of the Covid-19 pandemic. In this backdrop, since the examination was not conducted for two recruitment years, the High Court has after considering the issue stated before this Court through the learned senior counsel that as a one-time measure, this Court may accept the suggestion that candidates who would have qualified for the examinations were they to be held on schedule for recruitment years 2020 and 2021 in terms of the rules as they then stood, may be permitted to appear for the ensuing examinations.

19. Having regard to the fact that the recruitment examination for DJS has been last held in 2019 and two recruitment years have elapsed in the meantime, we are of the view that the suggestion of the High Court should be accepted for this year. The consequence of the acceptance of the suggestion by this Court, would be that candidates who would have fulfilled the upper age limit of 32 years, for the recruitment years 2020 and 2021 would be eligible to participate in the examination for the ensuing recruitment year 2022. The age bar which they would now encounter is not of their own volition. The real element of hardship faced by such candidates has been remedied by the High Court and there is no reason for this court not to accept the suggestion. The examination cannot however, be postponed indefinitely nor can the candidates who have applied be left in a state of uncertainty. The existing candidates can have no grievance by the widening of the competition. In order to facilitate this exercise, we accept the suggestion of the High Court that the last date for the receipt of application forms shall be extended to 3 April 2022 and the examination shall be held on 24 April 2022. We direct that no impediment shall be caused in the conduct of the examination and no court shall issue any order of stay at variance with or contrary to the above directions of this Court.

20. A communication of the modified dates in the above terms shall be placed on the website of the High Court of Delhi.

Delhi Higher Judicial Service

21. The challenge before the High Court in the writ petitions [WP (C) Nos 3636/2020, 3650/2022, 3665/2022 & 3684/2022] pertains to the determination of a minimum age requirement of 35 years for appearing for the Higher Judicial Service. Mr Amarjit Singh Chandhiok, learned senior counsel appearing on behalf of the petitioners before the High Court submits that:

(i) Article 233 of the Constitution does not contain any requirement of a minimum age and the only requirement is that in order to qualify for appointment as District Judge, a person should have been an advocate or a pleader for not less than 7 years;

(ii) No minimum age requirement is specified for appointment to the judicial service as a consequence of which, candidates who complete 10 years of service in the judicial service would be eligible for being appointed to the Higher Judicial Service before they attain the age of thirty five;

(iii) The High Court itself had removed the minimum age requirement of 35 years in 2019 which has been reintroduced in February 2022; and

(iv) Persons, such as the petitioners before the High Court should therefore be given an opportunity of appearing for the examinations for the reason that until the rules were modified in February 2022, they would have been eligible to appear for the examination if it was held at the material time in 2020 and 2021.

22. The submission which has been urged by Mr Chandhiok, learned senior counsel has been also adopted by Mr Sidharth Luthra, Ms Anitha Shenoy and Mr Dama Seshadiri Naidu, learned senior counsel as well as the counsel appearing on behalf of the intervenors and the intervenor in-person.

23. Mr A D N Rao, learned senior counsel appearing on behalf of the High Court has opposed the submission.

24. In order to consider the tenability of the submission, it must be noted at the outset that the First National Judicial Pay Commission, commonly known as the Shetty Commission, recommended the introduction of the requirement that for direct recruitment to the cadre of District Judges, candidates should be between the age of 35 and 45 years with an upper age relaxation of three years for SC/ST candidates. Paragraph 10.93 of the recommendations of the Shetty Commission is extracted below:

"...we recommend that the candidates for direct recruitment to the cadre of District Judges should be between 35 and 45 years and the upper age may be relaxed by 3 years for SC/ST candidates."

25. The recommendations of the Shetty Commission were initially followed by an order of a three-Judge Bench of this Court in **All India Judges Association vs Union of India, (2002) 4 SCC 274**. By the order of this Court, the States and the Union Territories to whom a copy of the report had been submitted were directed to submit their responses to the Union of India expeditiously. Eventually, the report of the Shetty Commission resulted in the judgment of a three-Judge Bench of this Court in **All India Judges Association vs Union of India, (2002) 4 SCC 247**. The rules of several High Courts provide that for recruitment to the Higher Judicial Service, the candidate should be of a minimum age of 35, with a maximum age limit of 45 years. For instance, the

rules pertaining to the UP Higher Judicial Service were noticed in a decision of a two-Judge Bench of this Court in **Hirandra Kumar vs High Court of Judicature at Allahabad, (2020) 17 SCC 401** (“**Hirandra Kumar**”). The prescription of a rule providing for a minimum age requirement or maximum age for entry into service is essentially a matter of policy. After noticing the earlier precedents on the subject, this Court in **Hirandra Kumar** (supra) observed that the determination of cut-offs lies in the realm of policy.

