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Court : Rajasthan

Decided On : Mar-09-1995

Reported in : 1995(2)WLC744; 1995(1)WLN360

Judge : Mohini Kapur, J.

Appeal No. : S.B. Civil Writ Petition No. 424 of 1986

Appellant : Dr. B.D. Chatterjee

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Mohini Kapur, J.

1. Two Writ petitions have been filed by the petitioner Dr. B.D. Chatterjee against two different orders passed against him. Both the orders are in connection with his service. The second order is consequential to the first order. Both the writ petitions are being disposed of together.

2. The petitioner Dr. B.D. Chatterjee was born on 27th July, 1942. In the year 1969 he was appointed as Civil Assistant Surgeon and was confirmed as such in the year 1971 and he continued to work as such. Besides M.B.B.S. he was holding a diploma in Dermatology, obtained in 1968 from Maulana Azad Medical Collage,

Delhi. In the year 1980 he completed M.D. in Genera] Medicine. On 25th August, 1981 he was appointed as Lecturer in Skin/V.D. on urgent temporary basis on their recommendation of the Central Selection Committee in accordance with Rule 30(1) of the Rajasthan Medical Service (Collegiate Branch) Rules 1962 (hereinafter referred to as the Rules').

3. In the year 1981, the Rajasthan Public Service Commission (hereinafter referred to as the Commission) advertised vacencies for selection to the post of lecture in Skin/V.D. but on basis of this advertisement, no selection were held. In the year 1985 seven (7) posts were advertises by the commission and the date fixed for receipt of applications was in June, 1986. On this date, the age of the petitioner was 43 years and the question arises as to whether he was eligible for the post. The rule in regard to the eligibility clause on the ground of age may be reproduced here:

11. Age:(1) A candidate for direct recruitment to a Junior post enumerated in Schedule and II must not have attained the age of 35 years on the first day of January following the last date fixed for receipt applications:

(2) Provided that the maximum age limit mentioned above shall be 40 years relaxation upto 45 years at the discretion of the Rajasthan Public Service Commission, prove on suitable candidates are available till the end of 1975.

Provided that....(2) A candidate for direct recruitment to a selection or Senior post enumerated schedule I and Schedule II must have attend the age of 25 years and must not have attained the age of 45 years on the first date of January following the last fixed receipt of application:

Provided: (i)...

(ii)...

(iii)...

(iv) That the persons appointed term rarely to a post in the Service shall be deemed to be within the age limit had they been within the age limit had they been

within the age limit they were initially appointed been though they have crossed the age limit when they appear finally before the Commission and shall be allowed upto two chances had they be eligible as such at the time to their initiated appointment.

(v)...

(vi) Notwithstanding anything contained contrary in these Rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age limit shall, be 40 years for direct recruitment to posts filled in by competitive Examinations or in case of posts filled in through the Commission by interview. This relaxation shall not apply to urgent temporary appointments.

4. The post of lecturer falls in category 'Junior posts' as enumerated in Schedule to the Rules.

5. The petitioner has come up on two grounds:

(1) That under proviso (vi) to Rule 11, he being a person serving in connection with the affairs of the State in Subs-tantive capacity was eligible up to 40 years of age of direct recruitment post to be filled in by the Commission by interview. In the year 1981, he was less than 40 years of age and had the Commission made the selection, he could have been considered for selection. Referring to Rule 8A of the Rules, it is contended that the actual number of vacancies accrued in a financial year are to be determined on the 1st April of every year and when the vacancies are of the year 1981 or prior to it then eligibility on the ground of age and qualification of a candidate for purpose of selection has to be treated as on that date.

(2) Referring to sub-clause (iv) of Rule 11, it is contended that the petitioner was appointed on a temporary post in the year 1981 at a time when he was within the age limit. Therefore, he has to be admitted to be within the age limit even if he has crossed the upper age limit when he final appeared before the Commission. In this connection, it may also be mentioned that though sub-Rule (vi) of Rule provided that the relaxation in upper age limit pars already in service, was not made

applicable to urgent-temporary appointments but this clause of sub-Rule (vi) has been declared ultra-vires and unconstitutional by a decision of this Court in Dr. Suresh Chand and Others v. State of Rajasthan and Others 1994 WLR Raj. 387.

6. The learned Counsel for respondent No. 2, i.e. the Commission has contended that the view of this Court in Dr. Om Narain Purohit v. State of Rajasthan and Others 1992 (3) WLC (Raj.) 641 has not found favour with the Supreme Court in a recent decision, though he has not been able to produce that judgment. On this ground he wanted time but in my opinion, the case can be disposed on basis of second ground raised by the petitioner and I proceeded to decide the case. Admittedly, the petitioner was serving as a C.A.S. in a substantive capacity and in the year 1982 when he was appointed as lecturer in Skin/V.D. on urgent temporary basis, he was less than 40 years of age. It is also an admitted position that the upper age for direct recruitment on a Junior post fixed by the Rules is 35 year but certain relaxations are provided in this upper age limit. Under sub-clause (vi) of Rule 11, a person who is already serving in connection with the affairs of the State in substantive capacity, the tipper age limit in his case shall be 40 years for the direct recruitment to a post to be filled by competitive examination or to be filled by the Commission by interview. Thus the upper age limit in the case of the petitioner is 40 years and not 35. years.

7. It has to be seen whether for the purposes of sub-Rule (iv) to Rule 11 the upper age limit has to be 35 years as provided by 11(1) of the Rules or in the case of the petitioner it should be/40 years, Sub-Rule (iv) has been reproduced above and it may be stated that this sub-Rule does not speak of the upper age limit as 35 years or 40 years but only says that persons who were within the age limit when they were initially appointed on temporary basis shall be deemed to be within the age limit even though they have crossed the age limit when they appeared finally before the Commission. The upper age limit for the posts under this sub-Rule is to be the upper age limit applicable in the case of a particular candidate. For fresh candidates it will be 35 years. For SC/ST and women candidates it will be relaxed by five years. Even there is relaxation provided for political sufferers, for services rendered in the NCC, released Emergency Commissioned Officers etc. The relaxation for in service candidate is also there and the upper age limit for that has

been provided as 40 years as seen above. As the upper age limit in respect of different candidates is different then while reading sub-clause (iv) of Rule 11, the upper age limit as applicable to the petitioner has to be taken into consideration while deciding whether he can be deemed to be within the upper age limit for purposes of selection. At the time of his appointment on temporary basis, he was less than 40 years of age and was eligible for the post as the upper age limit in his case was 40 years and on the basis of the temporary appointment he should be deemed to be within the age limit even though he has crossed the upper age limit when he finally appeared before the Commission for purposes of selection.

8. The learned Counsel for the respondent No. 2, Commission has placed reliance on a decision of this Court passed in S.B, Civil Writ Petition No. 1991/1985 Dr. J.S. Shukla v. Secretary, Rajasthan Public Service Commission and Others in which it was held that the petitioner had crossed the age of 35 years at the time he was given temporary appointment hence, he was not within the age limit at the time of his initial appointment and, therefore, the benefit of Rule 11(2)(iv) of the Rules was not available to him. It may be mentioned that this case was decided on 5th March, 1986 and at that time the clause' this relaxation shall not apply to urgent temporary appointments' was included in sub-rule (vi) of Rule of the Rules 11 with the result that for purposes of urgent temporary appointments the candidate has to be less than 35 years of age and a candidate who had crossed the age of 35 years could not be granted relaxation meant for in service candidates up to 40 years for purposes of urgent temporary appointment. In the present situation when this clause has been struck down as arbitrary and irrational then the relaxation in age up to 40 years to in service candidates become available for purposes of temporary appointment and when the petitioner was less than 40 years of age at the time of his temporary appointment he has to be admitted to be within the age limit, even if he has crossed the upper age limit when he appeared before the Commission. It is not a case where it can besaid that the petitioner is taking double benefit, first on basis of age relaxation and then on basis of temporary appointment. The upper age limit for different categories is different as the reading of the complete Rule would show. The only benefit the petitiones wants is on the basis of temporary appointment given to him and in view of this appointment made at the time when he was within the age limit he has to be treated to be within the

age limit, even if he has crossed the age limit when he appeared before the Commission. I accordingly hold that the candidature of the petitioner has been wrongly rejected by the Commission as being overage. By virtue of an order passed by this Court on 26th Feb., 1986 the Commission was directed to take the interview of the petitioner with regard to the post of Lecturer in Skin/V.D. but the Commission was restrained from declaring the result till further orders. The result of the petitioner was brought before the Court for perusal on 4th August, 198 and subsequently the petition was admitted. Now the Commission is directed to declare the result of the petitioner and if he has been found suitable for the post of Lecturer in Skin/V.D., the Government shall give him appointment on this post from the date the other candidates were given appointment. He shall be paid ful emoluments and other benefits for this pots from the date he is given appointment.

9. Now, we come to the second writ petition (S.B.C.W. 2433/1986). The petitioner was appointed on a temporary basis on the post of Lecturer Skin/V.D. in the year 1981 and this temporary appointment was terminated by Govt. order dated 10th December, 1986. The Government passed this order as a consequence of ineligibility of the petition for purposes of consideration for the post of Lecturer he had crossed the upper age limit. This reason has not be given in the order but this appears to be the reason for terminating the temporary appointment. No opportunity was given to the petitioner before passing this order as the temporary appointment was after due selection by the Central Selection Committee and it there was some dispute about the upper age limit then it was necessary to give him opportunity for submitting his explanation. When the...order holding the petitioners to be ineligible on the grow of crossing the upper age limit has been quashed, then the order also deserves to be quashed. Accordingly this writ petition is also allowed and the order dated 16th December 1986 is quashed.

10. