

Subhash Chandra Sharma Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jun-12-2000

Reported in : 2000(3)AWC2367

Judge : G.P. Mathur and ;Shitla Pd. Srivastava, JJ.

Acts : [Constitution of India](#) - Articles 14, 16, 226, 309, 310, 311 and 313; Uttar Pradesh Recruitment to Services (Age-limit) Rules, 1972 - Rules 2, 3 and 4; Uttar Pradesh Police Regulations; [Police Act, 1861](#) - Sections 2; Uttar Pradesh Recruitment to Services (Age Limit) (Amendment) Rules, 1979; [Government of India Act, 1935](#) - Sections 243

Appeal No. : Special Appeal No. 232 of 2000

Appellant : Subhash Chandra Sharma

Respondent : State of U.P. and Others

Advocate for Def. : P.M.N. Singh, A.D.J.

Advocate for Pet/Ap. : Sudhir Agarwal and ;S.C. Bhudwar, Adv.

Judgement :

G.P. Mathur, J.

1. This special appeal is directed against the judgment and order dated 3.3.2000 of learned single Judge by which Writ Petition No. 20771 of 1999 in which the appellant was one of the petitioners was dismissed.

2. The Dy. Inspector General of Police (Karmik], U. P. Police Headquarters, Allahabad (In short, the D.I.G.) issued an advertisement on 4.10.1991 inviting applications for making selection for 525 posts of Sub-Inspector of Police (both men and women) through direct recruitment. In the advertisement, the upper age-limit for the candidates was mentioned as 30 years and those born between 1.7.1961 and 1.7.1971 were eligible for making applications. The selection process initiated by the aforesaid advertisement was cancelled by the order dated 9.6.1994. and another advertisement was issued on 24.6.1994 for filling up 675 posts of sub-Inspectors of police. In this advertisement also, the upper age-limit was mentioned as 30 years. The appellant claims to have made an application in pursuance of this advertisement. The order dated 9.6.1994 by which the selection process initiated in pursuance of the advertisement dated 4.10.1991 had been cancelled was, however, challenged by filing Writ Petition No. 14653 of 1994, Ram Daras Rai v. State of U. P. and others, which was allowed on 23.5.1995. The order dated 9.6.1994 was quashed and a direction was issued to the respondents to complete the selection process which was commenced on the basis of the advertisement dated 4.10.1991. In pursuance to the judgment of the High Court, the selection process was completed and the result was declared on 2.12.1996. Since a substantial number of posts were filled in, the process for selection commenced in pursuance of the advertisement dated 24.6.1994 was not carried any further and no examination or interview took place. The advertisement issued on 24.6.1994 for filling up of 675 posts of sub-inspectors of police was cancelled and the candidates were intimated through a news-item published in the newspapers that they could take back the fee deposited by them.

3. Thereafter, a fresh advertisement was issued on 4.5.1999 inviting applications for filling up 615 posts of sub-inspectors of police wherein it was mentioned that the candidates should not be less than 21 years and should not be more than 25 years as on 1.1.1999. i.e.. they should have been born between 1.1.1974 and 1.1.1978. The appellant and 5 others then filed Writ Petition No. 20771 of 1999.

Jai Prakash Rai and others v. State of U. P. and others, praying that the upper age-limit of 25 years mentioned in the advertisement dated 4.5.1999 be quashed and a writ of mandamus be issued commanding the respondents to consider the candidature of the writ petitioners despite their being more than 25 years of age. The learned single Judge did not accept the contentions raised on behalf of the writ petitioners and dismissed the writ petition by the impugned judgment and order dated 3.3.2000.

