[2021] 2 S.C.R. 201

RACHNA & ORS.
v.
UNION OF INDIA & ANR.

(Writ Petition (Civil) No(s). 1410 of 2020)

FEBRUARY 24, 2021

[A.M. KHANWILKAR, INDU MALHOTRA AND AJAY RASTOGI,* JJ.]

Constitution of India – Art. 32 – Writ petition under, by last attemptee of the UPSE exam – Mandamus sought to 1st respondent-Union of India to extend one additional attempt as they are being barred from attempting the examination in future on account of exhausting of available attempts or on account of age bar subsequent to Civil Services (Preliminary) Examination, 2020; and that due to Covid 19 pandemic, they could not effectively participate in Examination 2020 – Held: Such direction cannot be issued – Policy decisions are open for judicial review by this Court if it is either absolutely capricious, totally arbitrary or not informed of reasons – Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different – Executive can take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate – Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right – Merely because as a matter of policy, if the 1st respondent had granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the CSE, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent as a matter of right – Policy decisions which had been taken by the executive on earlier occasions always depend on the facts and circumstances at the given point of time – Administrative law – Policy decisions – Judicial Review.

* Author

Dismissing the writ petition, the Court Held:

1.1 The syllabus of the preliminary examination has not changed since 2015 and after the Rules for Competitive examination 2020 were notified by the 1st respondent for Civil Services Exam 2020, the notice, was published on 12.2.2020 and the scheduled date of the examination was fixed on 31st May, 2020 but because of the unprecedented situation of Covid19 pandemic, the Commission took a policy decision to defer the examination and in the changed situation, after there was a relaxation in the lockdown, ultimately on 5th June, 2020 took a decision to hold the examination on 4th October 2020 and, therefore, instead of three months, the candidates got additional five months (i.e. eight months) to which one ordinarily can prepare for appearing in the examination in terms of the scheme of Rules 2020. [Para 33]

1.2 Under the scheme of Rules 2020, mere filling up of the form is not sufficient to avail an attempt. If someone appeared in either of the paper of the preliminary examination, that was considered to be an attempt availed by the candidate and, in the given situation, after the application form was filled, the candidates who wanted to withdraw their application form at the later stage because of the Covid-19 pandemic, the commission took a policy decision to open the window for the second time, which in the ordinary course is not available under the scheme of rules, for the candidates who intended to withdraw their application from 1st August, 2020 to 8th August, 2020. Since the examination was scheduled for 4th October, 2020 only those candidates were left who were mentally prepared to appear and willing to avail an opportunity of appearing in the Examination 2020 and after appearing in the examination, when they could not qualify, it has given a way to the instant litigation on the specious ground of Covid-19 pandemic that they were unable to effectively participate in the process of selection which has been initiated by the Commission in holding preliminary examination on 4th October, 2020. [Para 34]

1.3 This court cannot loose sight of the fact that apart from the present Examination 2020, remedial measures were adopted for the candidates who had participated in the various examinations/recruitment tests held for Central services by

the Commission at the given point of time during the Covid 19 pandemic and apart from that, the State Commissions/ recruiting agencies must have conducted their examinations/ recruitment tests for various services and merely because the present petitioners made a complaint to this Court, cannot be taken into isolation for the purpose of seeking additional chance/attempt in the backdrop of Covid-19 pandemic, which has been faced by not only the candidates appeared in Examination 2020 but by the candidates appeared in the various examinations/recruitment tests held by the State Commissions or by other recruiting agencies and by and large, every member of the society in one way or the other but that does not in any manner give legitimate right to the petitioners to claim additional benefit/attempt which is otherwise not permissible under the scheme of Rules 2020. [Para 35]

1.4 There are limited attempts for the candidates who appeared in the general category and the scheme of Rules 2020 does not provide any discretion to the 1st respondent to grant relaxation either in attempt or in age and any exercise of discretion which does not vest with the 1st respondent, if exercised, may go in contravention to the scheme of Rules 2020. [Para 36]

1.5 Taking note of the order of this Court dated 30.9.2020 passed in WP(C) No. 1012 of 2020 in the earlier proceedings, this Court has shown some sympathy for the candidates who were having their last attempt and were also likely to become age barred for next examination, if any indulgence could be shown to them. In compliance of the order of this Court, the 1st respondent made endeavour to find out a way which is possible to give solace to such candidates and placed it before this Court that too with reservation that there is a possibility in providing one extra attempt for the candidates who had availed the last and final attempt in Examination 2020 provided they are within their respective age brackets as provided under Rule 6 of the Rules 2020. [Para 37]

1.6 If an additional attempt remains restricted to the last attemptees for the reason that they had suffered during Covid 19 pandemic, all attemptees irrespective of the nature of attempt (i.e. 1st, 2nd etc.) who appeared in Examination 2020 must have faced the same consequences as being faced by the writ petitioners and each one of them have suffered in one way or the other during

the Covid-19 pandemic. At the same time, this reasoning would equally apply to those who have crossed the upper age barrier. More so, when no discretion is left with the 1st respondent to grant relaxation in the age bracket to the candidates other than provided under Rule 6 of the scheme of Rules 2020 which indeed the present petitioners are not entitled to claim as a matter of right and that apart, those who have withdrawn their forms either because of lack of preparation or because of some personal reasons but have crossed the upper age limit to appear in CSE 2021, they would also be equally entitled to claim and no distinction could be made whether the candidate has appeared in the Examination 2020 and availed the last attempt or attempts is still available at his disposal or has crossed the upper age limit. [Para 38]

