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D.B. CIVIL WRIT PETITION NO. 6838/2013.

Manish Sharma

Vs.

High Court of Judicature for Rajasthan,
Jodhpur through its Registrar General

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Date of Order :: 21st June 2013.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE DR. JUSTICE P.K. LOHRA

(Vacation Bench)

Mr. B.S. Sandhu, for the petitioner.

Mr. Manish Sharma, petitioner present-in-person.

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BY THE COURT:

The petitioner herein, who intended to offer his candidature in the process of recruitment to the post of Junior Personal Assistant (English) under the Rajasthan High Court Staff Service Rules, 2002 ('the Rules' / 'the Rules of 2002') but found no prospect therefor in view of the requirements on age and minimum qualifications, has preferred this writ petition seeking the following reliefs:-

"1. By an appropriate writ, order or direction, Rule 8 of the Rules of 2002 may kindly be declared ultra vires and be struck down, to the extent it does not provide for age relaxation for the period for which the recruitment process was not undertaken each year, and

2. That in the alternate, relaxation in the upper age limit may kindly be provided to the petitioner while exercising powers under rule 30, for the years for which no recruitment was held and the petitioner may kindly be deemed to be in the age limit, and his candidature may kindly be considered for appointment, and

3. That by an appropriate writ order or direction, the minimum qualification for the post of Jr. PA may also kindly be declared irrational and arbitrary and be struck down.

4. That in the alternate it is prayed that the petitioners certificate of RKCL may be considered equivalent to the minimum qualification provided for the post of Jr. PA. in computer knowledge, and

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5. Any other appropriate writ order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the petitioner.

6. Cost of the writ petition may kindly be awarded to the petitioner."

The prescription regarding minimum qualifications and age, as occurring in the referred notification dated 09.01.2013, read as under:-

"1. Minimum Educational Qualification:

(i) Candidate must be a graduate from any university established by Law in India or its equivalent examination from any university recognized by the Government for the purpose and

(ii) Must have passed-

"O" level certificate course conducted by DOEACC under control of the Department of electronics;

Or

Computer Operator & Programming Assistant (COPA) Data Preparation & Preparation & Computer Software (DPCS) certificate organized under National/State council of Vocational Training Scheme;

Or

Diploma in Computer Science/Computer Application from any university established by Law in India or from an institution recognized by the Government;

Or

Diploma in computer Science & Engineering from a Polytechnic Institution recognized by the Government.

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3. Age :

A candidate for direct recruitment to the service must have attained the age of 18 years and must not have attained the age of 35 years on the first day of January preceding the last date fixed for submission of the application;

PROVIDED That :- (1) the upper age limit shall be relaxed by five years in the case of the member of the Scheduled Caste or Scheduled Tribe or Other Backward Class or Women Candidates;

(2) there shall be no restriction as to age for candidate already serving in connection with the affairs of the State in a substantive or in a temporary capacity, having been so appointed prior to his/her attaining the age of 33 years;

PROVIDED That :- the temporary appointment is permissible under the relevant Rules applicable to service to which the person belongs and is made in accordance with those Rules.

(3) that there shall be no age limit in the case of widow and divorcee women candidate :

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(4) the upper age limit for the reservists, namely defence services personnel transferred to the reserve shall be 47 yrs.

EXPLANATION :- in the case of widow she will have to furnish a certificate of death of her husband from the Competent Authority and in case of divorcee she will have to furnish the proof of divorce."

It has strenuously been argued by the learned counsel Mr. Sandhu that the petitioner, who possesses Bachelors Degree and then, Diploma in Stenography and also the certificate in computer from Vardhman Open University, Kota (RKCL certificate), carries all such requisite qualifications which could be co-related with the job requirement of Junior Personal Assistant but he is being considered disqualified for not answering to the qualifications prescribed under the notification in question. It is submitted that the minimum qualification for the post of Junior Personal Assistant could be that the candidate ought to have a good knowledge of computer, with good typing and stenography speed, but the qualifications as prescribed in the Rules do not have any nexus with the work of Junior Personal Assistant. It is also submitted that in various other High Courts, the qualification only as regards computer operations have been provided but in fact, the qualifications as prescribed under the notification in question are more of core computer programming rather than essential computer operations. It is submitted that in the job requirement of Junior Personal Assistant, it is not the hard core programming that has the relevance but it is the basic knowledge about operation of computer that alone could be considered relevant. Thus, according to the learned counsel, the qualifications prescribed do not match with the job profile of Junior Personal Assistant; and having been

