

**A.F.R.****Reserved on - 29.7.2022****Delivered on - 11.8.2022****Court No. - 36****Case:- WRIT - A No. - 7783 of 2022****Petitioner :- Ajay Kumar Yadav And Another****Respondent:- State Of U.P. And 2 Others****Counsel for Petitioner :- Somendra Singh****Counsel for Respondent:- C.S.C., Avneesh Tripathi, M.N. Singh****with****Case:- WRIT - A No.- 8001 of 2022****Petitioner :- Anuj Gupta And Another****Respondent:- State Of UP And 2 Others****Counsel for Petitioner :- Somendra Singh, Ashwini Kumar****Counsel for Respondent:- C.S.C., Avneesh Tripathi, M.N. Singh****with****Case:- WRIT-A No. - 8082 of 2022****Petitioner :- Yogesh Pal Singh Gautam****Respondent:- State Of U.P And 2 Others****Counsel for Petitioner :- Babu Lal Ram, Navin Kumar****Counsel for Respondent:- C.S.C., M.N. Singh****with****Case:- WRIT-A No. - 8619 of 2022****Petitioner :- Ravindra Kumar Tyagi****Respondent:- State Of U.P. And 2 Others****Counsel for Petitioner :- Nitin Chandra Mishra, Abhishek Kumar  
Kushwaha****Counsel for Respondent:- C.S.C., Avaneesh Tripathi, M.N. Singh****Hon'ble Saurabh Shyam Shamsbery.J.**

1. All the above referred petitions involves same issue, therefore, are decided by a common judgment. For reference, prayers of the leading writ petition are mentioned hereinafter :-

*"i) Issue a writ, order or direction in the nature of mandamus commanding and directing to respondent No.03 to exempt the*

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*age relaxation to the petitioners for Assistant Prosecution Officer Exa.-2022 (ADVT. No.A-3/E-1/2022) dated 21.04.2022.*

*ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent No.03 to accept the application form of the petitioners for Assistant Prosecution Exam.-2022 (ADVT. NO.A-3/E-1/2022) dated 21.04.2022."*

2. Heard Shri Somendra Singh, learned counsel for petitioners in Writ A No.7783 & 8001 of 2022, Shri Abhishek Kumar Kushwaha, learned counsel for petitioner in Writ A No.8619 of 2022, Shri Vikram Bahadur Singh, learned Standing Counsel and Shri Lal Dev Chaurasiya, Advocate holding brief of Shri Avneesh Tripathi, learned counsel for respondents no.2 and 3.

3. Learned counsel for parties are in agreement that this writ petition involves interpretation of legal provision as well as clauses of advertisement of recruitment process, therefore, writ petitions could be decided without exchange of pleadings.

4. All the petitioners are candidates of recruitment process for the post of Assistant Prosecution Officer Exam - 2022 (Advt. No. A-3/E-1/2022, dated 21.4.2022).

5. Shri Somendra Singh, learned counsel for petitioners submitted that no recruitment process for Prosecuting Officers could be conducted after 2018 and after four years now in 2022, present recruitment process is commenced. During 4 years, many candidates have become over aged and by fixing cut off date for maximum age of 40 years to be 1.7.2022, respondents have declined petitioner's legitimate right to participate in the examination and cut off date for maximum age ought to be 1.7.2021 and in this regard, learned counsel relied upon definition of 'Year of Recruitment' (Rule 3(I) of U.P. Prosecuting Officers

Service Rules, 1991 (*hereinafter referred to as 'the Rules, 1991'*) which states that "means a period of twelve months commencing from the first day of July of a calendar year".

6. 'Age' is defined in Rule 10 of the Rules, 1991 that :-

*"10. Age - A candidate for direct recruitment must have attained the age of twenty one years and must not have attained the age of more than thirty-five years on the first day of July of the calendar year in which vacancies for direct recruitment are advertised by the Commission:*

*Provided that the upper age limit in the case of candidates belonging to the Scheduled Castes, Scheduled tribes and such other categories as may be notified by the Government from time to time shall be greater by such number of years as may be specified."*

7. Clause 11 of Advertisement is also mentioned hereinafter :-

*"11. Age Limit:*

*(i) Candidates must have attained the age of 21 years and must not have crossed the age of 40 years on July 1, 2022 i.e. they must have not been born earlier than 2nd July, 1982 and not later than July 1, 2001. For PH candidates, the maximum age limit is 55 years i.e. they must have not been born before 02 July, 1967,*

*(ii) Relaxation in Upper Age Limit:*

*(a) Upper age limit shall be greater by five years for candidates belonging to Scheduled Castes of U.P., Scheduled Tribes of U.P., Other Backward Classes of U.P., Skilled players of up classified Games, State Govt. employees of U.P. including the teachers/Staff of Basic Shiksha Parishad of U.P. and teachers/Staff of the Govt. Aided Madhyamik Vidyalayas of U.P. i.e. they must have not*

