

# SUPREME COURT OF INDIA

P.S.Commission Thr.Secr.M.P.P.S.Commi.

Vs.

Arvind Singh Chauhan

(Tarun Chatterjee and H.L. Dattu JJ.)

28.08.2009

## JUDGMENT

**H.L. Dattu, J.**

1. Leave granted.
2. These appeals are directed against the judgment and order passed by the High Court of Judicature of M.P., Jabalpur Bench at Gwalior in W. A. No.259 of 2007 dated 18.09.2007.
3. The facts in brief are:- The appellant - Public Service Commission had issued two advertisements inviting applications from eligible and qualified persons for State Service Examination 2001. In the notification issued on 01.11.2001 it was clearly mentioned that the age limit for appearing in the Preliminary Examination shall be 30 years relaxable by three years as on 1.1.2002 and subsequently on 9.10.2003, another advertisement was issued where the age limit has been prescribed as 30 years relaxable by five years as on 1.1.2004.
4. The respondents (Arvind Singh Chauhan and others) appeared in the preliminary examination conducted by the appellant. They were declared passed in the said preliminary examination and were allotted roll numbers for appearing in the final examination which was to be conducted in May-June 2006. However, the respondents were not permitted by the appellant- Commission from appearing in the Viva-voce Test/final examination on the ground that they were over aged.
5. Aggrieved by the aforesaid action of the appellant, the respondents filed a writ petition before the Hon'ble High Court of Judicature of M.P Bench at Gwalior, inter alia requesting the Court to direct the Public Service Commission not to exclude the respondents and other similarly situated candidates from participating in the viva-voce test/final examination and for other ancillary reliefs.
6. The main contention of the writ petitioners/respondents before the Learned Single Judge was that as per the advertisement issued in 2001 they were eligible to appear in examination as they were below 33 years as on 1.1.2002. The petitioners had further contended that another advertisement was issued in the year 2003 and as per Clause 10 of that

advertisement, those who were eligible to appear in the examination of 2001, shall also be eligible to appear in the later examination. Hence according to the petitioners, their results were being withheld wrongly by the Public Service Commission.

7. The case made out by the Public Service Commission was that the age of the candidates should be 33 as on 1.1.2002, and 35 as on 1.1.2004, to be eligible to participate in the examination and according to them, none of the writ petitioners fulfilled the age criteria and therefore the final results of the petitioners have not been declared.

8. The Learned Single Judge after perusal of the records has come to the conclusion that no details nor any document was filed by the writ petitioners to prove that in pursuance to the earlier advertisement issued in the year 2001 by Public Service Commission, they had submitted their applications. The Court while holding that the writ petitioners are not entitled for any relief, has relied on the observation made by this Court in the case of *Malik Mazhar Sultan v. U.P. Public Service Commission*<sup>1</sup>. In that case this Court has observed, that recruitment to service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The Learned Judge has also relied upon Clause 25 of the advertisement issued in the year 2003, going by which, the Commission is fully empowered to cancel selection of the candidates at any stage without giving any prior information to the candidates. It was also observed, that, considering the volume of applications it is practically impossible to scrutinize each and every line of the form and merely because appellants were permitted to appear in the preliminary examination, they cannot claim to permit them to appear in viva voce test/final examination. The Learned Judge is also of the view that the case referred to by the counsel for the writ petitioners (*Sanjay Singh v. UP Public Service Commission*) cannot assist the petitioners. The Learned Judge has concluded that the respondents were not entitled to any relief as far as age relaxation was concerned. Accordingly, he dismissed the writ petition.

9. Aggrieved by the judgment of the Learned Single Judge the respondent(s) had preferred an appeal before the Division Bench of the High Court. The Division Bench relying on certain clauses in the advertisement issued in the year 2003, has concluded that the candidates who had initially appeared in the examination of 2001, were permitted to appear in the examination of 2003. According to the Division Bench, the petitioners were not allowed to appear in the final examination only on the ground of being over aged. The Division Bench also has observed that the learned counsel for the Commission has no objection to consider the case of the three petitioners as per the advertisement issued in 2003. Accordingly, the Division Bench allowed the writ appeals and further directed the Commission to permit the writ petitioners to appear in the interview and consider their cases on merit alone.

10. The appellant- Commission had filed a review application before the High Court Corequesting the Court to review its earlier order. In the review application, it was brought to the notice of the Court that the petitioners had not submitted the application before the Commission till 29.12.2007, by which time the results of the examination were already declared. Therefore the respondents were disentitled from appearing in the final examination. The

petitioner had also challenged the finding of the Division Bench with regard to the so called concession made by their learned counsel.

11. On consideration of the review application, the High Court has brought to the fore a Circular dated 22.3.2002, issued by the Department of General Administration of the State Government in which it was mentioned that the relaxation in age extended for a further period of two years and if any candidate is below the age of 35 years till March 2003, he will be entitled to file an application for appointment in the government service. The contention of the petitioners was that in March 2003, the petitioners were below the age of 35 years. The contention of the counsel for the petitioner was that March 2003 could not be considered to be a cut-date and the circular simply means that whoever is off below 35 years of age as on March 2003 is eligible to apply. However, the court observed that the effect of the circular is that 31st March 2003 has to be considered as the cut-date. Accordingly, has rejected the review petition. off

12. We have heard learned counsel for the parties to the lis. We have given our anxious consideration to the legal issues raised at the time of hearing these civil appeals. In our view, the issues that would arise for our consideration are: (i) Whether the High Court failed to appreciate that no concession or consent was given on behalf of the petitioner and that there was dispute on almost every aspect of the case? (ii) Whether the High Court was justified in failing to appreciate the matter in the light of Clause 25 of the advertisement which makes it clear that if there is any error in the application submitted by the candidates, the Commission is fully entitled to cancel the selection of the candidates at any stage without giving any prior intimation to such candidates?

13. Clause 25 of the advertisement issued in the year 2003 reads as under:- The applicant should fill up form very carefully after reading proper instruction given in the advertisement. If any information has been given incomplete, even this is full responsibility of the applicant and his application form can be cancelled at any stage on the ground of error and incomplete. The candidate shall be cancelled at any stage after giving wrong caste certificate or filled up wrong caste in computerized application form and the selection board will take necessary action.

14. Clause 14 of the advertisement issued in the year 2001 states- Candidate should ascertain before filling the form that they have completed all qualifications and age limit as per the advertisement and assure that all entries of the application forms have been filled up correctly. This is self responsibility of the candidate that they have completed all qualifications and conditions as prescribed in the advertisement. Candidate should himself examine his qualification before filling up the form and fulfill qualifications and conditions all before sending the application. It does not mean that appearing in the examination or calling for interview, that he has been found qualified.

15. According to the clauses in the advertisement, the fact that the respondents have passed the preliminary examination does not mean that their application/candidature is valid. The Commission is fully authorized to cancel the candidature of the candidates at any stage

without prior intimation. The respondents also placed reliance on Clause 10 of the advertisement issued in the year 2003, where according to their contention, candidates eligible for appearing in the 2001 examinations are also eligible to apply for the 2003 examinations. However the relevant provision in the advertisement states- Those candidates who had submitted their application for 2001 Madhya Pradesh State Service, only one time age relaxation has been given by the department as per letter No. C-3/5/2003/1 dated 14.8.2003 i.e. all candidates who have appeared in 2001 State Service Examination, they will be entitled to appear in this examination.

16. The wordings clearly specify that the benefit is available to only those who have appeared for the 2001 examination and not to those who were entitled to apply for the 2001 examination. Also as observed by the Learned Single Judge of the Madhya Pradesh High Court, there has been no detail nor any document filed by the petitioners to prove that the petitioners, in pursuance to the earlier advertisement issued in the year 2001, had submitted their application forms.

17. As far as the finding of the High Court is concerned, had the intention of the Commission been to consider March 31, 2003 as a cut off date for eligibility it would have been explicitly specified. The Division Bench has referred to the Circular dated 22.3.2002 issued by the Department of General Administration of the State Government. The relevant portion of the Circular reads: keeping in view the increasing problem of unemployed youths in the state and keeping the interest of the unemployed youths in mind, the government has again considered and has taken a decision that a further relaxation of 2 years more needs to be given. Meanwhile thereby now from March 2000 to March 2003, the maximum age limit for appointment in government services will be 35 years.

18. Rule 5(C) of the State Examination Rules on which reliance placed by the appellant states: A candidate must have attained the age of 21 years and must not have attained the age of 30 years on 1st January next following the date of commencement of the competitive examination.

19. In view of the above discussion, in our considered view, the Division Bench of the High Court has erred in considering March 31, 2003 as a cut off date for eligibility as there is no explicit mention of the same in the circular.

20. In reply to certain averments in the counter affidavit filed by the respondents in response to the Special Leave Petition relating to age relaxation being the discretion of the state looking at the problems of unemployment and regarding the authority of the Commission to question the concession in age requirements, it has been made clear already that the Commission is not trying to question the age relaxation. The Commission is merely trying to enforce the age requirements prescribed by the State Government. On account of no record of any concession made on the part of the appellants and considering all the circumstances of the case, it is clear that the respondents were over aged on the specified cut-off dates which makes their application liable for cancellation.

21. In view of the above discussion, the appeals are allowed. The impugned order is set aside. In view of the peculiar facts and circumstances of the case, parties are directed to bear their own costs.

<sup>1</sup>(2006) 9 SC C 507