

THE STATE OF JAMMU AND KASHMIR & ORS. A

v.

SHAHEENA MASARAT & ANR.

(Civil Appeal No. 4991 of 2012)

SEPTEMBER 29, 2021 B

[L. NAGESWARA RAO AND SANJIV KHANNA, JJ.]

Service Law – Appointment – Respondent no.2 selected for appointment as Re-T (teaching guides) under Rehbar-e-Taleem (Re-T) scheme of appellant-State – Challenged by respondent no.1 – Writ petition dismissed by Single Judge – Appeal, allowed by Division Bench – Held: 35 years was the upper age limit for appointment as Re-T – Respondent no.2 who had crossed 35 years on the cut-off date was not eligible for appointment – Division Bench correctly directed the appointment of the respondent no.1 as Re-T – However, advertisement in question relates to appointment to a post of Re-T to which either respondent no.1 or respondent no.2 could have been appointed – Division Bench ought not to have directed the appointment of both the respondent nos.1 and 2 – Direction to continue respondent no.2 set aside – Constitution of India – Arts. 14, 16. C D E

Constitution of India – Arts.14, 16 – Appointment to public posts – Compliance of eligibility criteria – Held: Appointments to public posts should be strictly in accordance with Arts.14 and 16 – Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities – Service Law. F

Words & expressions – ‘as far as possible’ – Directory or mandatory – Discussed.

Disposing of the appeal, the Court

HELD: 1.1 Upper age limit notified in the advertisement for appointment as Re-T is 35 years as on 01.01.2002 which is the cut-off date for determining eligibility of a candidate who has applied in response to the advertisement dated 29.11.2002. Admittedly, the date of birth of second Respondent is 28.12.1965 and, therefore, she was more than 35 years on 01.01.2002. The G H

A learned Single Judge relied upon SRO 30 of 2003 by which the upper age limit was relaxed from 01.01.2003 to 31.12.2004 SRO 30 of 2003 giving relaxation of upper age limit from 01.01.2003 to 31.12.2004 cannot be made applicable to a selection which commenced by issuance of the advertisement dated 29.11.2002. [Para 5][11-G-H; 12-A-C]

B 1.2 The eligibility criteria for appointment as Re-T by the scheme as well as the advertisement includes a condition that a candidate shall 'as far as possible' fulfill the age qualification as prescribed by the State Government. The High Court construed the provision relating to upper age limit as mandatory. The conclusion of the Division Bench is approved. Appointments to public posts should be strictly in accordance with Articles 14 and 16 of the Constitution of India. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities. Construing

C the provision relating to upper age limit as directory would be conferring unbridled power in the executive to choose persons of their choice by relaxing the age beyond 35 years. In such case, the provision would have to be declared as unconstitutional. Therefore, 35 years is the upper age limit for appointment as Re-T. The 2nd Respondent who crossed 35 years on the cut-off date was not eligible for appointment. The High Court correctly directed the appointment of the 1st Respondent as Re-T. [Para 8][13-A-F]

D 1.3 While referring to the scheme in detail, the High Court took note of the fact that the Government can relax the upper age limit for regularization of Re-Ts. The scheme was discontinued and Re-Ts appointed under the scheme were considered for absorption as General Line Teachers. Even if a Re-T teacher was overaged, he/she would be eligible for formal appointment in the Government by relaxation of age. In view of the above, the

E Division Bench directed the continuance of Respondent No. 2. The advertisement in question relates to appointment to a post of Re-T to which either Respondent No.1 or Respondent No. 2 could have been appointed. The High Court ought not to have directed the appointment of both the Respondent Nos. 1 and 2. Having set aside the judgment of the Single Judge, the High

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Court committed no error in directing the appointment of Respondent No.1. The direction issued by the High Court to continue Respondent No.2 is set aside. Respondent No.2 has been continuing to work from 2004. Therefore, the Appellant is directed to accommodate her in any other vacancy. She shall not be entitled for any benefits prior to the date of her appointment afresh other than the salary and other allowances already paid for her services. [Paras 9, 10][13-F-H; 14-A-B] A

Iridium Indian TeleCommunication v. Motorola In-Charge (2005) 2 SCC 145 : [2005] 1 SCR 73 – referred to. C

Manickchand Durgaprasad v. Pratabmull Rameswar AIR 1961 Cal 483 – referred to.

Case Law Reference

[2005] 1 SCR 73	referred to	Para 6	D
CIVIL APPELLATE JURISDICTION: Civil Appeal No.4991 of 2012.			

From the Judgment and Order dated 13.04.2010 of the High Court of Jammu & Kashmir at Jammu, in LPA SW No.168 of 2008.

Ms. Taruna Ardhendumauli Prasad, Parth Awasthi, Advs. for the Appellants. E

Ms. Manjula Gupta, Ms. Nidhi, Ms. Suvarna S. Ganu. Jaydip Pati, Advs. for the Respondents.

