

SUPREME COURT OF INDIA

Union Public Service Commission

Vs.

Dr. Pankaj Kumar & Ors.

C.A.No.1488-1491 of 2008

K.Balakrishnan,CJI., R.V. Raveendran and J.M.Panchal,JJ.)

21.02.2008

ORDER

(Arising out of SLP(Civil) Nos. 1344-1347 of 2006) With SLP (Civil) No.26430 of 2005

1. Leave granted. These appeals arise from a common judgment dated 11.8.2005 passed by the High Court of Delhi in CWP Nos.8218/2003, 619/2003, 620/2003 and 784/2003. UPSC is aggrieved by the said judgment to the extent it directs extension of benefit of age relaxation to the respondents.
2. The respondents were appointed as Medical Officers (Ayurvedic/Unani), on a fixed salary of Rs.6000/- per month on contract basis in the year 1998 by the Government of National Capital Territory of Delhi. Their services were extended from time to time with some breaks. The government of NCT of Delhi sent a proposal to UPSC in the year 2000 for filling up the posts of Medical Officers (Ayurvedic/Unani). In pursuance of it, UPSC scheduled a test on 10.2.2002. At that stage, the respondents approached the Central Administrative Tribunal seeking regularization. They sought a direction to Government of NCT of Delhi to send their service records to UPSC for assessing their suitability for recommending them for regular appointment to those posts. The Tribunal by its order dated 10.12.2002 rejected the application. That was challenged in various writ petitions before the High Court.
3. The High Court by common judgment 11.8.2005 affirmed the decision of the Tribunal that the respondents were not entitled to regularization. It however recorded the submission made by learned Addl. Solicitor General (Counsel for the National Capital Territory of Delhi) that the contract employees will be entitled to age relaxation and extension of time for submitting their applications against the vacancies notified vide UPSC Advertisement No.54 of 2005. Consequently, it directed that the writ petitioners who submitted their applications against the said advertisement shall be granted age relaxation for the period they have worked as contract employees. It was also declared that they will be entitled for one time age relaxation for the period they had worked whenever applications were next invited by the State Government for appointment of Medical Officers (Ayurvedic/Unani). The said decision is challenged by the UPSC in these appeals by special leave on the ground that the writ

petitioners (respondents herein) not being government servants, the grant of age relaxation was contrary to rules and terms of the advertisement. They also submitted the concession made by the learned Solicitor General was not on behalf of UPSC.

4. The term relating to age in the UPSC advertisement No.54/2005 reads thus :

"Age: Not exceeding 35 years on normal closing date. Not exceeding 38 years for Other Backward Classes candidates and not exceeding 40 years for Scheduled Castes and Scheduled Tribes candidates in respect of vacancies reserved for them. Relaxable for central government servants as per the instructions issued by Government of India including NDMC/MCD from time to time upto five years. Age is also relaxable for employees of NDMC and MCD in respect of the posts in NDMC and MCD respectively upto five years."

The said clause makes it clear that age relaxation is available only to Central Government servants and employees of NDMC/MCD. The respondents were not employees of NDMC/MCD. Nor did they claim to be members of SC or ST or OBC. The respondents were contract employees of Government of NCT of Delhi. The limited question is whether they can claim to be 'Central Government servants' in which event they will be entitled to age relaxation."

5. The matter is squarely covered by the decision in *Union Public Service Commission vs. Girish Jayanti Lal Vaghela*¹ where in this Court has held that contract employees are not government servants and are not therefore entitled to age relaxation. Following the decision in *Girish Jayanti Lal Vaghela* (supra), these appeals are allowed and the order of the High Court in so far as it directs age relaxation to respondents, is set aside. SLP (Civil) No. 26430/2005

6. This SLP is filed by a contract employee seeking regularization. The appointment was made by Government of NCT of Delhi on 9.2.2001 on a consolidated salary for a period of six months or till regular appointment was made whichever was earlier. The Central Administrative Tribunal had rejected his application for regularization on 8.1.2003 and the High Court affirmed that decision while disposing of his writ petition (CWP No.619/2003). Having regard to the decision in *Secretary, State of Karnataka vs. Umadevi*² and several other decisions of this Court, the petitioner who was a contract employee for about two years when he approached the Tribunal was not entitled to regularization. There is no error in the orders of the Tribunal and the High Court. The SLP is, therefore, rejected.

Judgment Referred.

¹(2006) 2 SCC 0482

²2006 (4) SCC 0001