4. The principal submission of Sri S. C. Budhwar, learned senior counsel for the appellant, is that the U. P. Recruitment to Service (Age Limit) Rules. 1972 (In short, the 1972 Rules) provides that the upper age-limit for recruitment to all services and posts under the rule-making power of the Governor is 32 years and. therefore, the prescription of 25 years as the upper age-limit in the advertisement issued on 4.5.1999 is illegal. The other submission is that the appellant had made an application in pursuance of the advertisement dated 24.6.1994 and, as the said selection process was not completed, the appellant was entitled to be granted relaxation in age and his candidature should be considered in the present selection. Sri P. M. N.Singh, learned Additional Advocate General, and Sri Sabhajit Vadav. learned standing counsel, have on the other hand, submitted that the provisions of the 1972 Rules are not applicable to the recruitment being made for the post of sub-inspectors of police which is governed by Government Orders issued from time to time. They have further submitted that the mere fact that the appellant had made an application in pursuance of the advertisement dated 24.6.1994 and was eligible with regard to the age qualification at that time can be no ground to grant him relaxation in age in the selection which is to take place in pursuance to the advertisement dated 4.5.1999.

5. Before examining the contentions raised at the bar, it will be useful to refer to certain material which has been placed on record by means of a supplementary-affidavit in the appeal. The Government of India constituted a Committee v id e resolution No. 9/72/71-PERS. II dated 10th November. 1971 under the Ministry of Home Affairs to submit a report on the matters involving the police administration in the country. The main terms of reference to the Committee were (1) the objective which should govern all arrangements for training of police officers in the

socio-economic background of the country and our value-system and the continuing impact of science and technology. (2) the basic shortcomings of the arrangements for the training of police officers under the Central Government and in the States and [3) the measures to be taken to bring about the desired improvements in the existing state of affairs. The Committee was headed by Prof. M. S. Gore. Director. Tata Institute of Social Sciences, Bombay and Chairman, Indian Council of Social Sciences Research, New Delhi, as its honorary chairman. Sri M. M. L. Hooja, formerly Director of Intelligence Bureau, was its Vice-chairman and there were 9 other members including Sri G. Parthasarathi. Vice-Chancellor, Jawaharlal Nehru University, New Delhi. Sri K. F. Rustamji, Director General, Border Security Force, Sri N.S. Saxena. former I.G.P., U. P. and Sri M. Gopalan, I.G.P.. Kerala. Dr. A. Gupta. Director. Bureau of Police Research and Development, New Delhi, was honorary member-cum-Secretary of the Committee. In those days, the entire police department of a State used to be headed by one I.G. The Committee after examining voluminous material and visiting the various police training colleges in the country, submitted a detailed report on the subjects of reference made to it. In Chapter VI. dealing with recruitment. the Committee recommended that the minimum educational qualification for recruitment of constables should be High School or its equivalent and the minimum age should be 18 years and maximum 20 years. It further recommended that in case a candidate possessed higher educational qualification, a relaxation of 2 years may be granted, but in no case should the gap between the completion of education and coming into the police service be more than 3 years. Regarding the post of sub-inspector of police, the Committee recommended that a graduate degree from a recognised university should be the minimum educational qualification and the minimum age-limit should be 20 years and the maximum 23 years. It further recommended that for post-graduates, relaxation may be given upto 2 years, but the gap between the completion of education and the entry into the service should not exceed 3 years. Relaxation in age for reserved category of candidates was also recommended. The Committee also went into the question of physical qualification of police personnel and was of the opinion that as their nature of duty was law enforcement and maintenance of law and order, their built and appearance have direct impact on their effectiveness. After taking into

consideration the requirements of height, weight and chest measurements etc. of police personnel in some of the European countries like United Kingdom, the Committee made recommendations regarding the minimum height, chest measurements (expanded and unexpanded) and weight, having regard to the age and height of the person concerned. While dealing with sub-inspectors it was noticed in paragraph 46 of the report that as a leader he must have same physical standards as those of his men, if not higher, and physical qualification of sub-inspectors should be same as had been recommended for the head constables. The Committee also examined the procedure of selection and in paragraph 51 of the report, it was recommended that there should be a physical efficiency test and only those qualifying in the said test should be allowed to appear in a written competitive examination consisting of three papers, viz., a paper of essay in regional language and two papers of general knowledge one of current affairs, and history and another of science and geography. The Committee was further of the opinion that till comprehensive psychological test was not available, the candidates qualifying in the written examination should be subjected to a simple aptitude test somewhat on the lines of those employed by Services Selection Centres and, thereafter, there should be an interview by a Selection Board. A copy of the relevant part of the report of the Committee has been filed as Annexure-SCA 1 to the second supplementary counter-affidavit sworn by Sri Vijai Raghav Pant. D.I.G. (Establishment). U. P. Police Headquarters, Allahabad.

6. In paragraph 9 of the supplementary counter-affidavit, filed by Sri Vijai Raghav Pant. it is stated that paragraph 409 of the U. P. Police Regulations initially laid down the minimum age as 18 years and the maximum age as 23 years for enlistment of constables. This was changed from time to time and lastly. Government Orders have been issued on 19th May. 1998 and 8th June. 1998 whereunder the age-limit has been fixed from 18 to 20 years for constables (men), 18 to 23 years for constables (women) and for sub-inspectors (civil police) and platoon commander in Provincial Armed Constabulary, it has been fixed as 21 to 25 years. In paragraph 10, it is stated that the age-limit of sub-inspectors in C.R.P.F. is 20 to 25 years and that all central police organisations including the C.R.P.F. and the B.S.F. have common recruitment rules prescribing the same age-limit for direct recruitment. The specific case pleaded in the counter-affidavit

filed in the writ petition and also in the supplementary counter-affidavit filed in the appeal is that the provisions of the 1972 Rules had never been applied while making recruitment on the post of constable and sub-inspectors of police. Further in order to remove any doubts, a Government Order was issued on 7th July, 1976, stating that the Governor of U- P. had given exemption with regard to the upper age-limit fixed under the 1972 Rules, from being applicable to matters relating to direct recruitment on non-gazetted posts in the police department.

7. The Government order dated 19th May, 1998, as amended by the order dated 8th June, 1998, lay down in detail the procedure for making selection and appointment on the post of constables and sub-inspectors of police (men and women) and platoon commanders and constables in P.A.C. Paragraph 4 provides that for direct recruitment on the post of sub-Inspectors in civil police and platoon commanders in P.A.C., the minimum age will be 21 years and maximum age 25 years, and for in-service candidates the maximum age will be 40 years. For constable (men), minimum and maximum age will be 18 and 20 years, respectively, while for constables (women) in civil police the minimum and the maximum age will be 20 and 25 years. Paragraph 5 provides that the minimum qualification for the post of sub-Inspector is a graduate degree. Paragraph 6 lays down the requirement regarding height and chest measurement for general. Scheduled Tribes and hill area candidates. Paragraphs 7 and 8 give the procedure for selection. Initially, a physical test will be held for (1) long jump, (2) cricket ball throw, (3) run of 4.8 kms, (4) chinning up and (5) sit-ups (dandbaithak)--each having 20 marks (total 100 marks). The aforesaid physical test is only a qualifying examination. Those who successfully pass the physical test, will have to appear in a preliminary written examination which will be of 300 marks and it is, again, a qualifying test. Candidates in the ratio of ten times the number of vacancies will be declared as successful in the preliminary written examination. Thereafter, the main written examination will be held, which will consist of four papers, namely, (1) Hindi Essay, (2) General Knowledge--I (Social Science and History), (3) General Knowledge--II (Science and Geography) and (4) Psychology--each having 200 marks (total 800 marks). Those who succeed in the main written examination will appear before an interview board consisting of Director General. Additional Director General as Chairman, three officers of the

rank of Additional Director General and Secretary to the Government of Uttar Pradesh as members. The interview will be of 100 marks. By the Government Order dated 8th June, 1998 it has been provided that it will be necessary to secure a minimum of 50 per cent marks in each item of the physical test and 40 per cent marks in each paper of the main written examination. These Government orders show that a detailed and elaborate procedure has been provided for making selection on the post of sub-Inspectors of civil police and platoon commanders of P.A.C.. whereunder considerable emphasis is laid on the physique and physical capacity of the candidate.

8. The entire thrust of the argument of Sri S. C. Budhwar, learned counsel for the appellant, is based upon the 1972 Rules, which now provide 32 years as the upper age-limit for recruitment to services and posts under the rule-making power of the Governor. The Rules were made by the Governor in exercise of power under proviso to Article 309 of the Constitution and at the time of their first publication in the Gazette on the 1st April, 1972, they read as follows :

'1. Short title and commencement.--(1) These Rules may be called the Uttar Pradesh Recruitment to Services (Age-limit) Rules, 1972.

(2) They shall come into force at once. 2. Upper age-limit.--The upper age-limit for recruitment to all such services and posts under the Rule-making power of the Governor, for which the upper age-limit is less than twenty-seven years, shall be twenty-seven years.

3. Removal of restrictions on taking chances in the recruitment.--There shall be no restriction on taking of chances by a candidate for recruitment to any service or post during the period of prescribed age-limits.

4. Overriding effect of the rules.--These rules shall have effect, except in relation to advertisements issued before the commencement of these Rules, notwithstanding anything to the contrary contained in the relevant service Rules.'

9. These Rules were amended by the Uttar Pradesh Recruitment to Services (Age Limit) (First Amendment) Rules, 1979 on June 23, 1979 and Rule 2 was amended

in the following manner :

'2. The upper age-limit for recruitment to all such services and posts under the Rule-making power of the Governor, for which the upper age-limit is less than twenty-eight years, shall be twenty-eight years.'

10. The Rules were again amended on November' 24, 1983 and the words 'thirty years' were substituted for 'twenty-eight years'. Finally the Rules were amended on March 30, 1991. and the amended Rule 2 provides that the upper age-limit for recruitment to such services and posts under the Rule-making power of the Governor for which the upper age-limit is thirty years shall be thirty-two years.

11. Rule 2 as it was originally enacted did not lay down in general terms that the upper age-limit for all services and posts is being enhanced to 27 years. On the contrary it provided that the upper age-limit, for all services and posts under the Rule-making power of the Governor, for which the upper age-limit was less than 27 years, shall be 27 years. Rule 4 provided that these Rules shall have effect notwithstanding anything to the contrary contained in the relevant service rules. In our opinion, reading of Rules 2 and 4 together would show that what the Government intended by making the Rule was that wherever the upper age-limit was fixed as less than 27 years in a Rule made in exercise of power conferred by proviso to Article 309 of the Constitution, the said upper age-limit would be extended to 27 years. The words such services and posts under the Rule-making power of the Governor are important and they limit the area of operation of the Rule to only such services and posts for which a Rule had already been made by the Governor under the proviso to Article 309 of the Constitution and which provided for upper age-limit of 27 years. This object of making the Rule was again sought to be clarified by enacting Rule 4, which provides that these Rules shall have effect notwithstanding anything contrary contained in the relevant service Rules. It appears that the Government took a policy decision to raise the upper age-limit for recruitment to such category of services and posts for which under the relevant Rules governing specifically such services and posts, the maximum age-limit was less than 27 years. Instead of amending large number of such service rules in existence, it was thought more convenient and practical to enact a rule for

this limited purpose, whereby all Rules governing large number of services and posts were amended in order to make the upper age-limit for recruitment as 27 years wherever it was less than the said figure. In our opinion, the Rules have no application to such category of services where no Rules had been made at all prescribing upper age-limit for recruitment and the matter was governed by Government orders. If the recruitment to a particular Class of service was to be done in accordance with the Government orders on account of the fact that no rule under proviso to Article 309 of the Constitution had been made by the Governor, it was not at all necessary to enact a Rule to raise the upper age-limit as a Government Order could be amended easily by issuing another Government Order. The Legislature or the Rule-making, authority would not intervene and make an Act or Rule just for the purpose of amending a Government Order. The difficulty could arise only where a specific service Rule had been made as the same could not be amended by a Government Order. Therefore, in order to take care of such service Rule, the 1972 Rules were made and by the said Rules all such service Rules which had been made by the Governor in exercise of power under proviso to Article 309 of the Constitution and which provided for an upper age-limit for recruitment, got automatically amended. No Rule in exercise of power under proviso to Article 309 of the Constitution has been made by the Governor regarding recruitment of constables and sub- inspectors of civil police or of platoon commanders of P.A.C. and it had always been governed either by the Police Regulations or by the Government Orders issued from time to time. Consequently, such Government Orders cannot be affected in any manner by the 1972 Rules. We are, therefore, of the opinion that the 1972 Rules have neither any application nor can it affect or alter the Government Orders issued on 19th May, 1998 or 8th June, 1998 relating to recruitment of constables and sub-inspectors of civil police or of platoon commanders of P.A.C.

