

**Kamal Kishore Sharma Vs. Stat E and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1097144](http://sooperkanoon.com/1097144)

**Court :** Rajasthan Jodhpur

**Decided On :** Nov-08-2013

**Appellant :** Kamal Kishore Sharma

**Respondent :** Stat E and ors

**Judgement :**

D.B.CIVIL WRIT PETITION No.5624/2013.

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K.K.Sharma versus State & Ors.Date of Order :: 8th November 2013.

HON'BLE Mr.JUSTICE DINESH MAHESHWARI HON'BLE Mr.JUSTICE V.K.MATHUR Mr.Pritam Solanki for Mr.Dinesh Kumar Joshi, for the petitioner.

Mr.G.R.Punia, Senior Advocate & AAG with Mr.Mahendra Choudhary, Assistant to the AAG.

<><><> BY THE COURT: The learned counsel for the parties are ad idem that the similar nature petitions led by D.B.Civil Writ Petition No.3982/2013 - Girish Purohit & ORS.versus State of Rajasthan & Ors., have been considered and disposed of by a Co-ordinate Bench of this Court on 18.10.2013.

Even otherwise, we are satisfied that the claim of age relaxation of the petitioner, beyond what is prescribed by the rules, cannot be countenanced.

It remains trite that relaxation can be claimed only if, and to the extent, permissible under the Rules.

In the case of Prem Ratan Modi versus The State of Rajasthan & Ors.: 2013 RLW(1) 700, this Court took note of the law laid down by the Hon'ble Apex Court in the cases of Malik Mazhar Sultan & Anr.

versus U.P.Public Service Commission & Ors.: (2006) 9 SCC507 and D.B.CIVIL WRIT PETITION No.5624/2013.

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Anand Kanwar & Ors.: Civil Appeal No.52/1993, decided on 08.02.1995 as under:- In Malik Mazhar Sultans case (supra) even when emphasizing on the requirement of timely determination of the vacancies and timely appointments in relation to the U.P.Judicial Services, so far the age requirement was concerned, the Hon'ble Supreme Court held as under: - 17.

The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination.

Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules.

The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement.

If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof.

Therefore, the answer to the question would turn upon the interpretation of the Rules.

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(emphasis supplied) Moreover, in Anand Kanwars case (supra).even while noticing that the recruitments were not held during the years 1983 to 1989, the Hon'ble Supreme Court said,- Be that as it may, the High Court was not justified in taking the clock back to the period when unfilled vacancies were existing and holding that since the respondent was eligible on the date when vacancies fell vacant, she D.B.CIVIL WRIT PETITION No.5624/2013.

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Due to inaction on the part of the State Government in not filling the posts year-wise, the respondent cannot get a right to participate in the selection despite being over-aged.

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(emphasis supplied).

It was found in the aforesaid case of Prem Ratan Modi that relaxation in age for direct recruitment would be a matter for the Government to prescribe in the relevant rules; and, beyond what had been prescribed, cannot be claimed as a matter of right.

This Court said,- In the ultimate analysis, age relaxation for the direct recruitment, if to be granted, would be a matter for the Government to prescribe in the relevant Rules; and beyond what has been prescribed, cannot be claimed as a matter of right.....

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In view of the above, the claim for age relaxation as made by the petitioner in this matter cannot be countenanced; and could only be rejected.

It is, however, submitted that the power of age relaxation being available with the Government under the applicable Rules, the petitioner may be allowed to make a representation for objective consideration of the authorities concerned as permitted in Girish Purohit's case (supra) as also in Prem Ratan Modi's case (supra). Having considered the matter in its totality and having regard to the observations made in the order passed in Girish D.B.CIVIL WRIT PETITION No.5624/2013.

K.K.Sharma versus State & ORS.// 4 // Purohit's case (supra) as also in Prem Ratan Modi's case (supra). though we find no reason to interfere but leave it open for the petitioner to make representation for the purpose of claiming age relaxation in accordance with law.

The writ petition stands dismissed subject, of course, to the observations foregoing.

(V.K.MATHUR).J.

(DINESH MAHESHWARI).J.

/Mohan/

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