The Judgment of the Court was delivered by F

L. NAGESWARA RAO, J.

1. Rehbar-e-Taleem (Re-T) scheme was floated by the State of Jammu and Kashmir on 28.04.2000 for promoting and decentralizing management of elementary education with community participation and involvement. The further object of the scheme was to ensure accountability and responsiveness through a strong backup and supervision through the community and to operationalize effectively the schooling system at the grass roots level. According to the scheme, teaching guides (referred to as ‘Re-T’ hereinafter) in primary and middle schools were to be appointed to cover for the deficiency of the staff as per existing G

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A norms. An advertisement was published in daily newspaper 'Aftab' on 29.11.2002. According to the scheme and the advertisement, a candidate seeking appointment as Re-T should be a permanent resident of the State and belong to the village where the deficiency of the staff was assessed. He/she should possess the minimum qualification of 10+2 and the candidate should 'as far as possible' fulfill the age qualification as prescribed by the State Government. The selection under the scheme for the primary school at Bundoak Khar Mohalla Rainawari was conducted in which 11 candidates applied pursuant to the Notification dated 29.11.2002. Respondent No. 2 was selected for appointment as Re-T. Respondent No. 1 filed a writ petition before the High Court of Jammu and Kashmir at Srinagar under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir for quashing order No.12-DDC of 2003 dated 14.05.2003 by which Respondent No. 2 was appointed as Re-T. A learned Single Judge of the High Court dismissed the writ petition by a judgment dated 08.09.2008.

B Aggrieved thereby, the first Respondent filed an appeal which was allowed by the Division Bench of the High Court. The Division Bench directed the appointment of the Respondent No. 1 as Re-T within a period of one month from the date of the judgment. The High Court further directed continuance of the Respondent No. 2 also. State of Jammu and Kashmir has filed this appeal challenging this judgment and final order dated

C 13.4.2010 passed by Division Bench of High Court of Jammu and Kashmir.

2. The main grievance of the State of Jammu and Kashmir (Appellant) is that the High Court committed an error in directing the appointment of Respondent No. 1 and also continuance of Respondent

D No. 2. The Respondents were vying for one post of teacher and the High Court could not have directed the appointment of both the Respondents. It was contended on behalf of the first Respondent that the second Respondent had crossed the maximum age limit of 35 years and was not eligible to even apply for appointment as a teacher. The learned counsel for the first Respondent submitted that SRO 30 of 2003 which relaxed the maximum age for appointment of teacher by 2 years is not applicable to the instant case. According to the Respondent No. 1, the learned Single Judge of the High Court dismissed the writ petition erroneously by holding Respondent No. 2 as being eligible for appointment as Re-T on a misinterpretation of the condition relating to upper age limit.

3. Respondent No. 2 contended that her appointment was strictly in terms of the advertisement and the maximum age was relaxed as per SRO 30 of 2003 which applied to all selections. The learned counsel for the Respondent No. 2 argued that she was appointed on 17.05.2003 and she has been continuing since then. As her remuneration was not being paid since May 2008, Respondent No.2 filed an interlocutory application in this Court for suitable directions. During the course of hearing of the appeal, this Court was informed that Respondent No. 2 has been paid her salary. It was contended on behalf of Respondent No. 2 that the words 'as far as possible' are directory and the authorities had power to relax the maximum age beyond 35 years. In any event, according to Respondent No. 2, her appointment should not be disturbed at this stage as she has already served for 18 years.

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4. The Central Government launched Sarva Shiksha Abhiyan (SSA) scheme to improve literacy by providing more teachers in areas where there are deficiencies. To give effect to the SSA scheme, the State Government launched a scheme for appointment of Re-T teachers in primary and middle schools. Village Level Committees were constituted under the scheme. The Zonal Education Officer was designated to be the convenor of the Village Level Committee. The Village Level Committee has to prepare a panel after conducting the selection process for appointment as Re-T. The Deputy Commissioner along with the representative of the Director School Education shall finalise the selections. The Zonal Education Officer would have to issue appointment letters. According to the scheme, Re-T is appointed initially for period of 2 years and thereafter his/her services can be extended for a further period of 3 years. There is a provision in the scheme for absorption of Re-T as a General Line Teacher. Absorption of Re-T is made on the basis of recommendation made by the Village Level Committee regarding the satisfactory performance of the teacher.