*been born before 2nd July 1977.*

*(b) Upper age limit shall also be greater by 3 years + period of service rendered in army for the emergency commissioned officers/short service commission officers/Ex-Army personnels of U.P.*

*(c) Upper age limit shall be greater by 15 year's for P.H. candidates of U.P."*

8. Learned counsel further submitted that date of Advertisement was 21.5.2022, therefore, year of recruitment ought to be 1.7.2021 to 1.7.2022 and accordingly cut off date for maximum age ought to be 1.7.2021 and not 1.7.2022. In the present recruitment vacancies of year 2018-19, 2019-20 are included and considering petitioners' legal exceptions, writ petition be allowed.

9. Shri Abhishek Kumar Kushwaha, learned counsel for other petitioners submitted that due to Covid-19 Pandemic, examination was not conducted for almost four years and considering extraordinary circumstances, petitioners who are eligible if the cut off date for 'age' is fixed 1.7.2022 be permitted to appear in examination and in this regard, he relied upon paragraph 18 and 19 of judgment passed by the Supreme Court in **High Court of Delhi vs. Devina Sharma; (2022) 4 SCC 643**, which are mentioned hereinafter :-

*"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 6. The object and purpose of the directions of this Court has been to ensure that the 6 (2008) 17 SCC 703 CA 2016/2022 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 CA 2016/2022 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."*

[emphasis supplied]

10. Shri Lal Dev Chaurasiya, learned counsel for respondent no.2 submits that advertisement was issued on the direction of State, therefore, respondent no 2 has no submission on merit, however, Advertisement was issued on 21.4.2022, therefore, recruitment year would be 2022-23 and reckoning of date would be 1 July, 2022, as such, cut off date is rightly fixed.

11. Shri Vikram Bahadur Yadav, learned Standing Counsel submitted that first date of July calendar year would be relevant for the calendar year of recruitment which is 2022-23, therefore, relevant date would be 1 July, 2022 and not 1 July, 2021 and has relied upon paragraphs no.48, 68 and 77 of the judgment passed by a co-ordinate Bench of this Court in the case of **Sushil Kumar Singh and 127 others vs. State of U.P. and othes (Writ A No.4924 of 2021, decided on 24.8.2021)** that :-

*"48. Petitioners assume that age relaxation would be a natural consequence of non-holding of recruitment, annually, in terms of the undertaking given to the Court, and the writ petition is primarily based on such an assumption, which is wholly misplaced.*

*68. Distinction has been drawn between substantive legitimate expectation and procedural legitimate expectation. In order to make out a case for substantive legitimate expectation, it will have to be shown that change in policy is not on account of changed circumstances or in public interest and that the action*

*is otherwise arbitrary and unreasonable. In the facts of the present case it has already been found that State had not acted arbitrarily and justification exists for not holding annual recruitment on the post of Sub-Inspector despite the undertaking given by State of U.P. before Supreme Court.*

*77. The State Government has already made Rules of 2015 in exercise of powers under Clause (c) of Sub-section (2) read with Sub-section (3) and Section 2 of the Police Act, 1861 which specifies the age of recruitment and is otherwise not under challenge. The Writ Court, therefore, cannot issue any mandamus to the State to relax the upper age limit provided in Rule 10 in the manner it is prayed by the petitioners. A writ of mandamus can be issued only when there is in existence a legal right with corresponding legal duty. Prayer so made has, therefore, to be rejected. No provision otherwise exists in the Police Act, 1861 or the Rules of 2015 which empowers the State to relax the maximum age of recruitment specified in Rule 10."*

12. The advertisement for 2018-19 for A.P.O. was issued on 28.12.2018 and reckoning date was 1 July, 2018, therefore, relevant is year of recruitment and accordingly, date is fixed.

13. Heard the counsel for parties, perused the pleadings as well as written submissions.

14. Covid-19 pandemic has stalted and affected not only day to day life of a human being but has affected State's normal working and an example of it is the recruitment process in question which is scheduled after four years. Resultantly, petitioners became over aged according to cut off date i.e. they have crossed the age of 40 years before July 1, 2022 i.e. they are born earlier than 2<sup>nd</sup> July. 1982.

15. In the recruitment process, candidate between 21 years to

40 years are eligible to participate and there is no limit of attempts, therefore, petitioners were eligible to participate in recruitment held prior to recruitment held in 2018, therefore, the argument that they have been denied the right of legal expectation has no force. Considering it was beyond control of the State, therefore, State cannot be faulted for not conducting recruitment examination during Covid-19 pandemic.

16. 'Year of Recruitment' means a period of twelve months commencing for first day of July of a Calendar year(See Rule 3(1) of the Rules, 1991). 'Age' means that a candidate must not have attained the age of more than forty years on the first day of July of Calendar year in which vacancies for direct recruitment are advertised by the Commission (See Rule 10 of the Rules, 1991).