1.7 Any concession either in attempt or age is not available under the scheme of Rules 2020, at the same time, proposal which has been placed by the 1st respondent apart from complaint made inter se by the petitioners/intervenors themselves of being discriminatory in character, it is advisable to avoid this situation and any relaxation which is not permissible either in attempt or age under the scheme of Rules 2020 apart from being in contravention to the rules, it may be discriminatory and it is advisable not to exercise discretion in implementing what being proposed by the 1st respondent in compliance of the order of this Court dated 30th September, 2020. [Para 39]

1.8 The submission that discretion has been exercised by the respondent as a matter of policy in the earlier selections and the present petitioners have a legitimate expectation that the Government must exercise its discretion to overcome the unprecedented situation which the petitioners have faced while appearing in the Examination 2020 and their right of fair consideration and effective participation in the selection process has been denied to them which is in violation of Arts. 14 and 21 of the Constitution, is without substance for the reason that the policy decisions which had been taken by the executive on earlier occasions of which a reference has been made always depend on the facts and circumstances at the given point of time and has to be tested independently in the circumstances in which it has been exercised by the competent authority or the 1st respondent as in the instant case. [Para 40-41]

1.9 It was submitted that there is always a change in the upper age limit and number of attempts in different spell and further emphasis was that in the year 2015, the 1st respondent allowed one more attempt in the Civil Service Examination 2015 for the candidates who appeared in CSE 2011. Although the justification has been tendered by the respondents in their response that as there was a substantial change in the pattern of Civil Service (Preliminary) Examination 2011, in the given circumstances, the 1st respondent in its wisdom considered it appropriate to grant one more attempt in CSE, 2015 to such candidates who appeared in Civil Service Examination, 2011 either due to reaching upper age limit or due to exhausting of number of attempts and that was the given situation which prevailed upon the 1st respondent in taking a policy decision in granting permission but that cannot be made to be the basis or a foundation for the petitioners to site as a precedent in claiming to seek one additional attempt as a matter of right which is not permissible under the scheme of Rules 2020 or with the aid of Art. 14 of the Constitution to take a call in meeting out the difficulties which have been faced as alleged in the given circumstance. [Para 42]

2.1 Policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons. [Para 43]

Union of India and Others vs. M. Selvakumar and Another **(2017) 3 SCC 504 : [2017] 4 SCR 137 - relied on.**

2.2 Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights

guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the CSE, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right. [Para 45]

3. It has been brought to the notice that not only the petitioners/ intervenors before this Court, but there are large number of candidates who appeared in the various examinations in the year 2020 during Covid 19 pandemic and everyone must have faced some constraints/impediments/inconvenience in one way or the other and this Court can take a judicial notice that these petitioners have appeared in the same pattern of examination in the previous years since the year 2015 and what is being claimed and prayed for under the guise of Covid 19 pandemic is nothing but a lame excuse in taking additional attempt to participate in the CSE 2021 to be held in future and there is no substance in either of the submissions made. [Para 46]

4. The data furnished to this Court by the Commission clearly indicate that various selections have been held by the Commission for Central Services in the year 2020 during Covid 19 pandemic and selections must have been held by State Commissions and other recruiting agencies, if this Court shows indulgence to few who had participated in the Examination 2020, it will set down a precedent and also have cascading effect on examinations in other streams, for which this Court is dissuaded to exercise plenary powers under Art. 142 of the Constitution. However, it is made clear that this decision would not restrict the 1st respondent or the executive in exercising its discretion in meeting out the nature of difficulties as being projected to this Court, if come across in future in dealing with the situation, if required. [Para 47, 48]

RACHNA & ORS. v. UNION OF INDIA & ANR.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No(s). 1410 of 2020

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

Shyam Divan, C. U. Singh, Sr. Advs., Ms. Anushree Prashit Kapadia, Advs. for the Appellants.

Tushar Mehta, SG., S. V. Raju, ASG., P.S. Narasimha, Pallav Shishodia, Sr. Advs., Kanu Agrawal, Rajat Nair, Arvind Kumar Sharma, Rohit Sharma, Atul Agarwal, Rounak Nayak, Ms. Arju Chaudhary, Ms. Kanti Pratap Singh, Kumar Dushyant Singh, Vivek Tiwari, Ms. Priyanka Dubey, Dr. Vinod Kumar Tewari, Naresh Kaushik, Vardhman Kaushik , Aditya Chatterjee, Ms. Pracheta Kar, Kunal Mimani, Ms. Garima Bajaj, Ashutosh Ghade, Harsh V. Surana, K. L. Janjani, Advs. for the Respondents.

The Judgment of the Court was delivered by

RASTOGI, J.

1. Application(s) for intervention are allowed.

2. The batch of petitioners were hopeful that in their last attempt, they may qualify in the Civil Services (Preliminary) Examination, 2020 (in short "Examination 2020") which was held on 4th October 2020 but when they failed to achieve their goal, approached this Court by filing the instant writ petition under Article 32 of the Constitution seeking mandamus to the 1st respondent to extend one additional attempt to the petitioners/intervenors as they are being barred from attempting the examination in future on account of exhausting of available attempts or on account of age bar subsequent to Examination 2020.

3. The prayer which has been made in the instant petition is as follows:-

"(a) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature thereof and declare that the action of the respondents of not issuing appropriate policy for grant of an extra attempt to candidates for whom civil services examination 2020 would be last attempt as being violative of Articles 14, 19, 29 and 21 of the Constitution of India, and by way of issuance

of an appropriate writ, order or direction of or in the nature of mandamus, and/or any other writ, order or direction, inter-alia, direct the Respondent/s to provide one extra attempt to the last attempt candidates including the petitioners, in addition to number of permissible attempts: and/or

(b) Pass any other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

Brief Factual Matrix

4. The background facts delineated from the records and relevant for the purpose are that the Civil Services Examination is conducted every year by the 2nd respondent (Union Public Service Commission-UPSC) and for the year 2020, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) published Gazette Notification dated 12th February, 2020 notifying the rules for competitive examination, 2020 (hereinafter being referred to as "Rules 2020") to be held by the 2nd respondent for the purpose of recruitment to 24 services/posts to be held in three stages:- (i) preliminary (ii) mains (iii) personality test.