12. Sri P. M. N. Singh, learned Additional Advocate General, and Sri Sabhajit Yadav, learned standing counsel, have raised another objection to the applicability of the 1972 Rules to the matter of recruitment of constables and sub-Inspectors of police. Their submission is that the main part of Article 309 of the Constitution confers power upon the appropriate Legislature to make Acts to regulate the recruitment and conditions of service of persons appointed to public services and

posts in connection with the affairs of the Union or of any State and such Acts will be subject to the provisions of the Constitution. The proviso, according to the learned counsel, is a transitional provision empowering the executive to make Rules having the force of law relating to recruitment and conditions of service until the appropriate Legislatures legislate on the subject. Such a power of making a Rule, the argument proceeds, cannot be exercised if the appropriate Legislature has already enacted an Act which regulates the recruitment and conditions of service of appointment in public services. The contention is that as the Police Act, 1861, has already been in existence, which continues in force by virtue of Article 313 of the Constitution and occupies the field, it is not open to the Governor to make a Rule in exercise of power conferred by proviso to Article 309 of the Constitution in matters connected with the recruitment and conditions of service of police personnel including sub-inspectors of police who have been appointed in connection with the affairs of the State. It is thus urged that the 1972 Rules can have no application in matters relating to recruitment of constables and sub-Inspectors of police. Learned counsel has drawn attention of the Court to Section 2 of the [Police Act, 1861](#), which reads as under:

'Section 2.--The entire police establishment under a State Government shall for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers, and men and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act the pay and all other condition of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government.'

13. Learned Additional Advocate General has laid emphasis on the words 'shall be formally enrolled' and 'shall be constituted in such manner, as shall from time to time be ordered by the State Government', occurring in Section 2. and has submitted that the Act clearly takes within its ambit the matter of recruitment in the manner ordered by the State Government.

14. Sri S. C. Budhwar, learned counsel for the appellant, has submitted that the Police Act, 1861, cannot be treated to be an Act of the appropriate Legislature which may regulate the recruitment and conditions of service of police personnel appointed to posts in connection with affairs of the Union or of any State and, therefore, would not fall within the main clause of Article 309 of the Constitution. He has also urged that no Rules have been framed under the Act to regulate the recruitment and conditions of service of non-gazetted members of the police force and, therefore, the field is not occupied and it is competent for the Governor of the State to make Rules regulating the recruitment and conditions of service of the police personnel in exercise of power conferred by proviso to Article 309 of the Constitution. It is thus urged that the 1972 Rules will, also govern the matter of recruitment of sub-Inspectors of police.

15. The scope and ambit of power under proviso to Article 309 of the Constitution has recently been explained by the Apex Court in *Sri A. B. Krishna and others v. State of Karnataka and others* : [1998]1SCR157 . (In paragraphs 6 and 7 of the reports) which are as under :

'6. It is primarily the Legislature, namely, the Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts. In connection with the affairs of the Union or the State is vested. The legislative field indicated in this Article is the same as is indicated in Entry 71 of List I of the Seventh Schedule or Entry 41 of List II of that Schedule. The Proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the Proviso can be exercised only so long as the Legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.

7. The Rule making function under the Proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by the Parliament or the State Legislature which lays down the conditions of service or it is the Rule made by the President or the Governor under the Proviso to that Article, they have to be

in conformity with the other provisions of the Constitution specially Articles 14, 16, 310 and 311.'

In paragraph 8 it was observed as follows :

'8As a matter of fact, under the scheme of Article 309 of the Constitution, once a Legislature intervenes to enact a law regulating the conditions of service, the power of Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of 'Doctrine of Occupied Field'. If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a Rule under Article 309 in respect of that matter.'

16. Thus, there can be no doubt that if the appropriate Legislature has enacted a law regulating the recruitment and conditions of service, the power of the Governor is totally displaced, and he cannot make any Rule under proviso to Article 309 of the Constitution. In *State of U. P. v. Babu Ram Upadhyaya*. : 1961 CriLJ773 . a decision rendered by a Constitution Bench, the Police Act and the U. P. Police Regulations came up for consideration and it was held as follows in paragraph 12 of the Reports :

The result is that the Police Act and the Police Regulations made in exercise of power conferred on the Government under that Act, which were preserved under Section 243 of the Government of India Act, 1935, continue to be in force after the Constitution so far as they are consistent with the provisions of the Constitution.'

In paragraph 23, it was observed that the Police Act and the Rules made thereunder constitute a self-contained Code providing for appointment of the police officers and prescribing the procedure for their removal. In *Nanak Chand v. State of U. P.*, 1971 ALJ 724, a Full Bench of our Court held as follows :

'It is not correct to say that no temporary posts can be created in the Police Force, Section 2 of the Police Act is certainly wide enough to permit such posts to be created, and it appears that it is now the general Rule in U. P. for all new recruits to be employed at first in a temporary capacity.'

17. In *Nurul Hasan v. Senior Superintendent of Police*. 1985 UPLBEC 1329. a Division Bench of this Court, speaking through Hon'ble S. Saghir Ahmad, J. (as his lordship then was), held as follows :

'It has already been specified above that in the exercise of the powers conferred by the Police Act the State Government has made Police Regulations by which the service conditions of the subordinate police officers have been regulated. There are, therefore, special statutory provisions which regulate the service conditions of police personnel. They would, therefore, be not governed by the C.C.A. Rules as they clearly fall within Explanation (a) of Rule 3 of the said Rules.'

18. Similar view has been taken by two other Division Benches of our Court in *State of U. P. v. Mohd. Ibrahim*. : (1959)ILLJ105All . and *Mukhtar Singh v. State of U. P.* : (1959)ILLJ464All . Section 2 of the Police Act empowers the State Government to issue orders providing for the manner in which the police force may be constituted. The constitution of a force necessarily implies the act of making appointment to various categories of posts in the police force. Provision in this regard have been made in the U. P. Police Regulations or in the Government orders issued from time to time on the subject relating to recruitment. Therefore, the field relating to recruitment of subordinate ranks of the police force is already covered by the provisions of the Police Act. Consequently, a Rule made by the Governor in exercise of power conferred by proviso to Article 309, like the 1972 Rules, which is very general in terms and does not make any reference to the police force, can have no application to the matter governing the upper age-limit of the candidates seeking recruitment to the posts of constables or sub-Inspectors of police.

19. Sri S. C. Budhwar. learned counsel for the appellant, has urged that an identical question has been examined in considerable detail by a Division Bench of this Court in *State of U. P. and others v. Shakuntala Shukla and others*. 1999 (3) UPLBEC 1702. and it has been held that U. P. Government Services Criteria for Recruitment by Promotion Rules, 1994, will have overriding effect on Government Order dated 5.11.1965, which lays down the criteria for promotion of sub-inspectors to the post of inspectors in police on merit. The subject-matter of

consideration in this decision was a communication sent by the Dy. Secretary of U. P. Government to the Inspector General of Police. U. P. on 5.11.1965. which provided that the selection on the post of inspector from sub-Inspector shall be made on the basis of merit, Sri P. M. N. Singh. learned Additional Advocate General, has informed the Court that against the aforesaid decision, an appeal has been preferred in the Supreme Court which has been admitted and the operation of the Judgment has been stayed. The view taken in the said decision *prima facie* appears to be contrary to the view taken by us. in normal course. we would have made a reference to a larger bench but as an appeal has already been preferred against the said decision in the Supreme Court which has been admitted and is pending consideration, and the operation of the judgment has been stayed, we are of the opinion that no useful purpose will be served by making a reference to a larger Bench. That apart, the present special appeal is liable to be dismissed on other grounds which we have discussed in the earlier part of the Judgment and will be considered hereinafter and, therefore, decision on the second question urged by the learned Additional Advocate General would not alter the fate of the appeal.

20. It may also be pointed out that the advertisement for making recruitment on the post of sub- inspectors of police issued in October. 1991. which provided upper age-limit of less than 32 years had been challenged on the same ground, namely, that the upper age-limit under the 1972 Rules had been fixed at 32 years, by filing C. M. Writ Petition No. 32156 of 1991. *Indra Bahadur Shukla v. D.t.G. and others.* Relying upon the Government order dated 7th July. 1976. a learned single Judge dismissed the writ petition on 31.3.1992 and the said Judgment attained finality.

