

Ami Lal Bhat (Dr.)

Vs

State of Rajasthan & Ors.

(Sujata V. Manohar, V.N. Khare JJ)

08.07.1997

JUDGMENT

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MRS. SUJATA V.MANOHAR, J.

1. Leave granted.

2. In all these appeals the common question which arises for consideration is whether a Rule-making Authority can fix a cut off date with reference to the calendar year for determining the maximum age of a candidate who is to be considered for direct recruitment to a service under the State. The petitions and appeals before us deal with different Rules of service in the State of Rajasthan pertaining to various services under the State. Some of the Rules which are under challenge before us are the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rajasthan Panchayat Samiti and Zila Parishad Service Rules, 1959. Rajasthan Class IV Services (Recruitment and other service conditions) Rules, 1963, and Rajasthan Educational Subordinate Service Rule, 1971. All these Rules provide that the cut off date for deciding the maximum age prescribed for a candidate for appointment will be the 1st day of January following the date of application. The affected candidates who are before us contend that such a cut off date which is uniformly fixed under all the Service Rules of the State of Rajasthan, is arbitrary of unreasonable and must be struck down.

3. For the sake of convenience we are citing Rule 11(1) of the Rajasthan Medical Services (Collegiate Branch) Rules, 1962 which came up for consideration in a writ petition filed by Dr. Rajeev Mathur before the Rajasthan High Court. The Rajasthan High Court held that the portion of Rule 11 which prescribes determination of the maximum age with reference to 1st of January following the last date fixed for receipt of applications, was arbitrary and unreasonable and struck it down. The appeal before us from this judgment and order is Civil Appeal No. 2691/91 which is filed by the candidate who was 2nd in the order of merit for the particular selection. Rule 11(1) provides as follows:-

"11(1):- A candidate for direct recruitment to a junior post enumerated in Part C of the Schedule must not have attained the age of 35 years on the first day of January following the last date fixed for receipt of applications. Provided:

(1) That the upper age limit mentioned in Sub-rule (1) and (2) above, may be relaxed by 5 years in exceptional cases by Government in consultation with the Commission." The High Court held that the words "the first day of January following" in Rule 11(1) must be deleted.

4. Is such a cut off date fixed by the Rules applicable to the relevant service, arbitrary? It has been urged before us by the petitioners and/or appellants that the cut off date of 1st of January following the last date fixed for receipt of applications is arbitrary. The cut off date should only be fixed with reference to the last date of making the application in question. It is submitted before us that the date of 1st of January has no nexus with the application in question and, therefore, must be struck down.

5. This contention, on our view, is not sustainable. In the first place the fixing of a cut off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut off date for determining the maximum or minimum age required for a post, is in the discretion of the Rule-making Authority or the employer as the cases may be. One must accept that such a cut off date cannot be fixed with any mathematical precision and is such a manner as would avoid hardship in all conceivable cases. As soon as a cut off date is fixed there will be some persons who fall on the right side of the cut off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut off date, per se, arbitrary unless that cut off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in *Union of India and another etc. Vs. M/s. Parameswaran Match Works etc.* (AIR 1974 S.C. 2349) and has been reiterated in subsequent cases. In the case of *A.P. Public Service Commission, Hyderabad and Another Vs. B. Sharat Chandra and Ors.* (1990 2 SCC 669) the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut off date was challenged. This Court considered the various steps required in the process of selection and said, "when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications". This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take an uncertain time, it is desirable that such a cut off date should be with reference to a fixed date. Therefore, fixing an independent cut off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of *Union of India and Anr. Vs. Sudhir Kumar Jaiswal* (1994 4 SCC 212) the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut off date had become arbitrary. Negating this view of the Tribunal and allowing the appeal, the appeal, this Court cited with approval the decision of this Court in *Parmeshwar Match Works case* (supra) and said that fixing of the cut off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the court would be reluctant to strike down such a cut off date.

7. In the present case, the cut off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All Services Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut off date has been fixed in respect of all such advertisements as 1st

January of the year following. This is to make for certainty. Such a uniform date prescribed under all service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time gap between the advertisement and the cut off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut off date is that last date for receipt of applications under a given advertisement. Undoubtedly, this can be a possible cut off date. But there is no basis for urging that this is the only reasonable cut off date. Even such a date is liable to question in given circumstances. In the first place, making a cut off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it defendant on the date when each department issues an advertisement, and the date for receiving applications. A person who may fall on the wrong side of such a cut off date may well contend that the cut off date is unfair, since the advertisement could have been issued earlier; Or in the alternative that the cut of date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is why this Court has said in the case of Parameshwaran Match Works (*supra*) and later cases that the cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut off date can be the last date for receiving applications, appears to be without any basis. In our view the cut off date which is fixed in the present case with reference to the beginning of the Calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain.

8. Learned advocate for Dr. Rajeev Mathur in Civil Appeal No. 2691/91 drew our attention to Rule 8(A) of the Rajasthan Medical (Collegiate Branch) Rules, 1962. Under Rule 8(A) as originally framed the appointing authority was required to determine each year the number of vacancies anticipated during the following 12 months and the number of persons likely to be recruited by each method. This rule was amended at the material time under a notification dated 21st of February, 1981. Under the amended rule 8(A) the appointing authority shall determine on 1st April every year the actual number of vacancies occurring during the financial year. He contended that in the light of this rule all vacancies must be advertised soon after they are determined. In the case in question, the vacancy had occurred in September, 1987. It was, however, advertised only in January, 1988. Dr. Rajeev Mathur became over aged on 1st of January of the following year. It was submitted that had the vacancy been advertised in 1987, the cut off date would have been the 1st of January 1988, and Dr. Rajeev Mathur would have been eligible.

9. In the first place, while construing the validity of any given Rule, we cannot decide the reasonableness or unreasonableness of that rule by looking at borderline cases. There is no allegation that the advertisement was deliberately postponed to eliminate Dr. Rajeev Mathur or that there was any deliberate delay in advertisement the post. The delay between September and the following January cannot be considered as unreasonable. Rule 8(A) is merely for the purpose of determining the actual number of vacancies occurring during the financial year. It does not cost any obligation on the appointing authority to issue an advertisement within any specific time for recruitment to such a vacancy. So long as such an advertisement is issued within a reasonable time, and there is no mala fide delay, the action of the appointing authority in issuing the advertisement cannot be challenged simply because the maximum age qualification is fixed with reference to a fixed date.

10. It is next contended on behalf of the appellants/petitioners that under all the concerned service rules there is a provision for age relaxation. In Rule 11(A) of the Rajasthan Medical Services (Collegiate Branch) Rules, there is a provision for age relaxation by 5 years by the Government in consultation with the commission. There is also Rule 35 in the said Rules which gives a general power to relax rules in exceptional cases where the Government is satisfied that it is necessary, inter alia, to relax any provision of these Rules with respect to age or experience of any person and this can be done with the concurrence of the Department of Personnel and Administrative Reforms and in consultation with the Rajasthan Public Service Commission. It is urged that in the case of all those persons who are adversely affected because the advertisement for recruitment is issued later than the occurrence of the vacancy, corresponding age relaxation should be given to all candidates. In other words, what is contended is that if on the date when the vacancy occurred, the candidates were within the maximum age prescribed by reference to the cut off date, then if the advertisement is delayed, their age should be considered with reference to the cut off date of 1st January following the date of occurrence of vacancy. For example, if the vacancy has occurred on 1st of April of a given year, and the applicant would be within the maximum age of the 1st of January of the following year, then such a candidate will be considered as eligible even if the advertisement is issued not in April of that year but say February of the following year. All the candidates will get age relaxation of one year.

11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age barred. We fail to see how the power of relaxation can be exercised in the manner contended.

12. In the premises we do not see any reason to set aside the cut off date fixed by the relevant rules. The judgments of the Division Benches of the Rajasthan High Court in so far as they strike down 1st of January of the following year as the cut off date for determining the maximum age of a candidate for selection, require to be set aside.

13. Of the various judgments of the Rajasthan High Court which are before us, it is necessary to note that a Division Bench of the Rajasthan High Court, differing from the view taken by the earlier Division Benches referred this question to a Full Bench of the Rajasthan High Court in the case of Surinder Singh Vs. The State of Rajasthan (1995 1 WLR 197). The Full Bench of the Rajasthan High Court overruled the earlier judgments of the two Division Benches of the Rajasthan High Court and upheld the relevant Service Rules. We agree with the reasoning and conclusion of the Full Bench of the Rajasthan High Court.

14. It was, however, pointed out to us by the third respondent (Dr. Rajeev Mathur) in C.A. No. 2691/1991 that from the decision of the Division Bench of the Rajasthan High Court in his own case (Dr. Rajeev Mathur Vs. The State of Rajasthan) the Rajasthan Public Service Commission filed a Special Leave Petition before this Court being Special Leave Petition No.6931 of 1991. In the

Special Leave Petition, on 30th of April, 1991 this court passed the following order:-

"We express no views on the question of law raised but on facts found we decline to interfere. The Special Leave Petition is dismissed."

15. It is contended by Dr. Rajeev Mathur that in view of the dismissal of the Special Leave Petition filed by the Rajasthan Public Service Commission, the decision of the Division Bench of the Rajasthan High Court in the case of Dr. Rajeev Mathur Vs. The State of Rajasthan has become final and cannot be set aside. Hence the appointment of Dr. Rajeev Mathur cannot now be challenged, Dr. Rajeev Mathur was over age of the 1st of January of the year following the date of application. And his application was rejected by the Rajasthan Public Service Commission on the ground that he was over age. Immediately he preferred a writ petition before the Rajasthan High Court. In the writ petition he averred that his case was being considered by the Government of Rajasthan for age relaxation. The High Court, under an interim order, directed the Rajasthan Public Service Commission to consider his application and interview Dr. Rajeev Mathur. Accordingly he was interviewed. His application for age relaxation has been rejected by the Rajasthan Public Service Commission as well as by the State. But in view of his being interviewed, his case was considered and he was selected. His position was 1st in the merit list. The High Court has directed that he should be appointed. Does the dismissal of special leave petition filed by the Rajasthan Public Service Commission against this decision make this decision final as far as Dr. Mathur is concerned? In the order dismissing the special leave petition this Court has left the question of law open. But what is more relevant, the candidate who was second in the merit list in that case also thereafter filed a special leave petition before this Court from the same judgment. He was granted leave and his appeal is numbered as C.A. 2691/1991. This appeal, which is before us, directly challenges the appointment of Dr. Rajeev Mathur and the High Court judgment under which he is appointed. If Dr. Rajeev Mathur is not eligible, then the appellant in this appeal is entitled to be appointed to that post. Therefore, at the instance of the Rajasthan Public Service Commission this Court was not inclined to examine the merits of the individual case before it; though it left the question of law open. But when the affected candidate came up before this Court asking for special leave to appeal against the same judgment of the Division Bench, leave was granted and the appeal has been entertained. It is, therefore, not possible to hold that the decision of the Division Bench of the Rajasthan High Court in the case of Dr. Rajeev Mathur Vs. The State of Rajasthan is final on the facts of that case and the appointment of Dr. Rajeev Mathur cannot be challenged. This appointment is directly under challenge in C.A.No. 2691/1991 which requires to be considered and decided on merit. Therefore, we do not see any reason to make any exception in the case of Dr. Rajeev Mathur.

16. Lastly, in the appeal arising from Special Leave Petition No. 10659 of 1995, the respondent contended that he was in fact not over age of the cut off date which was, in that case 1st of January, 1992. This contention was raised on a wrong reading of the date of birth. It is now accepted by the parties that the correct date of birth of the petitioner in that case was 1st of January, 1959 and not 19th January 1959 as originally urged. The petitioner would, therefore, complete 33 years of age which was the maximum age prescribed in the concerned advertisement, on 1st of January 1992, the cut off date. His case, therefore, is not different from the case of other aggrieved candidates before us who are age barred on the cut off date.

17. In the premises the appeals of the candidates who have challenged the cut off date under the relevant Rules are dismissed while the appeals filed by the State of Rajasthan are allowed. The validity of the concerned Rules relating to the cut off date being fixed with reference to 1st of January of the year following the application is upheld. There will be no order as to costs.