

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 6646/2021

Anil Kumar Sharma S/o Sh. Mohan Lal Sharma, Aged About 48 Years, By Profession Advocate, R/o Village And Post Umara, Via Khachariyawas, Ward No.3, Tehsil Dantaramgarh, Distt. Sikar, Rajasthan.

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur through Registrar General, Jodhpur.
2. State of Rajasthan, Through Principal Secretary (Law), Government Secretariat, Jaipur.

----Respondents

For Petitioner(s) : Mr. Shiv Charan Gupta

**HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL**

Order

19th July, 2021

Per Hon'ble Mr. Sangeet Lodha, J.

1. This writ petition has been filed by the petitioner, an aspirant for appearing in the competitive examination for Direct Recruitment to the cadre of District Judge against the vacancies belonging to Economically Weaker Section (EWS) category, notified by the respondent-Rajasthan High Court vide notification dated 05.01.2021 issued under the Rajasthan Judicial Service Rules, 2010 ('Rules of 2010'), claiming relief in the following terms:

“(i) Respondents may be directed to provide relaxation in upper age limit by five years for the candidate belonging to EWS reserved category also as has been provided to other reserved category candidates, in the matter of direct recruitment to the cadre of District Judge being made in pursuance the notification dated 05.01.2021 (Annexure-1).

(ii) Respondents may be directed to accept the application (hard copy) of the petitioner with required examination fee, for direct recruitment to the cadre of District Judge being made in pursuance the notification dated 05.01.2021 (Annexure-1).

(iii) Pleased to direct the respondents to consider the petitioner within age limit after giving the benefit of age relaxation and thereby consider him for the recruitment, selection and appointment on the basis of his merits, in the competitive examination and if found within the merit then recruit and give him appointment with consequential benefit.

(iv) Pleased to declare Rule 33 of the Rajasthan Judicial Service Rules, 2010 unconstitutional and struck down Clause-7 of the notification dated 05.01.2021 (Annexure-1) and further direct the respondents to issue corrigendum making suitable amendment giving benefit of age upper age relaxation to the candidates of EWS reserved category.

(v) Pleased to direct the respondents to make provision for relaxation of upper age limit by 5 years for the candidates belonging to reserved category of EWS, in the Rules of 2010 as well in the notification dated 05.01.2021 (Annexure 1) by issuing appropriate order and corrigendum.

(vi) Any other order or direction which this Hon’ble Court deems fit may also be passed in the facts and circumstances of the case in favour of the humble petitioners.”

2. The facts relevant are that the direct recruitment to the District Judge Cadre in the State of Rajasthan is governed by Rules of 2010. Eligibility for direct recruitment to the posts of District Judge Cadre from amongst the advocates is provided under Rule 33 of the Rules of 2010. The High Court under the Rules of 2010 issued an advertisement dated 05.01.2021 inviting applications from the eligible candidates in the prescribed online format for direct recruitment to 60 vacant posts in the cadre of District Judge in accordance with the Rules of 2010. The

particulars of the total vacancies and the vacancies reserved for various categories including the category of EWS were duly notified. As per the notification issued, 6 posts are reserved for EWS category, which include 1 post for women.

3. As per clause (i) of Rule 33, the candidate applying for recruitment to the post must have attained age of 35 years and must not have attained the age of 45 years on the first day of January following the last date fixed for receipt of applications. Proviso (a) to clause (i) of Rule 33 provides relaxation of five years in upper age limit to the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, More Backward Classes and Women Candidates. The relevant part of Rule 33 of the Rules of 2010 in force at the time of issuance of the notification for recruitment, may be beneficially quoted:

“33. Eligibility for direct recruitment.- For the purpose of direct recruitment under sub-rule (3) of Rule 31, applications shall be invited by the Court from those Advocates, who fulfil the following conditions of eligibility:-

(i) must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January **following** the last date fixed for receipt of the applications;

Provided that

(a) the upper age limit mentioned above shall be relaxed by 5 years, in case of candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, “More Backward Classes and Women Candidates.

....X.XXXXXX.....”

4. Apparently, Rule 33 (i)(a) did not provide for relaxation of age in case of candidate belonging to EWS category though, the provision for reservation of the vacancies for Economically Weaker

Sections was inserted by way of sub-rule (6) of Rule 10 of the Rules of 2010 vide notification dated 21.08.2020 and thus, in the advertisement issued, the relaxation in age was rightly not provided for EWS category.

5. Precisely, the case of the petitioner is that when the relaxation in age is provided for Other Reserved Category candidates i.e. the candidates belonging to SC, ST, OBC, MBC and Women categories, EWS category could not have been picked up for a different treatment being given, particularly when, the required amendment providing 5 years relaxation in upper age limit has already been made in relevant recruitment rules governing other State services in the State of Rajasthan.