21. The second point urged by learned counsel for the appellant has hardly any merit. The appellant acquired no right by merely making an application in pursuance to the advertisement issued on 24.6.1994. The said advertisement was cancelled even before the process for selection had begun as the order dated 9.6.1994 cancelling the earlier advertisement dated 4.10.1991 and the consequent selection process was quashed by the High Court in C.M. Writ Petition No. 14653 of 1994. *Ram Daras Rai a. State of U. P.*, on 23.5.1995 and a direction was issued to complete the selection process which was in fact done. The candidates were informed to take back the fee deposited by them. The appellant can take no

benefit of the fact that he had made an application in pursuance to the advertisement issued on 24.6.1994.

22. There is another aspect of the matter which requires consideration. The appellant has invoked the Jurisdiction of this Court under Article 226 of the Constitution for quashing the advertisement insofar as it impose an upper age-limit of 25 years. Jurisdiction under Article 226 of the Constitution is an equitable and discretionary one. The Court is not bound to exercise its discretion on a technical ground. The appellant does not complain that any one of his fundamental rights guaranteed under the Constitution have been violated. In fact, the condition imposed in the advertisement that the upper age-limit for a candidate is 25 years, does not violate any other right of the appellant. The question to be considered is whether the Court is bound to grant relief to the appellant even if it is assumed that the 1972 Rules would govern the recruitment in question. The primary duty of police personnel is to maintain law and order, to ensure enforcement of laws and to catch the criminals and bring them before the Courts for their prosecution. The criminals use all kinds of weapons, means of fast transport and other modern gadgets to achieve their objective. A policeman has to perform very hard and strenuous duty round-the-clock. In order to be successful a policeman has to be well built and strong and must possess sound physique. He has not to perform his duties sitting in an office and working on a table, which requires less of physical exertion. The Police Commission constituted by the Government of India, which consisted of highly experienced persons and experts in the field recommended that the minimum and maximum age for constables should be between 18 to 20 years. With regard to the sub-Inspectors of police, the Commission was of the view that the minimum and maximum age-limit should be 20 and 23 years, respectively (paragraph 44 of Chapter VI of the Report). The minimum and maximum age-limit in C.R.P.F., B.S.F. and other Central Government forces like C.I.S.F. etc. is 20 to 25 years for a post equivalent to that of a sub-Inspectors of police. In army, the age of entry into the service is much less and many holding noncommissioned ranks are discharged from service even before they have attained the age of 40 years. Normally, the physical strength of a person is at its highest when he is in his twenties. All the good athletes achieve the best of their career when they are in their early twenties. The ability to learn and mould ones

way of life so as to successfully perform the duty can be better achieved in that age group. Nobody can stop the process of ageing. It is a natural biological phenomenon. It is stated in the counter-affidavit that the whole process of selection takes at least 2 years and sometimes more than that on account of many unforeseen factors including litigation in Courts. The training will take another one year. If the upper age-limit, as contended by the appellant, is accepted to be 32 years the result would be that a person would be entering the service at the age of 35 to 36 years. It is certainly too late an age on which a person should join as a sub-inspector of police. By the time, he learns and gathers experience, his physical strength would be waning. It would be wholly detrimental to the police force and consequently, for the society in general to allow entry in service at such a late stage. The contention of the appellant would be equally applicable for the post of constable as well and the result would be that though the Police Commission recommended the maximum age-limit of 20 years, they would be joining the force after they have already attained the age of 34 or 35 years (32 years plus the time in making selection and undergoing the training etc.). In our considered opinion, such a situation would seriously damage the efficiency of the police force and would not achieve the result for which the force is constituted and would result in break-down of law and order. We are, therefore, clearly of the opinion that the Court, while exercising Jurisdiction under Article 226 of the Constitution, should decline to exercise the discretion in favour of the appellant.

23. For the reasons mentioned above, the present special appeal lacks merit and is hereby dismissed.