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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29.01.2021

+ **W.P.(C) 1178/2021**

RITU GARG AND ORS.

..... Petitioners

Through: Mr. Rajshekhar Rao, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with
Mr. Kamal R. Digpaul, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral)

CM APPL. Nos. 3318/2021 & 3319/2021 (for exemption)

1. Exemption allowed, subject to just exceptions.
2. The applications stand disposed of.

W.P.(C) 1178/2021 & CM APPL. 3317/2021 (for ad-interim ex parte relief)

3. The present petition has been listed before us in the post-lunch session, on urgent mentioning. The Petitioners have approached this court under Article 227 of the Constitution of India, impugning the final order dated 28th January, 2021 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi in O.A./100/122/2021 dismissing the

Original Application (*hereinafter referred to as 'O.A.'*) filed by them. First and foremost, we may note that the transcript of the impugned order is not on record and the present petition has been filed stating that, as noted by the counsel, the Tribunal has pronounced the order orally and dismissed the O.A. filed by the Petitioners.

4. Briefly stated, the facts leading to the filing of the present petition are as follows. The Department of Personnel and Administrative Reforms has constituted a Subordinate Services Commission, subsequently re-designated as the Staff Selection Commission (*hereinafter referred to as 'SSC'*) to make recruitment to various class III (now Group "C") posts in various Ministries/Departments of the Government of India and its subordinate offices. The recruitment by the SSC for the vacant post(s) is notified for each year by way of open/public examinations for the respective years. One such examination is Combined Graduate Level Examination [*hereinafter referred to as 'CGL'*], held annually for recruitment to various posts as notified in the notice of examination for each respective year.

5. The SSC issued a notification dated 29th December, 2020 for the Combined Graduate Level Examination, 2020 (*hereinafter referred to as 'CGL 2020'*) for filling up of various Group 'B' and Group 'C' posts in different Ministries / Departments / Organizations. The schedule thereto prescribed dates for the conduct of examination in 2021. The date of age reckoning has been prescribed to be 1st January, 2021 and the last date of applying for such examination is 31st January, 2021.

6. Petitioners contend that due to the non-conduct of the CGL examination in the year 2020, and the subsequent determination of age limit (by fixation of 1st January 2021 as the date of age reckoning *vide* notification

dated 29th December, 2020) for the CGL 2020, they are being deprived of their last opportunity to appear for the said examination, on account of being overage on the said date, and thus, rendered ineligible to appear for the same.

7. In this background, the petitioners first filed a Writ Petition (Civil) No.458/2021 before this Court *inter alia* seeking urgent reliefs as well as seeking relaxation in the age reckoning as per the notification dated 29th December, 2020. The said petition was however withdrawn, with liberty to avail the alternate remedy by approaching the Central Administrative Tribunal, New Delhi under Section 19 of the Administrative Tribunals Act, 1985.

8. Accordingly, the Petitioners filed the afore-stated O.A. before the Tribunal and challenged the CGL 2020, to the extent it fixed the age reckoning date as 1st January 2021 to determine the eligibility of the aspirants, on the ground that it is unconstitutional, discriminatory, arbitrary, illegal and violative of Article 14 and 21 of the Constitution of India. The Tribunal has dismissed the O.A. *vide* the order impugned in the present petition. Aggrieved with the dismissal, the Petitioners by way of present petition seek a writ of mandamus directing the Respondents for fixing the date of age reckoning relatable to the year 2020.

9. Mr. Rajshekhar Rao, learned counsel for the Petitioners contends that the date of reckoning of age for the CGL 2020, being of the successive year (i.e. 1st January, 2021) is discriminatory, arbitrary, illegal and unconstitutional. The date of reckoning of age ought to be 1st January, 2020 as per the past pattern followed by Respondent No. 2. He contends that from 2017 onwards, CGL notifications have suffered administrative delays and

irregularities, resulting in a cascading effect impairing the normal conduct of examination and disturbing the schedule and pattern thereof. He submits that on account of the aforesaid, there has been disorientation and distortion of the process of recruitment. The action for notifying the date of age reckoning for CGL 2020 as 1st January, 2021 is not in good faith and does not serve any public purpose as it deprives a large number of aspirants of their last opportunity to appear for the said open/public examination, who would otherwise have been eligible, had the exam been conducted as per the long settled pattern and in accordance with the applicable OM of DOPT dated 14th July, 1988.

10. Although, we do not have the benefit of knowing the views of the learned Tribunal as the transcript of the impugned order dated 28th January, 2021 is still awaited, we have heard Mr. Rajshekhar Rao considering the urgency pressed by him that the last date for submitting the application for CGL expires on 31st January, 2021.

11. We have carefully perused the record and given due consideration to the contentions urged by Mr. Rao, however we are unable to accede to his contention. The controversy lies in narrow compass, as the facts are not in dispute. In terms of the notification, the eligible age has to be reckoned with reference to the date of 1st January, 2021. This reckoning date apparently deprives the petitioner of the last opportunity to appear for the said public examination on account of being overage. However in our view, this would not *ipso facto* entail that we should interfere in such a matter. The terms and conditions of the recruitment, including the age limit are to be fixed by the respondents. It is well settled in law that the employer is at liberty to fix the qualifications as well as the age limit for the purpose of recruitment, and

merely the fact that the same would cause prejudice to some participants, cannot be a reason for the Court to interfere and set a different age limit.