17. Assistant Prosecution Officer examination 2018 was advertised by Advertisement dated 28.12.2018 and cut off date for maximum age was fixed to July 1, 2018 whereas for Assistant Prosecution Office examination, 2022 (Advertisement dated 21.4.2022), cut off date for maximum age is fixed i.e. 1.7.2022. The relevant cut off date is fixed according to year of advertisement.

18. In **Devina Sharma (Supra)**, age was relaxed on basis of submission of the recruitment body, therefore, it cannot be treated to be a precedent. In the present case, State has fixed the cut off date and being a policy matter not be disturbed or interfered not being to be 1.7.2022, which has followed earlier pattern arbitrarily. Similarly reckoning date is fixed according to year to recruitment and year of advertisement such as in recruitment process for Uttar Pradesh Police Constable and Head Constable (Advertisement dated 14.1.2018) and the reckoning date was 1 July, 2008.



19. It is settled proposition that due to inaction on the part of the State Government in not filing the posts year-wise. The candidates cannot get a right to participate in the selection process being over aged and that no body can claim as a matter of right that recruitment on any post should be made every year. State has taken a decision which cannot be interfered except it is arbitrary which the petitioners have failed to make out a substantial case.

20. In the present case, there is no challenge to clauses of advertisement and reckoning date is fixed in accordance with Rules considering date of advertisement year of recruitment considering date of Advertisement to be 21.4.2022, reckoning date is fixed to be 1.7.2022.

21. Rule 10 of the Rules, 1999 provides reckoning date for age will be first day of July of the Calendar Year in which vacancies for direct recruitment are advertised by the Commission. In the present case, Commission has advertised on 21.4.2022, therefore, calendar year would be 1 January, 2022 to 31 July, 2000 and accordingly date would be first day of July of Calendar year i.e. 1.7.2022. Commission and State have followed the provisions correctly. Fixing of date cannot be said to be arbitrary. Petitioners have failed to make out a case for interference.

22. It will be relevant to quote paragraphs 8, 10 and 11 from the judgment passed by a co-ordinate Bench of this Court in **Vijay Kumar Singh vs. State of U.P. and others; 2022 (7) ADJ 677 (LB)** while dealing the similar issue held that :-

*“8. xxxxxxxxxxxx*

*Further, Rule 6 of U.P. Recruitment to Services (Age Limit)*

*Rules, 1972 (Age Limit Rules) reads:-*

*"Rule 6-Computation of Age.-Notwithstanding anything to the contrary contained in any service rules, for the services and posts, whether within or outside the purview of the Public Service Commission, a candidate must have attained the minimum age and must not have attained the maximum age, as prescribed from time to time, on the first day of July of the calendar year in which vacancies for direct recruitment are advertised by the Public Service Commission or any other recruiting authority, or as the case may be, such vacancies are intimated to the Employment Exchange.*

*Provided that nothing in this rule shall apply to a case where such advertisement or intimation has been made before the commencement of the Uttar Pradesh Recruitment to Services (Age Limit) (Fifth Amendment) Rules, 1984."*

*10. Learned counsel for the petitioner has also placed before this Court a report of the Calendar Reform Committee of Government of India, submitted on 10.11.1955. Learned counsel for the petitioner submits that in the said report the committee referred to number of calendars in use in India and did not find favour with the English calendar for use in India and recommended use of Indian calendar. Therefore, the term calendar year as used in Rule-10 should not be read as British calendar but should be treated to be Indian Calendar. Learned counsel for petitioner further relied upon the judgments of Supreme Court passed in case of 'Malik Mazar Sultan Vs. U.P. Public Service Commission' reported in [2006 (9) SCC 507] and 'Chairman Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited' reported in [2007 (8) SCC 705].*

*11. I have perused the report of the committee. The said report is only recommendatory in nature. There is nothing to show that the same was ever accepted and enforced, at any point of time. There is nothing to show that while drafting or enforcing the applicable rules, the State Government ever relied upon the said*

*report or referred to any Indian calendar. The use of the month of July in rules itself shows that rules refer to the British calendar and not to an Indian calendar. Therefore, the term 'calendar year' in which the vacancies are advertised is the year from the 1st of January to 31st December and, it is the first day of July of the said calendar year on which the person should not have attained the age of more than 40 years. The same in the present case is 2022 as the vacancies were advertised on 05.01.2022."*

**23.** In view of above discussion and considering the judgment **Vijay Kumar Singh (Supra)**, I do not find any illegality and irregularity in fixing of reckoning date in terms of date of advertisement i.e. 1.7.2022. Accordingly, the present writ petition is dismissed.

**Order Date :- 11.8.2022**  
Rishabh

***[Saurabh Shyam Shamsbery, J.]***

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