5. The scheme of Rules 2020 published on 12th February, 2020 is a complete code for the purposes of final selection to civil services. The parameters prescribed for eligibility with regard to number of attempts and age have been provided under Rule 4 and Rule 6 of the Rules 2020. Rule 4 and Rule 6 which are relevant for the purpose are mentioned hereunder:-

"**4.** Every candidate appearing at the examination who is otherwise eligible, shall be permitted six attempts at the examination.

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible.

Provided further that the number of attempts permissible to candidates belonging to Other Backward Classes, who are otherwise eligible, shall be nine. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates.

Provided further that candidates belonging to persons with benchmark disability will get as many attempts as are available to candidates other than persons with benchmark disability of his or her community, subject to the condition that a candidate of person with benchmark disability belonging to the General and EWS Category shall be eligible for nine attempts. Necessary action to make corresponding changes in respective Rules/regulations pertaining to various services is being taken separately. The relaxation will be available to the candidate of persons with benchmark disability who are eligible to avail of reservation applicable to such candidates.

Note:-

(I) An attempt at a Preliminary Examination shall be deemed to be an attempt at the Civil Services Examination.

(II) If a candidate actually appears in any one paper in the Preliminary Examination, he/she shall be deemed to have made an attempt at the Examination.

(III) Notwithstanding the disqualification/cancellation of candidature, the fact of appearance of the candidate at the examination will count as an attempt.

6. (a) A candidate must have attained the age of 21 years and must not have attained the age of 32 years on the 1st of August, 2020 i.e., he must have been born not earlier than 2nd August, 1988 and not later than 1st August, 1999. Necessary action to make corresponding changes in respective Rules/Regulations pertaining to various services is being taken separately.

(b) The upper age-limit prescribed above will be relaxable:

(i) up to a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe;

(ii) up to a maximum of three years in the case of candidates belonging to Other Backward Classes who are eligible to avail of reservation applicable to such candidates;

(iii) up to a maximum of three years in the case of Defence Services Personnel, disabled in operations during hostilities with any foreign country or in a distributed area and released as a consequence thereof;

(iv) up to a maximum of five years in the case of ex-servicemen including Commissioned Officers and ECOs/SSCOs who have rendered at least five years Military Service as on 1st August, 2020 and have been released;

(a) on completion of assignment (including those whose assignment is due to be completed within one year from 1st August, 2020 otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; or

(b) on account of physical disability attributable to Military Service; or

(c) on invalidment.

(v) up to a maximum of five years in the case of ECOs/SSCOs who have completed an initial period of assignment of five years of Military Service as on 1st August, 2020 and whose assignment has been extended beyond five years and in whose case the Ministry of Defence issues a certificate that they can apply for civil employment and that they will be released on three months' notice on selection from the date of receipt of offer of appointment.

(vi) up to a maximum of 10 years in the case of Persons with Benchmark Disabilities viz. (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d) autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst person under clauses (a) to (d) including deaf-blindness.

Note I :- Candidates belonging to the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes who are also covered under any other clauses of Rule 6(b) above, viz. those coming under the category of Ex-servicemen, Persons with Benchmark Disabilities [viz. (a) blindness and low vision; (b) deaf and hard of hearing; (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy; (d)

autism, intellectual disability, specific learning disability and mental illness; (e) multiple disabilities from amongst person under clauses (a) to (d) including deaf-blindness.] will be eligible for grant of cumulative age-relaxation under both the categories.

Note II : The details of Functional Classification (FC) and Physical Requirements (PR) of each service are indicated in Appendix IV of these Rules which are identified and prescribed by the respective Cadre Controlling Authorities (CCAs) as per the provisions of Section 33 and 34 of the Rights of Persons with Disabilities Act, 2016. Only those category(ies) of disability(ies) mentioned in Appendix IV shall apply for the examination under Persons with Benchmark Disability (PwBD) category. Therefore, the candidates belonging to the Persons with Benchmark Disability categories are advised to read it carefully before applying for the examination.

Note III:- The term Ex-servicemen will apply to the persons who are defined as Ex-servicemen in the Ex-servicemen (Re-employment in Civil Services and Posts) Rules, 1979, as amended from time to time.

Note IV:- The age concession under Rule 6(b)(iv) and (v) will be admissible to Ex-servicemen i.e. a person who has served in any rank whether as combatant or non-combatant in the Regular Army, Navy and Air Force of the Indian Union and who either has been retired or relieved or discharged from such service whether at his own request or being relieved by the employer after earning his or her pension.

Note V:- Notwithstanding the provision of age-relaxation under Rule 6(b)(vi) above, Candidates of Persons with Benchmark Disability will be considered to be eligible for appointment only if he/she (after such physical examination as the Government or appointment authority, as the case may be, may prescribe) is found to satisfy the requirements of physical and medical standards for the concerned Services/Posts to be allocated to the Candidates of Persons with Benchmark Disability by the Government.

Save as provided above, **the age-limits prescribed can in no case be relaxed**.

…."

6. It may be relevant to note that for the candidates who appear in the open category in the examination, they are permitted six attempts but for the candidates who are the members of Scheduled Castes and Scheduled Tribes, there is no restriction on the number of attempts provided, they are otherwise eligible. For the candidates who are belonging to OBC/EWS category, they can avail nine attempts. A clarification has further been made that if the candidate appears even in one paper of the preliminary examination, it shall be deemed to be treated as an attempt. At the same time under Rule 6, the age at the entry point is 21 years and exit at the age of 32 years. But the upper age limit is relaxable to the categories of vertical/ horizontal reservations and there is no such enabling provision granting relaxation in the upper age limit to the candidates belonging to general category as such those candidates of general category who have attained the age of 32 years on 1st August, 2020 as in the instant case became ineligible to participate in the ensuing Civil Services Examination, 2021 (in short "CSE 2021").