6. Learned counsel for the petitioner submitted that during the pendency of the present petition, vide notification dated 30.06.2021 issued by the State Government in consultation with the Rajasthan Public Service Commission and the Rajasthan High Court, has already amended Rule 33 of the Rules of 2010, whereby the expression "Economically Weaker Sections" has been inserted in proviso (a) of sub-rule (i) of Rule 33 after the expression "More Backward Classes" and before the expression "and Women Candidates" and thus, the relaxation in upper age limit stands extended to EWS category as well. Learned counsel submitted that the State Government vide circular dated 07.04.2021 in contemplation of the amendment had directed to defer the recruitment process so as to extend the benefit of the age relaxation to EWS category in the pending recruitment as well where the examination has not been conducted and thus, there is no reason as to why the provision providing for relaxation in upper age limit to EWS category should not be made applicable to the

recruitment process initiated by the High Court vide notification dated 05.01.2021 issued under the Rules of 2010. Learned counsel submitted that in view of the amendment made, the directions deserve to be issued to the respondents to issue the corrigendum and invite the applications from the candidates belonging to EWS category, who are eligible to apply for recruitment to the post availing the age relaxation. In support of the contention, learned counsel relied upon a decision of the Supreme Court in *Richa Mishra vs. State of Chhatisgarh & Ors.*: (2016) 4 SCC 179.

7. We have considered the submissions of the learned counsel and perused the material on record.

8. Indisputably, vide notification dated 05.01.2021 issued by the respondent-Rajasthan High Court under the Rules of 2010, the applications are invited from eligible advocates for direct recruitment to the cadre of District Judge against the vacancies of the year 2019-20 and 2020-21 including the backlog vacancies of Scheduled Castes and Scheduled Tribes of the year from 2011-12 to 2018-19.

9. It is noticed that the provision reserving 10% of vacancies for EWS in the direct recruitment in addition to the existing reservation was incorporated in the Rules of 2010 vide notification dated 21.8.20 but, no relaxation in upper age limit was provided for candidates belonging to the said category. Thus, apparently, the notification inviting applications issued by the respondent not providing for age relaxation to the candidates belonging to EWS category is in conformity with the provisions of Rules of 2010.

10. The petitioner has filed the present writ petition seeking directions to the respondent to provide relaxation in upper age

limit by five years as has been provided to other reserved category candidates. It has come on record that during the pendency of the petition, the Governor of Rajasthan in consultation with Rajasthan Public Service Commission and Rajasthan High Court, in exercise of the power conferred by Article 233 & 234 read with proviso to Article 309 of the Constitution of India, has issued notification dated 30.06.21, whereby by amending the Rule 17 & Rule 33 of the Rules of 2010, the candidates belonging to EWS category, have also been extended the benefit of relaxation in upper age limit by five years. From perusal of the notification amending the Rule 17 & Rule 33, in no manner, it can be inferred that the amended provision providing relaxation in upper age limit to EWS category is intended to be applied to the pending selections by giving it retrospective effect.

11. It is well settled that the eligibility qualification for recruitment to the post shall be governed by the rules existing as on the date of the issuance of the advertisement inviting applications and the amendment in the rules if any, unless it is expressly or by necessary implication made to have retrospective effect shall always be construed prospective in nature.

12. In *P. Mahendran & Ors. vs. State of Karnataka & Ors.* : AIR 1990 SC 405, held:

"5. It is well settled rule of construction that every statute or statutory Rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the Rule must be held to be prospective. If a Rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision, or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rule of 1987 does not contain any express

provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the Rule with retrospective effect. Since the amending Rule was not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover, as the process of selection had already commenced when the amending Rule came into force. The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter." (emphasis supplied)

13. In *NT Bevin Katta & Ors. vs. Karnataka Public Service Commission & Ors.*: (1990) 3 SCC 157, the Hon'ble Supreme Court while dealing with the issue regarding retrospective applicability of the amended rules, held:

"11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules or government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and government orders. Candidates who apply and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement; however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication; if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. Lest

there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

14. In *Mohan Kumar Lal vs. Vinoba Bhave University & Ors.:* (2002) 10 SCC 704, the Hon'ble Supreme Court while dealing with the question regarding applicability of the reservation policy introduced subsequent to issuance of the advertisement inviting application for appointment to the post, observed:

"The short question that arises for consideration in this appeal is whether the Service Commission could ignore the decision to make reservation policy applicable in respect of an appointment to the post, which was advertised on 10.1.1990, and the last date for submission of the application was 30-1-1990. The High Court in the impugned judgment is of the view that since appointments had not factually been made, the reservation policy would apply. As it transpires, the provisions of Section 57, which governs the field, did not contain any clause for reservation and Sub-section (5) of said Section 57 providing for reservation was introduced only on 22-8-1993. In this view of the matter, in respect of post advertised for which the process of recruitment had been initiated, the reservation policy could not have been made applicable. The impugned judgment of the High Court was, therefore, erroneous, and cannot be sustained. We, therefore, set aside the impugned judgment of the High Court and hold that the reservation policy, pursuant to the amended provision of Subsection (5) of Section 57 of the Act, will not apply to the present case." (emphasis supplied)

15. In *Chanan Ram vs. State of Rajasthan & Ors.:* (1997) 2 WLC 373, the Rajasthan Public Service Commission had issued an advertisement inviting applications for recruitment to the posts of Assistant Director (Junior) on 5.11.93 for filling in the vacancies of the year 1986-87 to 1992-93 under the provisions of Rajasthan

State Agriculture Marketing Service Rules, 1986, however, the rules were amended in the month of April, 1995, whereby the nomenclature of the post of Assistant Director was re-designated as Marketing Officer and the basic qualifications were also changed. A Bench of this Court dealing with the issue of retrospective applicability of the amended rules relying upon various decisions of the Supreme Court including the decision in *P. Mahendran*, categorically held that the vacancies when determined for a particular year; advertised under the rules as prevalent at that time, the selection process when started, are to be filled up by process of selection under the Rules and the amendment if any, subsequent to the advertisement shall be prospective and no right which had accrued to the candidates to be considered in response to the advertisement under the Rules can be taken away.

16. In *State of Rajasthan vs. Indu Bala Kumawat & Ors.*: 2019(3) WLN 122, the issue before a Bench of this Court was as to whether the amendment introduced in Regulation 3.4.1 of the University Grants Commission Regulations, 2010, as amended on 11.7.16, extending relaxation of five marks to Other Backward Class [OBC (non-creamy layer)] category, which were earlier available at the graduate and masters level to the candidates of Scheduled Castes/Scheduled Tribes and Differently Abled categories would be applicable to the selection process initiated vide advertisement dated 12.1.15 wherein the last date for submitting the application was notified as 27.2.15, which was subsequently extended to 26.3.15 and finally to 31.3.15. The Court while relying upon the decisions of the Supreme Court in *P. Mahendran* and *NT Bevin Katti* held:

"25. It is settled canon of law that the eligibility conditions and educational qualifications are required to be reckoned as prevailing on the date of the advertisement. In some cases it may however relate to a specific date, mentioned in the advertisement or as per the last date of submitting application form, in tune with the relevant rules.

....XXXX....

27. Any subsequent amendment in the rules providing for different yardsticks, educational qualification or other criteria cannot be made applicable to the recruitment which has begun, as it would amount to changing the rules of game, after the game has started. That apart, if the amended Regulations are held applicable, it would result in injustice and indiscriminate to those similarly situated individuals of OBC category, who had not applied for the post at all, thinking that they having secured less than 55% percentile are not eligible."

17. In the backdrop of position of law settled as above, advertizing to the facts of the present case, it is noticed that Schedule III of the Rules of 2010 prescribes specific time schedule for determination and notification of the actual number of existing and expected vacancies in each cadre as also for conduct of examination for filling up vacancies in the cadre of District Judge. It is pertinent to note that the last competitive examination for recruitment to the posts in the cadre of District Judge was held in October, 2018. The notification for ensuing examination was issued by the High Court on 05.01.2021. The eligible candidates were invited to make online application during the period from 27.01.2021 to 27.02.2021. Later, vide notice dated 10.03.2021, the last date for submission of the online applications was extended to 31.03.2021 and for this purpose, the submission of online application was activated from 1 p.m. on 16.03.2021. Admittedly, after scrutiny of applications, the respondent-Rajasthan High Court has scheduled the preliminary examination on 25.07.2021 and for that purpose, the admission cards of the candidates have already been uploaded. Thus, at this stage, the

process of selection cannot be halted/reversed so as to extend the benefit of age relaxation to EWS category introduced vide notification dated 30.6.2021, which in no manner could be construed to be retrospective in nature. The selection process already initiated pursuant to the advertisement dated 05.01.2021 has to be concluded in accordance with the rules prevalent at the relevant time.

18. The Government order dated 07.04.2021 directing various Departments, Commission, Boards etc. to make provision for relaxation in age and the fee to the EWS category in no manner militate against the prospectivity of the amended provision introduced as aforesaid.

19. In *Richa Mishra*, relied upon by the learned counsel, the issue involved was that the benefit of age relaxation was extended to women candidates in 1997 Rules as well as in 2005 Rules but the same was omitted in the Rules of 2000. After due consideration, the Supreme Court observed that it was not a case of casus omissus but was only accidental and thus, keeping in view the nature of legislation i.e. social justice legislation, the denial of benefits during the intervening period would defeat the intention of the rule making authority, which was always to grant benefit of age relaxation to women candidates. In the considered opinion of this Court, the said decision of the Supreme Court rendered taking into consideration the peculiar facts of the case, in no manner, helps the petitioner.

20. In view of the discussion above, we are firmly of the opinion that the amendment in Rule 17 & 33 of Rules of 2010 introduced vide notification dated 30.06.2021 is prospective in nature and therefore, the selection process initiated for recruitment to the

posts of District Judge cadre by the respondent against the vacancies of the years 2019-20 & 2020-21 has to be concluded in accordance with unamended Rules. The petitioner belonging to EWS category cannot claim relaxation in age as a matter of right, dehors the Rules in force at the time of issuance of the notification inviting applications.

21. The writ petition therefore lacks merits, the same is hereby dismissed.

(MAHENDAR KUMAR GOYAL),J

(SANGEET LODHA),J

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