26. The submission of the appellants, to the effect that the prescription of a minimum age would be contrary to the constitutional provision contained in Article 233 of the Constitution, cannot be accepted. Article 233(2) of the Constitution stipulates that a person not already in the service of the Union or of a State shall only be eligible to be appointed a District Judge if he has been, for not less than 7 years, an advocate or a pleader and is recommended by the High Court for appointment. Clause (1) of Article 233 stipulates that appointments of persons, posting and promotion of District Judges shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to the State. Article 235 entrusts to the High Court control over the district courts and courts subordinate thereto including the posting and promotion of and the grant of leave to persons belonging to the judicial service to the State and holding any post inferior to the post of District Judge. The Constitution has prescribed the requirement to the effect that a person shall be eligible for appointment as a District Judge only if he has been an advocate or a pleader for at least seven years. What this means is that a person who has not fulfilled the seven year norm is not eligible. The Constitution does not preclude the exercise of the rule making power by the High Courts to regulate the conditions of service or appointment. The silences of the Constitution have to be and are supplemented by those entrusted with the duty to apply its provisions. The Constitution being silent in regard to the prescription of a minimum age, the High Courts in the exercise of their rule making authority are entitled to prescribe such a requirement. Direct recruitment to the Higher Judicial Service is intended to be from members of the Bar who have sufficient experience. The post of a District Judge is at a senior level in the cadre. Age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to liberty and justice. The High Courts are well within their domain in prescribing a requirement which ensures that candidates with sufficient maturity enter the fold of the higher judiciary. The requirement that a candidate should be at least 35 years of age is intended to sub-serve this. Except for a short period when the requirement of a minimum age of thirtyfive was deleted, the Delhi High Court has followed the norm.

27. In the circumstances, we are of the view that there is no merit in the submission which has been urged on behalf of the petitioners before the High Court and the intervenors who have not fulfilled the age requirement of 35 years. Though for a short

period of about a year, the High Court had deleted the requirement of a minimum age of 35 years for entry into the Higher Judicial Service, the High Court has set right the rule so as to bring it into conformity with the recommendations of the Shetty Commission. The deletion of the minimum age requirement of 35 years in 2019 may have been guided by the need to attract a larger pool of applicants to DHJS. But the reinstatement of a minimum age requirement of 35 years is a matter of policy. This conforms to the recommendation of the Shetty Commission. Hence, there is no valid basis for this court to hold that the requirement that a candidate for the DHJS should be at least thirty-five years of age is invalid. We do not find any merit in the challenge which has been urged on behalf of the appellants to that extent.

28. During the course of the hearing, this Court has been apprised of the fact that several applicants for the higher judicial service examination would have qualified in terms of the upper age limit of 45 years in 2020 or, as the case may be, 2021. As a matter of fact, Mr A D N Rao indicates that he has instructions to the effect that some of those candidates may already have or would be in the process of moving petitions before the High Court. The reasons which have weighed with this Court in allowing the High Court, as a one-time measure, to permit candidates for the DJS examination who had qualified in terms of the upper age limit of 32 years during the recruitment years 2020 and 2021, should on a parity of reasoning be extended to candidates for the DHJS examination who would have qualified in terms of the upper age limit of 45 years during the recruitment years 2020 and 2021 during which no examinations could take place for the reasons which have been noticed earlier.

29. In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations.

30. For the Delhi Higher Judicial Service, the last date for the receipt of applications shall stand extended to 26 March 2022 while the examination shall be held on 3 April 2022, in those terms as stated before this court by senior counsel representing the High Court.

31. The High Court of Delhi shall upload a corrigendum indicating the above relaxation on its website.

32. The appeals are partly allowed in the above terms. The writ petitions before the High shall stand disposed of.

33. Pending applications, if any, stand disposed of.