7. Pursuant to the notification dated 12th February, 2020 published in the Official Gazette by the 1st respondent, process of selection was initiated by the Commission inviting applications from the eligible candidates who wish to appear in the Examination 2020. According to the notice published by the Commission, preliminary examination was to be held on 31st May 2020. Appendix II-B annexed thereto deals with the procedure for withdrawal of application after submission of online application, it could be withdrawn from 12th March, 2020 to 18th March, 2020. Thereafter the admit cards were issued to all the candidates who intended to participate in the selection process, but because of the unprecedented Covid-19 pandemic, which was notified by the National Disaster Management Authority vide its order dated 24th March 2020, the Commission by its Press Release dated 4th May, 2020 deferred the Examination 2020 and further informed that the revised schedule of examination will be notified at a later stage.

8. Taking note of the unlock 1.0 guidelines published on 5th June 2020, the Commission decided to conduct the preliminary examination on 4th October, 2020. Several candidates submitted their objections. Taking note thereof, the Commission allowed the candidates to submit their revised choice of examination center by its letter dated 1st July, 2020 and further opened the window for withdrawal of the

application from 1st August, 2020 to 8th August, 2020. This Court can take judicial notice of the fact that after a second opportunity was afforded to the candidates for withdrawal of the application, only such of the candidates were left who had made up their mind and were mentally prepared to appear in the ensuing preliminary examination which was scheduled to be held on 4th October, 2020.

9. As alleged that when no decision was taken by the respondent on their representations/objections for deferring of the examination, certain candidates filed Writ Petition (Civil) No.1012 of 2020 before this Court on 5th September, 2020 seeking postponement of the Examination 2020 and the prayer for relaxation in upper age limit and an additional attempt. This Court was not persuaded to issue a direction to the Commission to defer the schedule of examination to be held on 4th October, 2020 on the submissions made by the writ petitioners who approached this Court. Moreover, on one of the issues, this Court expressed a sanguine hope that possibility of providing one more attempt to such candidates with corresponding extension of age limit, if possible, can be explored by the concerned authorities. The submission made to merge the two examinations, namely, to be conducted on 4th October, 2020 with the examination scheduled for 2021, however, did not find favour by this Court.

10. The relevant part of the order dated 30th September, 2020 is extracted as under:-

"(iv) The fourth point raised before us is that some of the candidates may be giving last attempt and also likely to become age-barred for the next examination, and if such candidates are unable to appear in the examination due to Covid-19 pandemic situation, it would cause great prejudice to them.

In this regard, we have impressed upon Mr. S.V. Raju, learned Additional Solicitor General appearing for the Ministry of Home Affairs (MHA), Ministry of Health and Family Welfare (MoHFW) and Department of Personnel and Training (DoPT) to explore the possibility of providing one more attempt to such candidates with corresponding extension of age limit. He has agreed to convey the sentiments of the Court to all concerned and to take a formal decision thereon expeditiously."

11. The fact is that all the writ petitioners/intervenors appeared in the preliminary examination held on 4th October, 2020 which was conducted in 74 cities. During the course of arguments, following information was brought to the notice of this Court:-

-Number of candidates who enrolled for the Examination 2020 - 10,56,835.

-Number of candidates who appeared on 4th October, 2020- 4,86,952.

-Number of last attempt candidates who appeared for Examination 2020 and have not attained age bar for 2021- 3863

-Number of last attempt candidates who appeared in Examination 2020 and would reach age bar for CSE 2021- 2236

-Candidates having last attempt in terms of age bar but did not appear- 4237

-Combined effect of last attempt appeared : 3863 + 2236 = 6099 which comes to around 1.25% of candidates who appeared for the examination.

-Combined effect of candidates who appeared and non-appeared and who require relaxation for 2021, i.e. total = 3863+2236+4237 = 10,336 which comes to 0.97% of total candidates who enrolled for Examination, 2020.

12. When the present petitioners/intervenors failed to qualify in the preliminary examination held on 4th October, 2020 by the Commission, they approached this Court by filing of the instant writ petition, and this Court took note of the fact that in the light of the order passed in the earlier proceedings dated 30th September, 2020, the decision of the competent authority to fulfil the legitimate aspirations of the candidates was still pending with the authority. During the pendency of the writ petition in deference to this Court, a decision was taken by the 1st respondent and placed for perusal dated 5th February, 2021 in which it was agreed in principle to give one time restricted relaxation, limited to CSE 2021 to only those candidates who appeared in Examination 2020 as their last permissible attempt and otherwise are not age-barred from appearing in CSE 2021, and no relaxation to the candidates will be given who have not exhausted their permissible number of attempts or to those candidates who are otherwise age-barred from appearing

in CSE 2021. The extract of the decision which was placed on record dated 5th February, 2021 is reproduced hereunder:-

"As per the suggestion of this Hon'ble Court, the Union of India is agreeable for the following ex-gratia, one-time, restricted relaxation to be granted to the prospective candidates, subject to the same being part of a consent order, disposing off the petition. The conditions, agreeable to the Respondent, are as under:

1. Relaxation, only to the extent of providing one extra attempt for Civil Service Examination (CSE), specifically limited to CSE-2021, may be granted to only those candidates who appeared for CSE-2020 as their last permissible attempt and are otherwise not age-barred from appearing in CSE-2021.