12. Petitioners strongly relied upon the Office Memorandum No. AB.14017/70/87-Estt. (RR) dated 14th July, 1988 issued by the Government of India, Ministry of Personnel, P.G and Pensions, Department of Personnel and Training (hereinafter referred to as '**OM**') which sets out the crucial date for determining the age limits for competitive examination conducted in parts by UPSC/SSC. According to the instructions contained in para 2 of the said OM, the crucial date for determining the age limits for competitive examinations held for recruitment by UPSC/SSC etc. in the first half of the year, is the first date of January of the year in which the examination is held; and if the examination is held in the second half of the year, the crucial date will be the first day of August of the year in which the examination is held. Petitioners contend that the advertisement of the CGL 2020 was due to be issued on 15th September, 2020 as per the tentative timetable published by the Respondents, and therefore the reckoning date should be relatable to the year 2020.

13. The aforesaid OM dated 14th July, 1988, in our view is of no assistance them, in as much as it nowhere prescribes that the age reckoning can be set with reference to the year in which the vacancies were notified, for recruitment through SSC. The said OM clarified the doubts expressed with respect to the crucial date for determining the age limit in respect of following examinations in the following terms:

"2. Some doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the Preliminary examination of the Civil Services Examination is normally held in the first half of the year and the Main examination is held in the second half of the year. In this case the position has been

clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If, however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January. Similarly, if both parts of an examination fall in the second half of the year, the crucial date for determining the age limits would be the 1st of August. The position in this regard is clarified in the following illustrations:-

Illustrations

NAME OF EXAMINATION	DATE ON WHICH FIRST PART OF EXAM HELD	DATE ON WHICH SECOND PART OF EXAM HELD	DATE FOR DETERMINING THE AGE LIMITS (MINIMUM AND MAXIMUM)
1	2	3	4
Exam A	1-3-88	25-8-88	As on 1-8-88
Exam B	1-9-88	1-3-89	As on 1-1-89
Exam C	1-3-88	1-5-88	As on 1-1-88

3. It may sometimes so happen that due to exigencies of circumstances an examination, which is normally held during the first half of the year, is shifted to the second half. In such a case, the date for determining the age limits would still be the 1st of January. The exact position should be clearly indicated in the rules for the respective examinations, which are notified for the purpose.”

(Emphasis Supplied)

14. The above para 3 of the OM deals only with such situations where the examination is shifted from first half to the second half of the year. It has no stipulation for the situation which is being faced by the present petitioner. Moreover, from para 2, it is clear that the date of age reckoning relates to the year in which the examination is held, and not the year in which the exam is notified. Nevertheless, we are unimpressed with the submissions made by Mr. Rao that since there have been administrative delays on the part of the respondents leading to cascading effect on the conduct of CGL examinations, the aspirants would be entitled to seek a mandamus for changing the eligibility criteria by changing the age limit by altering the date for reckoning the age. During the course of the arguments, we also pointed out to Mr. Rao that any change in the age limit criteria would not only impact the petitioners but would affect several other aspirants who may not

have approached the Court, and therefore, changing the reckoning date would lead to undesirable ramifications in as much as the entire CGL examination would have to be re-scheduled, which is not only undesirable, but also against public interest.

15. Further, even if we assume that there have been administrative irregularities, lapses and delays on the part of respondents, it does not necessarily translate into an actionable right in favour of the aspirant to seek a change in the reckoning date. The employer has to weigh several factors before embarking upon the recruitment drive, and judicial review of such reasons or factors is limited. We also do not see any arbitrariness on the part of the respondents in fixing the age reckoning date. The said date has been fixed keeping in mind the year in which the examination is being held. This criteria cannot be held to be unreasonable or irrational. It is being applied uniformly and not selectively. The same may result in rendering the aspirants, such as the petitioners, as overage, but it does not mean that there is a violation of Article 14 of the Constitution of India. The petitioners are unable to show any violation of any statutory rule on the part of the respondents, except for referring to the OM of 1988, which to mind is inapplicable. The petitioners are also unable to show any rule whereby relaxation can be given regarding the age for recruitment. The discretion of the employer to fix the age reckoning date will obviously impact some persons who fall on the other side of the said date, but that cannot be *per se*, arbitrary. This discretion of the Government cannot be considered as capricious or whimsical.

16. It is also well recognised that administrative authorities are in the best position to decide the requisite qualification for recruitment, since they have experience in administration, and thus the Court would not readily interfere

with such decisions. We must also bear in mind that fixing the eligibility criteria and the other conditions of service are within the competence of the Government. They are entitled to change the rules relating to a service or alter or amend the same, keeping in view the administrative exigencies or the necessities of the circumstances. Besides, the Petitioners have not shown any right in their favour to seek holding of examination every year. This is the prerogative of the Employer. Thus, in absence of any such right, they cannot seek a mandamus, as prayed for. Further, Judicial review in such matters can only be exercised if the action of the employer is contrary to any constitutional or statutory provision or is competently arbitrary or vitiated on account of being *mala fide*. In view of the above, we cannot issue a mandamus to the Government to withdraw the notification and fix a particular eligibility age criteria in the manner the petitioners would like us to.

17. We find no merit in the present petition and accordingly the same is dismissed, along with pending application, with no order as to costs.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

JANUARY 29, 2021

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