

W.P. No.74/2016

29.2.2016

Shri Vibhor Khandelwal, learned counsel for the petitioners.

Shri Sunil Jain, learned Additional Advocate General with Shri Romesh Dave, learned Dy. Govt. Advocate for the respondent Nos.1 and 2.

Shri V.P. Khare, learned counsel for the respondent No.3.

They are heard.

By this writ petition, the petitioners are praying for the following reliefs:-

7.1 That, the minimum age limit of 24 years prescribed in column 3 of Schedule III read with Rule 8 (I) (a) of the Rules of 1991 may kindly be declared as ultra vires;

7.2 That, the respondents may kindly be directed to reconsider and amend the minimum age limit prescribed in the subjected Rules from 24 years to 21 years.;

7.3. That, the respondents may further be directed to amend the advertisement dated 22.12.2015 by mentioning the minimum age limit from 24 years to 21 years for appearing in the examination for the post of Assistant District Public Prosecution Officer and to republish the same after such amendment;

7.4 That, the respondents may further be directed not to move ahead on the advertisement dated 22.12.2015 without reconsidering the age criteria as mentioned hereinabove and the petitioners may kindly be permitted to appear in the examination dated 05.06.2016;

7.5 Any other relief which this Hon'ble Court may consider necessary in the interest of justice, may also be granted in favour of the petitioners.

Petitioners, who are 22 years of age have filed this writ petition, challenging the validity of Rule 8(i) (a) and Column 3 of Scheduled III of Madhya Pradesh Public Prosecution (Gazetted) Services Recruitment Rules, 1991 wherein the minimum age limit for appearing in the examination to be conducted for the post of Assistant District Public Prosecution Officer has been fixed as 24 years as on first day of January of next following the date of commencement of selection.

By fixing the aforesaid age limit, the respondent Nos. 1 and 2 has treated the candidates who belong to the age group of 21 years to 24 years with discrimination as compared to the candidates who belong to the age group of 24 years to 40 years. Section 24(1) (b) of the Advocates Act, 1961 provides for admission of a person as an advocate who has completed the age of 21 years. The advertisement bearing no.02/Pariksha/2015/22.12.2015 also provides that the compulsory educational qualification of an applicant is Degree in law from any recognized university or equivalent degree and it is further mentioned therein that preference shall be given to the applicant who got First Division marks or has higher qualification or has worked with bar for two years.

The contention of the learned counsel for the petitioners that no justified reason has been assigned by the respondents for fixation of the minimum age limit 24 years and resultantly debarring the entitled candidates who belong to the age group of 21 years to 24 years.

Shri Sunil Jain, learned AAG for the respondent Nos.1 and 2 has drawn our attention to the decision of the Division Bench of this Court in the case of **Bindu vs. State of M.P., 2010 (4) M.P.L.J. 231** whereby the Division Bench has

dismissed the writ petition by holding that fixation of minimum age limit of 24 years cannot be said to be illegal or arbitrary. It has also been held that the posts of ADPOs require special skill which can be acquired by an incumbent practicing at Bar, hence, an incumbent with two years' practice at Bar is to be preferred. The Division Bench has also held that the ADOPs are supposed to practice in the Court in criminal matters and represent the State Government in criminal cases, therefore, fixation of minimum age limit of 24 years has the purpose behind it of appointing the persons of special skill/experience having at least 2 years' practice at Bar. Para 14, 17 and 18 of the Division Bench decision **Bindu vs. State of M.P.(supra)** are relevant which reads as under:-

14. Thus, fixation of minimum age limit of 24 years cannot be said to be illegal or arbitrary at all. Merely by the fact that the petitioner is having 60% and could clear five years' LLB course at the age of 23 years cannot be made a ground to assail the vires of Rule 8 (1) of the Rules of 1991. The posts of Civil Judges are different than that of ADPOs. The posts of ADPOs require special skill which can be acquired by an incumbent practicing at Bar, hence, an incumbent with two years' practice at Bar is to be preferred. ADOPs are supposed to practice in the Court in criminal matters and represent the State Government in criminal cases. Thus, fixation of minimum age limit of 24 years has the purpose behind it of appointing the persons of special skill/experience having at least 2 years' practice at Bar. The intendment is that the persons appointed on priority basis are not absolutely raw hands.

17. At this stage, it is also submitted by Shri Parag Chaturvedi, counsel for petitioner that since the petitioner has appeared in the examination of ADPOs on the basis of interim order passed by this Court, she should be permitted to appear in the interview as now she attains the age of 24 years.

The submission cannot be accepted for the reason that the petitioner was not entitled to appear in the examination as she had not completed eligibility criteria and her merit has to be considered not with the students of this year but with the students of that year itself. She had not completed 24 years of age on 1-1-2009. Consequently, no relief can be granted to the petitioner as she was not entitled to appear in the written examination itself.

18. Resultantly, we find the petition to be devoid of merits. The same is hereby dismissed. No costs.

Considering the fact that the question involved in this writ petition has already been considered by the Division Bench of Principal seat in the case of **Bindu vs. State of M.P.(supra)**, no case for grant of any relief, as prayed by the petitioners is made out.

The writ petition filed by the petitioners has no merit and is accordingly dismissed.

(P.K. Jaiswal)
Judge

(Alok Verma)
Judge

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