2. No relaxation shall be granted for CSE-2021 to those candidates who have not exhausted their permissible number of attempts or to those candidates who are otherwise age-barred from appearing in CSE-2021 as per the prescribed age limits of different categories, or to any other candidate for any other reason whatsoever.

3. This relaxation for the candidates and to the extent as prescribed above, shall be a one-time relaxation only and shall apply only for appearing in CSE-2021 and shall not be treated as a precedent.

4. The relaxation provided at Point 1, shall not create any vested right whatsoever or any other purported right on ground of parity or otherwise, in favour of any other set/class of candidates at any time in the future."

Submissions of the parties

13. The main thrust of submission of learned counsel for the petitioners is that the sudden and strict lockdown due to unprecedented pandemic in March, 2020 had made a large disruption in the life of the common man and the measures adopted led to difficulties and impediments in the preparation of the Examination 2020 for many aspirants and the Government failed to take any policy decision for the last attemptees before holding Examination 2020 to enable them to take an appropriate/suitable decision and noticing precedence from the earlier policy of 1st respondent to grant an extra attempt to last-attemptees in the event causing widespread hardships left with

no choice except to appear in the examination even though they did not have an adequate opportunity and infrastructure and they were left out blinded with uncertainty.

14. Learned counsel for the petitioners submits that petitioners are placed in the disadvantageous position with the onset of the pandemic and due to the unprecedented measures imposed in the wake thereof. That apart, candidates working in essential services did not have the benefit of seeking leave or claiming exemption from duty/ overtime duty looking to the nature of their services and in the light of invocation of The Essential Services Maintenance Act, 1968 and The Disaster Management Act, 2005. There is no benefit accruing to persons in essential services and public employment, consequent to the unlock guidelines.

15. Learned counsel further submits that denial of an additional attempt to the petitioners will make them to suffer serious discrimination amongst who have not faced such hurdles as being faced by the petitioners in their preparation during the unprecedented pandemic. While others had a choice of leaving the Examination 2020, while taking care of their health, the last attemptees particularly in terms of age, were left with no choice and had to sit for the exam despite the lack of opportunity to prepare which is in violation of Articles 14 and 21 of the Constitution of India.

16. Learned counsel further submits that the petitioners were deprived of their basic facilities for preparation in view of the innumerable, inevitable circumstances suffered by them due to Covid-19 pandemic, which prevailed in the entire country during the crucial period of their preparation and even on the date of examination, but the impact may not be uniform on all the participants and at least to those who are essential service providers and such candidates deserve one more attempt when they virtually lost for unavoidable circumstances their last attempt in 2020 and there are past precedents to grant of extra attempt in addition to age relaxation for such years when UPSC Civil Services Examinations' aspirants faced hardships due to various reasons.

17. Learned counsel for the intervenors in addition further submitted that the discretion exercised by the 1st respondent dated 5th February, 2021 to grant one time relaxation limited to only those candidates who appeared for Examination 2020 as their last permissible attempt and otherwise not age-bared from appearing in CSE 2021 with no relaxation

to the candidates who have not exhausted their permissible number of attempts or to those candidates who are otherwise age-barred from appearing in CSE 2021 is not a rational decision and no such classification could be made amongst the group of candidates who had participated in Examination 2020 as a last attempt and are debarred to appear in CSE 2021 because of the attempt being exhausted or having crossed the upper age limit and it was expected from the 1st respondent to take a holistic view of the situation and grant one time relaxation to all the candidates who had participated in Examination 2020 regardless of the fact whether one has availed all the attempts or crossed the age barrier disqualifying to appear in CSE 2021.

18. Learned counsel for intervenors further submits that the candidates who appeared in Examination 2020 by and large are affected because of unprecedented pandemic and they were unable to prepare themselves to appear in the examination due to various impediments which came in front of them of which adequate reasons have been furnished to this Court. In the given circumstances, at least taking a lenient and a holistic view of the matter, this Court may exercise its jurisdiction under Article 142 of the Constitution granting one time relaxation to the candidates who appeared in Examination 2020 with one additional attempt regardless of the fact whether one has exhausted the number of attempts or crossed the upper age limit as prescribed under the Rules 2020 and it does not affect either the integrity of the examination or any restriction on the prospective participants of CSE 2021 and to those who have already availed the attempts. All hopes of the candidates remain in the last attempt but that had gone in vain because of the unprecedented situation which came in front of them and that was the only reason for which they have not been able to put their full potential to qualify the Examination 2020.

19. Per contra, counter affidavits have been filed by the respondents in their defence and it has been stated that the syllabus for the preliminary examination has not been changed since 2015 and examination of this nature is not possible for a candidate to prepare at the last moment and it needs a lot of planning, spanning of a number of going through this preparation. Entry age of candidates is 21 years and exit age for general candidates is 32 years. Relaxations/ upper age limits are available to candidates who appear in certain categories of vertical/horizontal reservations. Hence, for general candidates there is a time of 11 years if they would be able to start

preparing at the age of 21. After the process was initiated pursuant to Rules 2020, as per the scheme, the examination was scheduled for 31st May, 2020. There was a clear time of three and a half months and by the time candidate appeared in their last attempt, they would have a lot of experience so it could easily be inferred that they have consumed sufficient time to prepare for the preliminary examination as no change in the syllabus has been given effect to after the year 2015 but taking note of the unprecedented situation of Covid-19 pandemic, the policy decision was taken by the Commission to defer the examination and on 5th June 2020, it was declared that the examination is to be scheduled on 4th October, 2020. Therefore, instead of three months which is the requirement under the scheme of rules, candidates got almost five additional months (i.e. eight months) to prepare for the Examination 2020 and to compensate the hardships caused by Covid-19 pandemic, different modalities were adopted by the respondent. So far as the demand made by the petitioners for extra attempt or extra year is concerned, it has been specifically stated that giving of an extra attempt or the year would result in hardships being caused to the candidates who are appearing for the CSE 2021 and that apart an additional attempt has been demanded by the petitioners who are the last attempters or who have crossed the age bar.

20. According to the learned counsel, that would result in discrimination for the reason that all attemptees irrespective of the nature of attempt (i.e., 1st, 2nd etc.) must have suffered during this Covid-19 pandemic and hence the consideration of giving an additional attempt to only last attemptees would be discriminatory. At the same time, such of the successful candidates can also complain but for Covid-19, their rankings in the list of successful candidates would have been much higher, therefore, they should also be given an additional chance. Similar reasoning would apply as far as the upper age is concerned and so far as the submissions made by learned counsel for the petitioners are concerned, these are without prejudice to the main contention that they are not entitled for relaxation as prayed for.

21. It has been further stated that the first national lockdown came into force on 25th March, 2020, i.e., after one and a half month of the notice of examination published on 12th February 2020. From 1st June, 2020, gradual unlocking of the lockdown had started on monthly basis and the preliminary examination was held on 4th October,

2020 when the unlock guidelines 5.0 were in force. To meet out the bone of contention of the petitioners that there are precedents for granting relaxation on earlier occasions is concerned, it has been stated that these are the policy decisions taken by the executive in a particular facts and circumstances and the present decision has to be tested independently in the given circumstances, which has no relativity or comparison.

22. It has also been stated that the candidates who had appeared in the examination had accepted the rules of the Examination 2020 and now having appeared and failed, they cannot be permitted to approbate and reprobate in the same breath after they had failed in the Examination 2020. The submission may not hold good for the reason that their prayer is to grant additional attempt to appear in CSE 2021 and the petitioners have not questioned the procedure of selection held of Preliminary Examination 2020, deserves rejection.

23. The 2nd respondent (UPSC) has also filed its counter affidavit and it has been stated that due to prevailing conditions in the country in the year 2020 on account of Covid-19 pandemic, several decisions were taken by the Commission to reschedule the examinations as a matter of fact, no examination was held during the period of lockdown. The resumption of examinations started with the NDA & NA Examination (I) & (II) on 6th September, 2020 and apart from Examination 2020, following are the examinations and recruitment tests held by the Commission during the period 6th September, 2020 to 20th December, 2020:-

Sl. No.	Name of Examination	Date of Examination	Number of candidates applied	Number of candidates appeared
1	NDA/NA Exam (I) & (II)	06.09.2020	530185	240445
2	Civil Services (Pre) Exam	04.10.2020	1040060	482770
3	Indian Economic Service	16-18 Oct, 2020	10458	1461
4	Indian Statistical Service Exam	16-18 Oct, 2020	12090	1753
5	Combined Geoscientist (Main) Exam	17-18 Oct, 2020	720	619

6	Engineer ing Services (Main) Exam	10.10.2020	2263	1955
7	Combined Medical Services Exam	22.10.2020	43120	20213
8	Combined D efence Services Exam-II	08.11.2020	234343	118250
9	Central Armed Police Forces Exam	20.12.2020	296066	89946
10	CBRTs	20.12.2020	26988	14250
Total			**2196293**	**971662**

24. Learned counsel for the Commission submits that although the decision has to be taken by the 1st respondent in meeting out the prayer made by the writ petitioners but so far as the 2nd respondent (UPSC) is concerned, all effective measures were adopted in holding the examinations/recruitment tests of various Central Services during the said period and indulgence which has been prayed for by the petitioners appeared in Examination 2020, in the given circumstances, of which the details have been furnished need no further indulgence by this Court.

Analysis

25. We have heard Mr. Shyam Divan, learned senior counsel appearing for the petitioners; Mr. S.V. Raju, learned Additional Solicitor General and Mr. Naresh Kaushik, learned counsel appearing for the respondents; Mr. P.V. Narasimha and Mr. Pallav Shishodia, learned senior counsel appearing for the intervenors and with their assistance perused the material available on record.

> *"The question that emerges for our consideration is that whether the petitioners/intervenors and other similarly placed candidates are entitled to another/additional chance for CSE 2021 on account of the unprecedented Covid-19 pandemic which as alleged has deprived them from effectively participating in the Examination 2020".*

26. There is no doubt that for India or for rest of the world, Covid-19 has been a disaster of unprecedented proportions. The crisis of Covid-19 pandemic has provided the sternest test for disaster management response in most countries, including India. Due to

unprecedented spread of the virus, the world had gone into a virtual lockdown as several countries initiated strict screening of potential cases introduced in their territory. Disasters are testing times for the institutions and individuals, processes and procedures, and policies and their implementation mechanisms. We can take judicial notice that when Covid-19 struck India, the country already had in place legal and administrative instruments to empower and enable the State to contain and manage the several crisis that would arise from the pandemic. Two of the most legal instruments are the Distaster Management Act, 2005 and the Epidemic Diseases Act, 1897 amended in the year 2020.

27. The World Health Organization(WHO) has declared it as a global pandemic. Not only that but because of its rampant spread, countries were forced to stop international traveling as well as locked up themselves. Also, the lockdown has been recognised at the given point of time as the only method to control the spread of the pandemic and almost every country has adopted this method.

28. On 25th March, 2020, the Disaster Management Act 2005(DM Act) was invoked in India for the first time since it was passed almost a month and a half ago, to tackle the Covid-19 pandemic that was then in its initial stages of spreading. The National Disaster Management Authority(NDMA) which was created by the Ministry of Home Affairs(MHA) in pursuance of the Disaster Management Act 2005, issued a notification dated 24th March, 2020 under Section 6(2)(i) of the DM Act. The order directed the ministries and departments of Government of India and State Governments along with State Disaster Management Authorities to take measures for "ensuring social distancing so as to prevent the spread of Covid-19 in the country".