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fixed arbitrarily, deserve to be struck down. It is also submitted that in the Rules framed by the State Government under Article 309, three years' relaxation in the upper age has been provided in almost all the Service Rules, for the year in which the recruitment is not held but, in the Rules of 2002, no such age relaxation is given which is absolutely discriminatory; and hence, Rule 8 deserves to be struck down.

Having given a thoughtful consideration to the entire matter, we are clearly of the view that the submissions do not make out any case for interference; and this writ petition does not merit admission.

As regards the qualifications, a reference could usefully be made to the decision in the case of V.K. Sood Vs. Secretary, Civil Aviation & Ors. : 1993 Supp (3) SCC 9 wherein the Hon'ble Supreme Court was pleased to hold that the prescription of qualifications for appointment to any post is not the function of the Court and it is essentially for the rule-making authority or employer to regulate the method of recruitment and to prescribe qualifications. The Hon'ble Supreme Court, inter alia, held as under:-

"6. Thus it would be clear that, in the exercise of the rule-making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission."

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Thus, it remains trite that the Court cannot regulate the prescription of qualifications and it is essentially for the rule-making body and the employer to lay down such qualifications. In our view, it is not available for the prospective candidate to suggest as to what ought or ought not be the qualifications for a particular job. Similarly, the reference to the qualifications provided by any other High Court, in our opinion, remains entirely misplaced. It has not been shown as to how the prescription of qualifications by one employer in such a matter could be co-related with such prescription by another employer.

As regards the claim for age relaxation too, it remains trite that relaxation can be claimed only if, and to the extent, permissible under the Rules. In the case of Prem Ratan Modi Vs. The State of Rajasthan & Ors.: SAW No.383/2012, decided on 17.08.2012, this Court took note of the law laid down by the Hon'ble Apex Court in the cases of Malik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors.: (2006) 9 SCC 507; and Rajasthan Public Service Commission Vs. Smt. Anand Kanwar & Ors.: Civil Appeal No.52/1993, decided on 08.02.1995 as under:-

"In Malik Mazhar Sultan's case (supra) even when emphasizing on the requirement of timely determination of the vacancies and timely appointments in relation to the U.P. Judicial Services, so far the age requirement was concerned, the Hon'ble Supreme Court held as under: -

"17. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the 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 relaxation of

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age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules."

(emphasis supplied)

Moreover, in Anand Kanwar's case (supra), even while noticing that the recruitments were not held during the years 1983 to 1989, the Hon'ble Supreme Court said,-

"Be that as it may, the High Court was not justified in taking the clock back to the period when unfilled vacancies were existing and holding that since the respondent was eligible on the date when vacancies fell vacant, she continued to be so till the time the vacancies are filled. Due to inaction on the part of the State Government in not filling the posts year-wise, the respondent cannot get a right to participate in the selection despite being over-aged."

(emphasis supplied)"

It was found in the aforesaid case of Prem Ratan Modi that relaxation in age for direct recruitment would be a matter for the Government to prescribe in the relevant rules; and, beyond what had been prescribed, cannot be claimed as a matter of right. In Prem Ratan Modi's case, the claim for providing age-relaxation of 13 years was found beyond the relevant rules and, this Court, inter alia, observed as under:-

"In the ultimate analysis, age relaxation for the direct recruitment, if to be granted, would be a matter for the Government to prescribe in the relevant Rules; and beyond what has been prescribed, cannot be claimed as a matter of right....."

In view of the above, the claim for age relaxation as made by the petitioner could only be rejected.

In the result, this writ petition fails and is, therefore, dismissed.

(P.K. LOHRA), VJ.

(DINESH MAHESHWARI), VJ.