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5. Upper age limit notified in the advertisement for appointment as Re-T is 35 years as on 01.01.2002 which is the cut-off date for determining eligibility of a candidate who has applied in response to the advertisement dated 29.11.2002. Admittedly, the date of birth of second Respondent is 28.12.1965 and, therefore, she was more than 35 years on 01.01.2002. The learned Single Judge relied upon SRO 30 of 2003 by which the upper age limit was relaxed from 01.01.2003 to 31.12.2004. Thereafter, Rule 17 of the Jammu and Kashmir Civil Services

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- A (Classification, Control and Appeal), Rules 1956 was amended and upper age limit was relaxed from 01.01.2003 to 31.12.2004. As the second Respondent was less than 37 years as on 01.01.2002, the learned Single Judge held that she was eligible to be considered for appointment as Re-T. The Division Bench of the High Court held that Respondent No. 2 was not entitled to seek benefit of SRO 30 of 2003 as she completed 37 years of age as on 01.01.2003. We are in agreement with the Division Bench. SRO 30 of 2003 giving relaxation of upper age limit from 01.01.2003 to 31.12.2004 cannot be made applicable to a selection which commenced by issuance of the advertisement dated 29.11.2002.
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- C 6. Re-T scheme provides that a candidate shall ‘as far as possible’ fulfill the qualification as prescribed by the State Government. The eligibility criteria stipulated by the advertisement dated 29.11.2002 is that a candidate shall ‘as far as possible’ fulfill the age qualification as prescribed by the State Government i.e. the candidate should not be above 35 years of age. The learned Single Judge of the High Court
- D interpreted the words ‘as far as possible’ appearing in the scheme as well as the advertisement in respect of the upper age limit, as directory by relying upon judgment of this Court in ***Iridium Indian Tele-Communication V. Motorola In-Charge***,¹ whereas, the Division Bench was of the opinion that the judgment of this Court in ***Iridium Indian Tele-Communication*** (supra) is not applicable to the facts of the instant case.
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- F 7. In ***Iridium Indian Tele-Communication*** (supra), this Court was concerned with the interpretation clause 37 of Letters Patent which provided that in making rules and orders under this clause, the High Court shall be guided “as far as possible” by provisions of the Code of Civil Procedure. A Full Bench of High Court of Calcutta in ***Manickchand Durgaprasad V. Pratabmull Rameswar***², considered the scope of clause 37 of Letters Patent and observed that the rules framed under clause 37 would prevail over the corresponding provisions of the Code of Civil Procedure if there is any inconsistency. This Court in ***Iridium Indian Tele-Communication*** (supra), upheld the view of the Full Bench of the Calcutta High Court in ***Manickchand Durgaprasad*** (supra) in so far as it related to interpretation of the words ‘as far as possible’ in
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¹ 2005 (2) SCC 145

² AIR 1961 Cal 483

clause 37 of the Letters Patent by holding that the words 'as far as possible' are merely directory. A

8. As stated above, the eligibility criteria for appointment as Re-T by the scheme as well as the advertisement includes a condition that a candidate shall 'as far as possible' fulfill the age qualification as prescribed by the State Government. There is no dispute that the upper age limit for appointment as Re-T is 35 years. The Division Bench examined the scheme and noticed that there is no minimum age limit specified and if the words 'as far as possible' for upper age limit are interpreted as directory, the officers would have discretion to select candidates even after they cross 45 years. Further, the Division Bench was of the opinion that there will be no uniformity in selection of Re-Ts in the State. The scheme would be rendered unconstitutional as being violative of Articles 14 and 16 of the Constitution of India. Therefore, the High Court construed the provision relating to upper age limit as mandatory. We approve the conclusion of the Division Bench. Appointments to public posts should be strictly in accordance with Articles 14 and 16 of the Constitution of India. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections by unfettered discretion being vested in the authorities. Construing the provision relating to upper age limit as directory would be conferring unbridled power in the executive to choose persons of their choice by relaxing the age beyond 35 years. In such case, the provision would have to be declared as unconstitutional. Therefore, we are of the opinion that 35 years is the upper age limit for appointment as Re-T. The 2nd Respondent who has crossed 35 years on the cut-off date was not eligible for appointment. The High Court has correctly directed the appointment of the 1st Respondent as Re-T. B C D E F

9. Now, the question that remains to be answered is the continuance of Respondent No. 2. While referring to the scheme in detail, the High Court took note of the fact that the Government can relax the upper age limit for regularization of Re-Ts. The scheme was discontinued and Re-Ts appointed under the scheme were considered for absorption as General Line Teachers. Even if a Re-T teacher was overaged, he/she would be eligible for formal appointment in the Government by relaxation of age. In view of the above, the Division Bench directed the continuance of Respondent No. 2. G

10. The advertisement in question relates to appointment to a post of Re-T to which either Respondent No.1 or Respondent No. 2 could H

- A have been appointed. The High Court ought not to have directed the appointment of both the Respondent Nos. 1 and 2. Having set aside the judgment of the learned Single Judge, the High Court committed no error in directing the appointment of Respondent No.1. The direction issued by the High Court to continue Respondent No.2 is set aside. Respondent No.2 has been continuing to work from 2004. Therefore, the Appellant is directed to accommodate her in any other vacancy. She shall not be entitled for any benefits prior to the date of her appointment afresh other than the salary and other allowances already paid for her services.
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11. The appeal is disposed of accordingly.

Divya Pandey

Appeal disposed of.