29. In the early phases of this spread of Covid-19 pandemic, the response attempted to control the ingress of the virus in our country through border control, screening of persons entering the country, follow-up surveillance and contract tracing. This was followed by series of countrywide lockdown measures: Lockdown 1 (25th March, 2020 to 15th April, 2020), Lockdown 2 (16th April, 2020 to 3rd May, 2020) and Lockdown 3 and 4 (4th May, 2020 to 17th May, 2020 and then through May 31st). Instituted and publicized by the Central Government under the Disaster Management Act 2005, these lockdowns varied in scope and nature, depending on the situation on the ground.

30. Despite that Covid-19 pandemic has affected the livelihood of the common man at all levels, be it a level of education system, from pre-school to tertiary education. Different countries introduced various policies in meeting out the widespread socio-economic implications but the Covid-19 pandemic has left its footprints for us to learn from the unprecedented situation, which everyone has come across and suddenly changed the lifestyle of every individual in the society, his way of working, from social security to individual human rights, from macro economy to household income and has made us more stronger to face, if any difficult situation arises in future and this is what by experience we learn. There is an old saying "there is good in every evil". Still life has to move on in all situations, and this is what this country has faced, but resiliently fought back this unprecedented situation and the economy and life of the common man is on the path towards normalcy in a short period of time than expected.

31. While reverting to the facts of the instant case of the petitioners, what is prayed by them in the first blush appears to be attractive but it lacks legal strength and foundation for various reasons.

32. The scheme of Rules 2020 of which a detailed reference has been made and Rules 4 & 6 in particular, clearly stipulate that the entry age to participate in this competition is 21 years and the exit age for general candidates is 32 years and at least each candidate gets minimum 11 years to participate in the competitive examination, i.e., CSE, in the instant case. For those who claim reservation vertical/ horizontal, they have numerous/unlimited chances and are also entitled for age relaxations. Thus, the scheme takes note in providing adequate opportunities to the candidates to participate in this competitive examination at all levels. It may further be noticed that under Rule 6 of Rules 2020, there is a clear mandate that age limit prescribed in no case can be relaxed subject to the relaxations which have been enumerated for various categories. So far as the candidates who appear in the general category and have crossed the age of 32 years, no discretion is left with the authority to grant any relaxation in upper age limit prescribed for the candidates appeared in the instant Examination 2020.

33. The syllabus of the preliminary examination has not changed since 2015 and after the Rules 2020 were notified by the 1st respondent for Civil Services Exam 2020, the notice, in the first instance,

was published on 12th February 2020 and the scheduled date of the examination was fixed on 31st May, 2020 but because of the unprecedented situation of Covid-19 pandemic, the Commission took a policy decision to defer the examination and in the changed situation, after there was a relaxation in the lockdown, ultimately on 5th June, 2020 took a decision to hold the examination on 4th October 2020 and, therefore, instead of three months, the candidates got additional five months (i.e. eight months) to which one ordinarily can prepare for appearing in the examination in terms of the scheme of Rules 2020.

34. Under the scheme of Rules 2020, mere filling up of the form is not sufficient to avail an attempt. If someone appeared in either of the paper of the preliminary examination, that was considered to be an attempt availed by the candidate and, in the given situation, after the application form was filled, the candidates who wanted to withdraw their application form at the later stage because of the Covid-19 pandemic, the commission took a policy decision to open the window for the second time, which in the ordinary course is not available under the scheme of rules, for the candidates who intended to withdraw their application from 1st August, 2020 to 8th August, 2020. Since the examination was scheduled for 4th October, 2020 only those candidates were left who were mentally prepared to appear and willing to avail an opportunity of appearing in the Examination 2020 and after appearing in the examination, when they could not qualify, it has given a way to the present litigation on the specious ground of Covid-19 pandemic that they were unable to effectively participate in the process of selection which has been initiated by the Commission in holding preliminary examination on 4th October, 2020.

35. This court cannot lose sight of the fact that apart from the present Examination 2020, it has been brought to the notice of this Court that remedial measures were adopted for the candidates who had participated in the various examinations/recruitment tests held for Central services by the Commission at the given point of time during the Covid 19 pandemic and apart from that, the State Commissions/ recruiting agencies must have conducted their examinations/ recruitment tests for various services and merely because the present petitioners made a complaint to this Court, cannot be taken into isolation for the purpose of seeking additional chance/attempt in the backdrop of Covid-19 pandemic, which has been faced by not only

the candidates appeared in Examination 2020 but by the candidates appeared in the various examinations/recruitment tests held by the State Commissions or by other recruiting agencies and by and large, every member of the society in one way or the other but that does not in any manner give legitimate right to the petitioners to claim additional benefit/attempt which is otherwise not permissible under the scheme of Rules 2020.

36. So far as the instant case is concerned, there are limited attempts for the candidates who appeared in the general category and the scheme of Rules 2020 does not provide any discretion to the 1st respondent to grant relaxation either in attempt or in age and any exercise of discretion which does not vest with the 1st respondent, if exercised, may go in contravention to the scheme of Rules 2020.

37. Taking note of the order of this Court dated 30th September, 2020 passed in Writ Petition(Civil) No. 1012 of 2020 in the earlier proceedings, this Court has shown some sympathy for the candidates who were having their last attempt and were also likely to become age barred for next examination, if any indulgence could be shown to them. In compliance of the order of this Court, the 1st respondent has made endeavour to find out a way which is possible to give solace to such candidates and placed it before this Court that too with reservation that there is a possibility in providing one extra attempt for the candidates who had availed the last and final attempt in Examination 2020 provided they are within their respective age brackets as provided under Rule 6 of the Rules 2020. After the proposal was placed on record, even the petitioners/intervenors inter se made their submission to the Court that the proposal which has been placed by the 1st respondent for consideration of this Court according to them is discriminatory and is in violation of Article 14 of the Constitution.

38. We do find substance in what being urged by learned counsel for the petitioners inter se in questioning the decision placed by 1st respondent for our consideration. If an additional attempt remains restricted to the last attemptees for the reason that they had suffered during Covid 19 pandemic, all attemptees irrespective of the nature of attempt (i.e. 1st, 2nd etc.) who appeared in Examination 2020 must have faced the same consequences as being faced by the writ petitioners and

each one of them have suffered in one way or the other during the Covid-19 pandemic. At the same time, this reasoning would equally apply to those who have crossed the upper age barrier. More so, when no discretion is left with the 1st respondent to grant relaxation in the age bracket to the candidates other than provided under Rule 6 of the scheme of Rules 2020 which indeed the present petitioners are not entitled to claim as a matter of right and that apart, those who have withdrawn their forms either because of lack of preparation or because of some personal reasons but have crossed the upper age limit to appear in CSE 2021, they would also be equally entitled to claim and no distinction could be made whether the candidate has appeared in the Examination 2020 and availed the last attempt or attempts is still available at his disposal or has crossed the upper age limit.

39. We do find substance that any concession either in attempt or age is not available under the scheme of Rules 2020, at the same time, proposal which has been placed by the 1st respondent before us apart from complaint made inter se by the petitioners/intervenors themselves of being discriminatory in character, we are also of the view that it is advisable to avoid this situation and any relaxation which is not permissible either in attempt or age under the scheme of Rules 2020 apart from being in contravention to the rules, it may be discriminatory and it is advisable not to exercise discretion in implementing what being proposed by the 1st respondent in compliance of the order of this Court dated 30th September, 2020.

40. The thrust of submission of learned counsel for the petitioners was that discretion has been exercised by the respondent as a matter of policy in the earlier selections and the present petitioners have a legitimate expectation that the Government must exercise its discretion to overcome the unprecedented situation which the petitioners have faced while appearing in the Examination 2020 and their right of fair consideration and effective participation in the selection process has been denied to them which is in violation of Articles 14 and 21 of the Constitution.

41. The submission, in our view, is without substance for the reason that the policy decisions which had been taken by the executive on earlier occasions of which a reference has been made always depend on the facts and circumstances at the given point of time

and has to be tested independently in the circumstances in which it has been exercised by the competent authority or the 1st respondent as in the instant case.

42. Their further grievance that there is always a change in the upper age limit and number of attempts in different spell and further emphasis was that in the year 2015, the 1st respondent allowed one more attempt in the Civil Service Examination 2015 for the candidates who appeared in CSE 2011. Although the justification has been tendered by the respondents in their response that as there was a substantial change in the pattern of Civil Service (Preliminary) Examination 2011, in the given circumstances, the 1st respondent in its wisdom considered it appropriate to grant one more attempt in Civil Service Examination, 2015 to such candidates who appeared in Civil Service Examination, 2011 either due to reaching upper age limit or due to exhausting of number of attempts and that was the given situation which prevailed upon the 1st respondent in taking a policy decision in granting permission but that cannot be made to be the basis or a foundation for the petitioners to site as a precedent in claiming to seek one additional attempt as a matter of right which is not permissible under the scheme of Rules 2020 or with the aid of Article 14 of the Constitution to take a call in meeting out the difficulties which have been faced as alleged in the given circumstance.

43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in ***Union of India and Others Vs. M. Selvakumar and Another*** 2017(3) SCC 504. The relevant portion is as under:-

"**47**. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and Delhi High Court. The horizontal reservation and relaxation for Physically Handicapped Category candidates for Civil Services Examination, is a matter of Governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the Physically Handicapped candidates belonging to the Reserved Category as well as General Category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public

policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution."

(Emphasis supplied)

44. It was the case where the number of attempts granted to physically handicapped persons were increased from 4 to 7 in the UPSC-CSE examination and the candidates belonging to the OBC had moved this Court requesting for an increase of the number of attempts from 7 to 10 that is an additional 3 attempts as it was done in the case of the physically handicapped category but that was repelled by this Court for the reasons indicated above.

45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Service Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right.

46. It has been brought to our notice that not only the petitioners/ intervenors before this Court, but there are large number of candidates who appeared in the various examinations in the year 2020 during Covid 19 pandemic and everyone must have faced some constraints/ impediments/inconvenience in one way or the other and this Court

can take a judicial notice that these petitioners have appeared in the same pattern of examination in the previous years since the year 2015 and what is being claimed and prayed for under the guise of Covid 19 pandemic is nothing but a lame excuse in taking additional attempt to participate in the Civil Service Examination 2021 to be held in future and we find no substance in either of the submissions which has been made before us.

47. The data furnished to this Court by the Commission clearly indicate that various selections have been held by the Commission for Central Services in the year 2020 during Covid 19 pandemic and selections must have been held by State Commissions and other recruiting agencies, if this Court shows indulgence to few who had participated in the Examination 2020, it will set down a precedent and also have cascading effect on examinations in other streams, for which we are dissuaded to exercise plenary powers under Article 142 of the Constitution.

48. We, however, make it clear that this decision would not restrict the 1st respondent or the executive in exercising its discretion in meeting out the nature of difficulties as being projected to this Court, if come across in future in dealing with the situation, if required.

49. Consequently, the petition fails and is accordingly dismissed.

50. Pending application(s), if any, stand disposed of.

Headnotes prepared by: Nidhi Jain

Result of the case:
Writ petition dismissed.