



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CWP No. 7125 of 2021**  
**a/w CWP Nos. 8023,**  
**8050, 8135, 8222 and**  
**8344 of 2021**

**Reserved on : 16.06.2023**

**Decided on : 21.06.2023**

**1.CWP No. 7125 of 2021**

Rakesh Kumar

....Petitioner.

**Versus**

State of Himachal Pradesh and others

...Respondents.

**2.CWP No. 8023 of 2021**

Tim Saran

....Petitioner.

**Versus**

State of Himachal Pradesh and others

...Respondents.

**3.CWP No. 8050 of 2021**

Saurabh Singh Guleria and Anr.

....Petitioners.

**Versus**

State of Himachal Pradesh and others

...Respondents.

**4.CWP No. 8135 of 2021**

Neelam Kumari

....Petitioner.

**Versus**

State of Himachal Pradesh and others

...Respondents

**5.CWP No. 8222 of 2021**

Reena Devi

....Petitioner.

**Versus**

State of Himachal Pradesh and others

...Respondents.

**6.CWP No. 8344 of 2021**

Karan Singh Guleria

....Petitioner.

**Versus**

State of Himachal Pradesh and others

...Respondents.

**Coram*****The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.******The Hon'ble Mr. Justice Satyen Vaidya, Judge.*****Whether approved for reporting?<sup>1</sup> Yes.**

For the petitioner(s) : Mr. Shrawan Dogra, Senior Advocate, with Mr. Tejasvi Dogra, Mr. Manik Sethi, Mr. Pawan Kumar Sharma, Mr. Vinay Mehta, Mr. Sanjay Kumar Sharma, Mr. K.B. Khajuria and Mr. Kush Sharma, Advocates.

For the respondent(s) : Mr. Anup Rattan, Advocate General with Mr. I.N. Mehta, Sr. Additional Advocate General, Mr. Ramakant Sharma, Ms. Sharmila Patial, Additional Advocate Generals and Mr. Rajat Chauhan, Law Officer.

<sup>1</sup> *Whether reporters of the local papers may be allowed to see the judgment?*

: Mr. Vikrant Thakur,  
Advocate, for HPPSC, in all  
the petitions.

---

**Satyen Vaidya, Judge**

All these petitions were heard and are being decided together as common questions of facts and law are involved. Reference to respondents hereafter has been made in relation to the memorandum of parties in CWP No. 7125 of 2021.

2. Petitioners have prayed for declaring Clause-6 of the Himachal Pradesh Prosecution Department, Assistant District Attorney, Class-I (Gazetted), Recruitment and Promotion Rules, 2017 (for short "2017 Rules") as *ultra vires* the Constitution of India. In alternative, a prayer has been made to issue direction to the respondents to relax 2017 Rules for the petitioners in so far as the prescription of maximum age therein is concerned. Clause-6 of 2017 Rules provides for age limit for recruitment to the post of Assistant District Attorneys (for short "ADA") in the Prosecution Department as "35 years and below"

3. Petitioners are Law Graduate and practicing Advocates. They are aspirants to be appointed as ADAs in the Prosecution Department of the State. In 2021, respondent No. 3 issued an advertisement No. 59/11-2021 inviting applications from desirous and eligible candidates for recruitment to 25 posts of ADAs, Class-I (Gazetted) (on contract basis). Candidates between 18 years to 35 years were eligible to apply and such age was to be reckoned as on 01.01.2021. All the petitioners had crossed the age of 35 years as on 01.01.2021 and hence were ineligible.

4. In the past, the selection process for recruitment to the posts of ADAs was conducted by respondent No. 3 in 2018-2019. Petitioner in CWP No. 7125 of 2021 had participated in the selection process. Though, he had qualified the written test, he could not finally make it to select list. As per petitioners, thereafter due to COVID-19 Pandemic, no selection process for the recruitment to the posts of ADAs was conducted during 2020 and in the meantime, all of them attained the age of 35 years.

5. Petitioners have prayed for declaring Clause-6 of 2017 Rules as *ultra-vires* the Constitution of India. It is submitted that the post of ADA is Class-I (Gazetted) post. The Government of H.P. had taken a decision as far back as on 22.9.1983 whereby the age for direct recruitment to all Class 1 posts except Himachal Administrative Services, Himachal Judicial Services and Himachal Police Services was prescribed as “ 45 years and below”. It is further submitted that for the posts of ADAs a separate class has been carved out without there being any nexus with the object sought to be achieved. Further, the prescription of lesser age for direct recruitment to the posts of ADAs has been targeted on the premise that the provision in this regard has been incorporated in the 2017 rules without adherence to the Rules of Business of the Government of Himachal Pradesh. Thus, according to the petitioners, the classification so drawn is irrational, arbitrary and discriminatory.

6. In alternative, petitioners have sought aid of Rule 18 of 2017 Rules which empowers the State

Government to relax the rules in appropriate case(s). As per petitioners, they were denied the opportunity to participate in the selection process by extraordinary circumstances created by COVID-19 pandemic. It was contended that had "COVID-19" pandemic not been there, the selection process could have been initiated in the year 2020 and petitioners would have been eligible to participate.

7. On the other hand, respondents have contested the claim of the petitioners being untenable and meritless. It is submitted that after the appointment of ADAs in September, 2019 no requisition was there before respondent-3 till December, 2020 for filling-up the posts of ADAs and as such no process had been initiated in 2020 for filling-up such posts. According to respondents "COVID-19" pandemic cannot be blamed by the petitioners. 2017 rules including rule 6 thereof have also been defended as *intra-vires*. As per respondents, the Department of Personnel, vide its letter dated 20.04.2001 had issued instructions regarding age limit for direct recruitment to Class-II posts, whereby it was

prescribed as “45 years and below”. At that stage the post of ADA was Class-II (Gazetted) post. Steps were taken in the year 2003 for reframing the R&P rules for the posts of ADAs in terms of instructions dated 20.04.2001, issued by Department of Personnel and also for incorporating certain other required changes. All the advisory departments had approved the proposal. The matter was placed before the Council of Ministers/Cabinet and the Cabinet had approved all amendments in R & P Rules for the posts of ADAs, except enhancement of maximum age from 35 years to 45 years. Accordingly, the recruitment and promotion rules for the posts of ADAs were notified on 05.08.2003, in which the age for direct recruitment was prescribed as “35 years and below” and thereafter the position has remained the same.

8. We have heard Mr. Shrawan Dogra, learned Senior Counsel assisted by Mr. Bharat Thakur, learned counsel for the petitioners and Mr. Anup Rattan, learned Advocate General for the respondents and have also gone through the records.

9. The Government of Himachal Pradesh through Department of Personnel letter dated 22.09.1983 addressed to the all the Secretaries/Joint Secretaries/Deputy Secretaries and Under Secretaries to the Government of Himachal Pradesh and others had communicated as under:-

*“Subject:- Recruitment and Promotion Rules- Age limit for direct recruitment to Class I and Class II posts.*

*I am directed to say that the question of fixing the upper age limits for direct recruitment to Class I and Class II posts of the State Govt. had been under consideration of this Govt. for some time past, and after careful consideration, it has been decided that in the relevant Recruitment and Promotion Rules the age limits for Class I Officers may be provided as “45 years and below” and for Class II Officers it should be “35 years and below” in respect of the direct recruitment. It is, therefore, requested that necessary amendments in the Recruitment and Promotion Rules may be carried out immediately. The cases need not be sent to the Department of Personnel, Law and Finance or placed before the Cabinet of Ministers in so far as this amendment is concerned.*

*2. The above instructions may kindly be brought to the notice of all concerned, and should be adhered to strictly in future.”*



10. On the strength of aforesaid communication, it has been contended on behalf of the petitioners that Rule 6 of 2017 rules was not in consonance with the above decision of the State Government and hence non-inclusion of the prescription of age limit in terms thereof in 2017 rules is *ultra-vires* the Constitution of India. It is submitted that while placing the matter before the Council of Ministers with respect to recruitment and promotion rules for recruitment to the posts of ADAs , entire material including above referred decision of the State Government was not placed and thus, the Rules of Business of the Government of H.P., were violated.

Learned Senior Counsel for the petitioners has placed reliance on following extract from ***Vasavi Engineering College Parents Association Vs. State of Telangana and Ors.*** reported in ***(2019) 7 SCC 172***, to assert that the Rules of Business of Government of H.P. specifically provided for placing before the Council of Ministers a detailed Memorandum indicating with sufficient precision the salient facts of the case and points for decision along with such other papers as are necessary

for disposal of the case, whereas in the case in hand, no such exercise was undertaken.

*“16. Judicial review, as is well known, lies against the decision making process and not the merits of the decision itself. If the decision making process is flawed inter alia by violation of the basic principles of natural justice, is ultravires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance with the law. The court, in the garb of judicial review, cannot usurp the jurisdiction of the decision maker and make the decision itself. Neither can it act as an appellate authority of the TFARC.”*

11. Further, emphasizing the significance of Rules of Business of the Government of H.P, learned Senior Counsel for the petitioners has placed reliance on a decision rendered in case titled as ***MRF Limited Vs. Manohar Parrikar and Others alongwith connected matters*** reported in ***(2010) 11 SCC 374***, in which Hon’ble Supreme Court has held as under:-

“107. Thus from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules framed by the State Government under the provisions of [Article 166\(3\)](#) of the Constitution of India. In the case on hand, as have been noticed by us and the High Court, the decisions leading to the notifications do not comply with the requirements of Business Rules framed by the Government of Goa under the provisions of [Article 166\(3\)](#) of the Constitution and the Notifications are the result of the decision taken by the Power Minister at his level. The decision of the individual Minister cannot be treated as the decision of the State Government and the Notifications issued as a result of the decision of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void.

108. The appellants contended before this court that another Division Bench of the High Court in its earlier judgment of 21.1.1999 had held that the Notification dated 1.8.1996 was clarificatory and that it did not create any extra financial liability on the State Government requiring approval of the Cabinet in compliance with the Business Rules before it was brought into force. In our opinion the said Notification cannot be treated as mere clarificatory. It is a notification issued purportedly in terms of a Government decision. It was a decision finalized at the level of the Minister of Power alone and was taken in violation of the Rules of Business framed under [Article 166\(3\)](#) of the Constitution of India. The decision cannot be called a government decision as understood under [Article 154](#) of

High

*the Constitution, though it may satisfy the requirements of authentication. Nevertheless mere authentication as required under [Article 166\(2\)](#) of the Constitution did not make it a government decision in law nor would it validate a decision which is void ab initio. The validity of the notification will have to be tested with reference to the constitutional provisions and Business rules and not by their form or substance. Therefore, this contention of the appellants is liable to be rejected.”*

12. Mr. Shrawan Dogra, learned Senior Counsel also pointed out that by virtue of Rule 14 of the Rules of Business of the Government of H.P. all cases referred to in the ‘Schedule’ appended to such rules are mandatorily required to be brought before the Council of Ministers. Clause-2 of the schedule provided that proposals for the making or proposals involving amendments, other than the routine amendments of rule, directing the recruitment and conditions of service of Class-1 post were required to be brought before the Council of Ministers.

13. Having given our thoughtful consideration to the rival submissions, we are not persuaded to allow the prayer(s) in the petition for the reasons detailed hereafter.

14. The Himachal Pradesh Prosecution Department, Assistant Public Prosecutor, Class-III (Gazetted), Recruitment and Promotion Rules, 1991 (for short, "the 1991 Rules") had prescribed the age for direct recruitment between 21 to 35 years. The post of Assistant Public Prosecutor was re-designated as Assistant District Attorney and was made as Class-II (Gazetted) post.

15. Per notification dated 05.08.2003, R & P Rules for the post of ADA, Class-II (Gazetted) in the department of prosecution (for short, 'the 2003 rules'), were notified after repealing 1991 rules. In 2003 Rules, the age for direct recruitment was prescribed as "35 years and below".

16. The Department of Personnel letter dated 22.09.1983 had communicated the decision of the Government to prescribe "45 years and below" as age limit for direct recruitment to Class-I posts and "35 years and below" for Class-II posts. Subsequently, *vide* communication dated 20.04.2001 issued by Department of Personnel, the criteria of age limit for Class-II officers

was also prescribed as '45 years and below' w.e.f. 01.04.2001 as under:

*"In partial modification of this Department letter No. PER(AP-11)-A(4)-9/83-F, dated the 22<sup>nd</sup> September, 1983 on the above noted subject, I am directed to say that the Government has now decided that the upper age limit in the relevant Recruitment and Promotion Rules for Class-II Officers, would be "45 years and below" in respect of direct recruitment. This maximum age limit will be applicable from 1<sup>st</sup> April, 2001 and will be applicable to all categories of posts except HAS, Allied Services and Police Services as the Police Personals are governed under Punjab Police Rules, 1934. It is, therefore, requested that necessary amendments in the Recruitment and Promotion Rules may be carried out immediately. The cases need not be sent to the Department of Personnel, Law and Finance or placed before the Council of Ministers, in so far as this amendment is concerned.*

2. *The above instructions may kindly be brought to the notice of all concerned, and should be adhered to strictly in future.*

Thus, though at the time of notifying 2003 rules the post of ADA was Class-II (Gazetted) post but it had already been brought at par w.e.f. 1.4.2001 with Class-1 posts for the purposes of prescription of age limit for direct recruits. 2003 Rules were repealed and substituted by 2009 Rules. Lastly, 2009 Rules were further repealed and

substituted by 2017 Rules. Both the times the age limit remained unchanged. In the meanwhile, on 10.11.2003, the post of ADA was made as Class-I (Gazetted) post.

17. During the course of hearing, material placed before the Council of Ministers that had approved the 2003 rules was also shown to us. After going through such records, we have found that a memorandum along with changes proposed in R & P Rules for the posts of ADAs was placed before the Council of Ministers. The age for direct recruitment to the posts of ADAs was proposed as '*45 years and below*'. The Council of Ministers had approved all other amendments except the proposed change in the age limit. Accordingly, 2003 Rules were notified with age for direct recruitment as '*35 years and below*'.

18. It was on 20.04.2001 that the Department of Personnel had already communicated the decision of the Government to prescribe the age limit for direct recruitment to Class-II posts as '*45 years and below*'. Hence, the stand of the respondents that the 2003 amendment in the age limit for direct recruitment for the

post of ADAs was proposed on the basis of aforesaid communication dated 20.04.2001, seems plausible. In such view of the matter, it cannot be said that the relevant material was not before the Council of Ministers. Nonetheless, the proposal for enhancement of age for direct recruitment to the post of ADA, Class-II (Gazetted) had not been accepted by the Cabinet.

19. In light of what has been observed above even the fact that post of ADA was subsequently declared as Class-I (Gazetted) post, will not alter the edifice of matter under consideration as even at the time of making of 2003 Rules, the criteria of age limit for Class-I and Class-II posts had already been brought at par.

20. Nothing has been brought on record to suggest that 2003 and for that matter even 2009 Rules were challenged at any point of time, more particularly, with respect to the prescription of age limit therein. It being so, the challenge to Rule 6 of 2017 rules becomes redundant without any challenge to 2003 and 2009 rules. Once the Cabinet had taken decision not to accept the proposed age for the post of ADA as 45 years and



below while approving 2003 Rules, there was no requirement thereafter to place before the Council of Ministers the same proposal for enhancement of age time and again. Thus, we have not found any fault in decision making process. For the same reasons, we have also not found it to be a case of violation of the Rules of business of the Government of H.P. Consequently, the challenge to Rule 6 of 2017 rules at the instance of petitioners is without any substance and material.

21. The State Government is within its powers to carve out exceptions for a particular category of post in so far as the prescription of age limit by direct recruitment to such post is concerned. As noticed above, the State Government has already carved exceptions for Himachal Administrative Services, Himachal Police Services and Himachal Judicial Services.

22. Respondents have taken a specific stand that during 2020, no requisition was made by the Administrative department for filling-up the posts of ADAs. Such contention has not been rebutted on record. Petitioners have not shown that any step was

contemplated or taken during year 2020 for recruitment to the posts of ADAs. That being so, petitioners have not been able to make out a case of hardship due to exceptional circumstances created by COVID-19 pandemic. In such circumstances, they cannot be said to have any occasion claiming relaxation in R & P Rules. Even otherwise, such relaxation cannot be claimed as a matter of right and hence, the mandamus as sought by petitioners cannot be issued.

23. In light of above discussion, we have not come across any arbitrariness, discrimination or illegality in the action of respondents. In result, the petitions fail and are dismissed.

24. The petitions are accordingly disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.

**(Tarlok Singh Chauhan)**  
**Judge**

**(Satyen Vaidya)**  
**Judge**

**21<sup>st</sup> June, 2023**

(sushma)

High Court of H.P. ◊