

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CWP-12723-2021 (O&M)
Date of Decision: 11.08.2021

Navdeep Singh Brar & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Pardhuman Garg, Advocate,
Mr. DK Bhatti, Advocate,
Mr. BS Dhatt, Advocate,
Mr. Saurav Bhatia, Advocate,
for the petitioners

Ms. Monica Chhibber Sharma, Sr.DAG, Punjab

GIRISH AGNIHOTRI, J. (Oral)

(1) The matter has been taken up through video conferencing on account of restrictions due to outbreak of COVID-19 pandemic.

(2) By this order, I shall dispose of CWP Nos.12723, 13474, 13337, 13789, 13893, 14668, 14879 of 2021 as common questions are involved for adjudication. For orders, CWP No.12723 of 2021 is being treated as the lead case.

(3) The petitioner Navdeep Singh Brar and 55 others have filed the instant writ petition, *inter alia*, with a prayer to direct the respondents to give age relaxation to them for applying against the posts of Police Sub Inspectors advertised on 06.07.2021. A further prayer is made to count their age as on 01.01.2021 in lines of the judgment of the Hon'ble Supreme Court in ***Re: Cognizance for Extension of Limitation*** whereby the period starting from 15.03.2020 till further orders was directed to be considered as 'Zero Period' in view of COVID-19 pandemic. Prayer is also made to allow the petitioners to provisionally appear in the examination scheduled for the above-said posts.

(4) This Court in view of the facts and grounds noticed hereunder finds no merit in the pleas raised in the petition.

(5) Learned counsel for the petitioners submit that on 06.07.2021, Advertisement No.1 of 2021 was issued by the Punjab Police for recruitment to the post of Sub Inspectors, in the cadre of District Police, Armed Police Intelligence and Investigation. As per the petitioners, 560 posts of Sub Inspectors were advertised. The last date for filling up online application forms was fixed as 27.07.2021. It is pleaded that under Clause 5 of the advertisement under the head "**ESSENTIAL ELIGIBILITY REQUIREMENTS FOR CANDIDATES**", the following was provided:-

“5.1 Nationality

The candidate should be a citizen of India. She/he should not have obtained the citizenship/permanent residency/green card of any other country.

5.2 Age

Eligibility criteria regarding age shall be as follows:-

Minimum age as on 1 January, 2021- 18 years

Maximum age as on 1 January, 2021 - 28 years. Relaxation in age shall, however, be applicable as mentioned below:

- i. *Relaxation upto five (5) years in the prescribed upper age limit has been granted to the candidates belonging to the Scheduled Castes and Backward Classes, who are residents of Punjab. As such, maximum age for such candidates shall be 33 years as on 1 January, 2021.*
- ii. *Ex-servicemen, who are residents of Punjab, shall be allowed to deduct the period of his/her service in the Armed Forces of the Union from his actual age, and if the resultant age does not exceed the maximum age limit prescribed for direct appointment to such a vacancy in the Service Rules concerned by more than three (3) years, she/he shall be deemed to satisfy the conditions regarding age limit.*

iii. *Relaxation upto five (5) years in the prescribed upper age limit has been granted to candidates, who are serving regular employees of Punjab Government or of other State or Central Government. As such, maximum age for such candidates shall be 33 years as on 1 January, 2021.*”

(6) The petitioners have conceded that they do not fulfill the age criteria prescribed in the advertisement. In other words, their age is beyond the age of 28 years which was required as on 01.01.2021. The grounds on which the petitioners have based their case is:-

- (i) On 12.07.2020, the worthy Chief Minister of Punjab in his official tweet at Twitter had responded to the query of one Mr. Amarpal Singh from Ludhiana and had said that “*the official announcement of the increase in recruitment age from 28 years to 32 for DSPs and Sub Inspectors will be made in the coming days...*”;
- (ii) It is pleaded that since 2016 to till date, no recruitment process has been initiated by the Government. It is pleaded that last examination for the said posts was held in the year 2016 and 450 posts were advertised at that time. It is then pleaded that this inaction on the part of the respondents has adversely affected their chances to appear and compete for the said posts of Sub Inspector;
- (iii) It is urged that had the examination/advertisement been issued by the Department in the year 2020, the petitioners would have been eligible to participate in the examination;
- (iv) Fourthly, it is submitted that as per *proviso* to Rule 12.6(c) of the Punjab Police Rules, 1934 (in short, the Rules), the Director General of Police, Punjab has the power to relax the upper age

limit under special circumstances. In this regard, the said *proviso* is reproduced as under:-

“...*Provided that the Director General of Police may, for the reasons to be recorded in writing, relax the upper age limit under special circumstances...*”

(v) Lastly, to support their prayer made in the writ petition, the petitioners have pleaded that they ought to have been given the benefit of age relaxation in view of the order dated 23.03.2020 passed by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (Civil) No.3/2020 “Re: COGNISANCE FOR EXTENSION OF LIMITATION”*** . In other words, the petitioners have claimed that they should also be given the benefit of this Covid period as they lost their chance to face the recruitment due to non-conducting of the exams by the respondents.

(7) This Court vide order dated 14.07.2021 had issued notice to the respondents. In response thereto, reply dated 06.08.2021 has been filed by way of affidavit of Mr. Patil Ketan Baliram, IPS, Assistant Inspector General of Police Personnel-2, Punjab on behalf of the respondents.

(8) In reply to the first ground taken by the petitioners, it is argued by Ms. Monica Chhibber Sharma, Id. Sr.DAG, Punjab that a perusal of the tweet would show that it was only a reply to the query raised by one Mr. Amarpal Singh that worthy Chief Minister had said that the official announcement shall be made. She submits that if reference is made to para 8 of the preliminary submissions of the reply, it would be evident that the matter was in fact examined in the office of the Director General of Police. Various field officers were consulted and after considering all the factors it

was deemed appropriate neither to amend the Rules nor to grant relaxation in age. Para 8 of the reply is reproduced as under:-

“That the proposal for increase of upper age limit of SI from 28 to 32 years was examined in the office of Director General of Police, Punjab. Various field officers were consulted and most of the field officers were not in favour of increase of upper age limit due to the questionable physical fitness at the age of 32 years, particularly physical part of basic training. Also, this will further increase the upper age limit of reserved categories. Accordingly, no amendment has been carried out in the relevant Rules pertaining to the age limits for the post of Sub-Inspectors and the upper age limit for the post of Sub-Inspectors for general category candidates is still 28 years.”

(9) Learned State counsel in reply to the second ground submits that in fact in the year 2016, 430 posts were advertised and it is further submitted that the petitioners have no legal right to pray for a mandamus to direct or command the ‘employer’ i.e. the respondents herein to fill up the vacancies year-wise. She submits that there is no requirement in the Rules to the effect that the vacancies should be filled up year-wise.

(10) Regarding the third ground, it is averred that in the year 2020, no decision was taken by the ‘employer’ i.e. the respondents to fill up the existing vacancies of Sub Inspectors. It is reiterated that the petitioners have no right as it is the prerogative of the ‘employer’ to either fill up the vacancies which are vacant or not to fill up the same till the time ‘employer’ would actually feels the requirement to do so. In this regard, reference is made to para 6 of the preliminary submission of the reply.

(11) Ms. Chhibber, in response to the fourth ground, submits that the stand of the respondents is that the upper age limit for the post of Sub Inspectors was enhanced from 25 to 28 years after the approval of the

Council of Ministers as conveyed by the Department of Personnel, Punjab vide order dated 25.05.2016. It is also the submission of learned State counsel that to the specific categories, the age relaxation has been given in the advertisement which is evident from clause (i), (ii) & (iii) of clause 5.2, reproduced above. By making reference to clause (i), learned State counsel submits that relaxation upto 5 years in the upper age limit had been granted to the candidates belonging to the reserved category and accordingly for them the age was 33 years as on 01.01.2021. She submits that similarly there was provision *qua* ex-serviceman category and also of 5 years for those who were employees of the Government. For them as well, the maximum age was enhanced to 33 years as on 01.01.2021.

(12) To the fifth ground, learned State counsel makes reference to para 11 of the preliminary submission to say that in fact the said order dated 23.03.2020 of the Hon'ble Supreme Court¹, by no stretch of imagination, be made applicable to extending/considering the age factor of the candidates applying for the post. सत्यमेव जयते

(13) Besides, learned State counsel has taken an objection that no fundamental right much less legal right of the petitioners has been infringed by the respondents. She vehemently urged that the petitioners have not challenged Rule 12.6 of the Rules *ibid* wherein the maximum age has been fixed. Therefore, since the action of the respondent-Department in issuing the advertisement is in accordance with the service rules, the writ petition is bereft of merit. That apart, it is averred that the petitioners have also chosen not to challenge the clause of the advertisement and the writ

¹ Order dated 23.03.2020 passed in *Suo Motu Writ Petition (Civil) No.3/2020 "Re: COGNISANCE FOR EXTENSION OF LIMITATION*

petition is merely on the ground to grant them age relaxation which is not maintainable.

(14) In addition to the pleadings, Mr. Pardhuman Garg, learned counsel for the petitioner (in CWP-12723-2021) averred that in the judgment/order dated 22.07.2021 passed in **WP(C) No.8956/2020 (Najma vs. Govt. of NCT of Delhi)**, the Delhi High Court has *inter alia* taken the view² where there is a clear governmental policy, which is sought to be changed, and the legitimate expectation of those who were covered under the previously existing policy is in question, in that case, the benefit of policy would have to extend to the commercial society or individual concerned. Reliance has also been placed on the discussion of the third category of cases where oral assurance/promise was made which was not implemented by the conscious decision that was taken in the public interest due to adequate reasons that were shown. It was further held that where a clear and unequivocal oral assurance and promise is made by the worthy Chief Minister but there is no policy placed before the Court, if there is such inaction, the same should not be permitted.

(15) Mr. Saurav Bhatia, learned counsel for the petitioner (in CWP-13474-2021) submits that even the Hon'ble Supreme Court in **Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector and E.T.I.O. and Ors. (2007) 5 SCC 447**, observed that unlike the ordinary estoppels, promissory estoppels gives rise to a cause of action. It was further observed that its application against constitutional or statutory provisions is impermissible in law. Learned counsel therefore submits that even though the said judgment was on different set of facts, wherein validity and

² Ref. para 95 & 96 of the judgment

application of Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003 was in question, yet he would like to rely upon the *ratio* of the said judgment.

(16) Mr. DK Bhatti, learned counsel for the petitioner (in CWP-13337-2021) submits that the petitioners were eligible both in the year 2019 as well as in 2020 but because of inaction on the part of the respondents not to advertise the posts, the petitioners have missed their chance to compete for the said post. He further submits that in the present case, it is the case where the petitioners are not being allowed to participate in the 'game' and therefore, once the 'game' has not started, the principles that rules of 'game' cannot be changed are not attracted in the present case. He further submits that there are vast powers with the Government to fix the appropriate age for the aspirants/candidates keeping in view the overall public interest.

(17) Mr. BS Dhatt, Advocate for the petitioners (in CWP-13893-2021) has pleaded that this Court in *CWP-25534-2016 (Mangat Singh & Ors. Vs. State of Punjab & Ors.)* decided on 03.02.2020 had issued appropriate directions to the competent authority therein to consider the case of the writ petitioner for granting them relaxation in the upper age limit.

(18) At this stage, learned State counsel submits that she has been instructed to submit that in pursuance to the directions given by this Court, the Department has passed an order dated 28.02.2020/14.07.2020 ultimately rejecting the request of the writ petitioners in *Mangat Ram's* case for age relaxation.

(19) Mr. Garg has further submitted that the Hon'ble Supreme Court vide order dated 24.02.2021 passed in *WP (C) No.1410 of 2020 (Rachna & Ors. Vs. UOI & Anr.)*, has held that the objection taken by the respondents

that the writ petition is not maintainable as the petitioners do not have the right, is without any force. Para 3 of the said judgment would show that the prayer in the writ petition was for seeking a mandamus/directions to declare that action of the respondents in not issuing appropriate policy for grant of an extra attempt to candidates for whom civil services examination 2020 would be last attempt as being violative of Articles 14, 19, 29 and 21 of the Constitution of India. He submits that the fact that the Hon'ble Supreme Court had entertained the writ petition would show that the present petitioners who are similarly situated had a right to maintain the present writ petition.

(20) Reference is made to the order dated 25.05.2021 passed by the Allahabad High Court in Writ-A No.4924 of 2021 (Sushil Kumar Singh & others vs. State of UP & Ors.) (P9) wherein the Court had issued interim directions to allow the petitioners therein to submit their application forms for the post of Sub Inspector who would be within the eligible limit as on 01.07.2018.

(21) On the other hand, learned State counsel makes reference to the order dated 13.06.2018 passed by the Hon'ble Supreme court in SLP No.12569/2018 (Rajendra Singh & Ors. Vs. State of UP & Ors.), to submit that in that case on 14.01.2018, an advertisement was issued. The last date of application was 01.07.2018. Therein, it was pleaded that the last selection had taken place in the year 2015. She then refers to para 5&6 of the said judgment to say that in that case the learned State counsel was asked to seek instructions and on instruction, it was submitted on behalf of the State of UP that in the 2018 examination, the Government had taken a decision that such candidates who missed out merely because of date of reckoning for the selection in the 2018 shall be given one chance to compete. She submits that

it was only in those circumstances that the directions on provisional basis was issued by the Allahabad High Court.

(22) Learned State counsel further relied upon the decision of the Hon'ble Supreme Court in *State of Haryana vs. Subash Chander Marwaha (1974) 3 SCC 220* wherein it was held that existence of vacancies gives no legal right to the candidate to be selected³.

(23) On further instructions by the learned State counsel, it has been clarified on the basis of additional affidavit dated 10.08.2021 of Mr. Patil Ketan Baliram, IPS, Assistant Inspector General of Police Personnel-2, Punjab that the issue of age relaxation, after the tweet by the worthy Chief Minister (referred to by the petitioners), was discussed at various levels as mentioned in the affidavit. From the short affidavit, the contents of which are reproduced hereunder, it was the considered decision on behalf of the State neither to increase the upper age limit from 28 to 32 (by taking steps to amend the statutory rules) nor to relax the age beyond the age of 28 years:-

“3. That with regard to the tweet made by the Chief Minister Office, Punjab (CMOPb) regarding the increase of upper age limit for the post of Sub-Inspectors in direct recruitment from 28 years to 32 years, it is most humbly submitted as under:

I. After the said tweet, the matter for increase of upper age limit of SI from 28 to 32 years was examined in the office of Director General of Police, Punjab.

II. Various field officers were consulted and most of the field officers were not in favour of increase of upper age limit due to the questionable physical fitness at the age of 32 years, particularly physical part of basic training. Also, this will further increase the upper age limit of reserved categories.

III. Accordingly, the matter was discussed by the Director General of Police, Punjab with the Chief Principal Secretary to

³ Ref. para 8 of the judgment

Chief Minister, Punjab, Chief Secretary, Home, Punjab and with the Chief Minister of Punjab also and it was decided that further action be taken by the Chief Minister Office as discussed.

IV. The tweet relied upon by the petitioner as made by the Chief Minister Office, Punjab, is actually only a response to the query raised by one Mr. Amarpal Singh from Ludhiana whereby it was informed that the officials announcement of the increase the recruitment age from 28 years to 32 years will be made in the coming days.

V. However, the fact remains that till date no amendment has been carried out in the relevant Rules pertaining to the age limits for the post of Sub-Inspectors and the upper age limit for the post Sub-Inspectors for general category candidates is still 28 years.”

(24) This Court finds no merits in the first submission made by the petitioners. It is evident that firstly in view of Rule 12.6 of the Rules, which are statutory in nature, the action of the respondent-Department is in accordance with law. Secondly, the respondents in their reply have appended the notification (R2) wherefrom it is evident that vide letter dated 25.05.2016, the decision/approval of the Council of Ministers was conveyed. Amongst other decisions, the approval of the Council of Ministers in the revised memo was to authorize the Home Department to increase the age limit from 25 years to 28 years in direct recruitment of Constables and Sub Inspectors. Therefore, this Court is of the view that the petitioners cannot claim it as a matter of right for increase in the maximum age limit or for relaxation merely because the worthy Chief Minister had tweeted in regard thereto. It is evident from the previous decision that the worthy Chief Minister along with Council of Ministers had taken a decision as reflected in the memo dated 25.05.2016 (R2) to increase the age limit from 25 to 28 years. The petitioners also cannot claim their legal right based upon the judgment of the Delhi High Court in

Najma's⁴ case (supra), as even the facts and circumstances in that case were distinct. Reliance so placed by the petitioners clearly shows that the observations made by the Delhi High Court were keeping in view the fact that the tweet therein was by the worthy Chief Minister of Delhi regarding governmental policy. On the contrary, in the present case, a prescribed procedure as per the Rules of Business was required to be followed so as to amend the statutory Rules (especially Rule 12.6 of the Rules).

(25) This Court finds that the petitioners have no legal right to support the plea that they are entitled to age relaxation/increase in the upper age limit beyond 28 years merely because since 2016, no recruitment process had been initiated by the Government and accordingly their chances of recruitment were affected.

(26) It is not the case of the petitioners that there was any bounden duty cast upon the respondents under any statutory Rules to fill up the post/vacancies of Sub Inspectors each year after 2016. This Court finds force in the stand of the respondents, *inter alia*, to the effect that no fundamental/legal right of the petitioners has been infringed by the respondents.

(27) Further, it is the specific case of the respondents that in the year 2020 (as alleged by the petitioners), no decision was taken by the Government to fill up the vacancies of Sub Inspectors. The stand of the respondents, on the contrary, deserves to be upheld *inasmuch* as the petitioners cannot seek enforcement of the alleged promise when its obligation is against the Constitutional or statutory provisions. Therefore,

⁴ Judgment/order dated 22.07.2021 passed in WP(C) No.8956/2020 (Najma vs. Govt. of NCT of Delhi)

this Court finds that the petitioners cannot take the benefit of the observations made in the *Southern Petrochemical Industries Co. Ltd.'s*⁵ case (supra).

(28) This Court is in agreement with the contention of the learned State counsel who while relying upon the pleadings in the written statement submits that the decision of the 'employer' whether to fill up the vacancies at any particular time depends upon the public need, administrative exigencies and availability of infrastructure or budgetary provision. There is no legal obligation on the part of the State that if the vacancies have fallen vacant, the State must fill up the said vacancies immediately. There is no legal right with the petitioners to claim that all the vacancies should have been advertised prior to 2021 or even to allege that the inaction of the Department in this regard can be termed as violation of any right.

(29) This Court is of the opinion that in the advertisement the Department has provided certain relaxation to certain categories as mentioned therein as (i), (ii) & (iii) and as such the petitioners do not have a statutory right or a legal right based upon the peculiar facts pleaded in the present case to claim that the competent authority i.e. the DGP, Punjab ought to have granted relaxation in the upper age limit. In *Mangat Singh's*⁶ case (supra) relied upon by the petitioners, the facts that can be seen are that vide order dated 03.02.2020 in a writ petition filed in the year 2016, this Court had issued directions to the respondents therein to consider the prayer of the petitioners therein for relaxation in the upper age limit. It has been brought to the notice of this Court by learned counsel that in fact in that case, the advertisement was of the year 2016 and provisionally the petitioners therein were permitted to provisionally participate in the selection process. However,

⁵ *Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector and E.T.I.O. and Ors.* (2007) 5 SCC 447

⁶ *CWP-25534-2016 (Mangat Singh & Ors. Vs. State of Punjab & Ors.)* decided on 03.02.2020

in the present case, it has been found that the petitioners have not been able to *prima facie* make out a case whereby they, as a matter of right, can claim relaxation. It is for the executive authorities who have been vested with the power of relaxation to consider all the facts and circumstances. Before this Court, the respondents, on affidavit, have clarified that the matter was examined in the officer of Director General of Police. Various field officers were consulted and most of the field officers were not in favour of increasing the upper age limit. It has also been stated that the matter was discussed by the Director General of Police with the Chief Principal Secretary to the Chief Minister, Punjab and Secretary Home also. Therefore in the above circumstances, this Court does not find it to be a fit case to issue directions/mandamus to the competent authority to examine the issue of age relaxation.

(30) The petitioners cannot claim extension in the upper age limit by taking the plea of COVID situation. In the present case, it is not the case of parties that an advertisement in this regard had been initially issued in the year 2019 or 2020 (when the petitioners were allegedly within the maximum age limit). In other words, in the present facts and circumstances, the selection process apparently has not been deferred or delayed because of COVID situation. Therefore the petitioners herein cannot claim their right for extension of upper age limit.

(31) In addition, this Court also finds force in the arguments raised by the learned State counsel that the petitioners have neither challenged Rule 12.6 of the Rules wherein the maximum age has been fixed. They have also not challenged the relevant clause of the advertisement wherein the age has been prescribed as one of the eligibility conditions. The prayer *inter alia* has

been made by the petitioners on the ground that vacancies had come into existence in the years 2017, 2018, 2019 & 2020 but were not advertised and thus they were deprived of their chances of recruitment.

(32) For the reasons and observations made in the foregoing paragraphs, this Court does not find merit in the writ petitions and the same are accordingly dismissed.

(33) No costs.

11.08.2021

vishal shonkar

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes

(Girish Agnihotri)
Judge



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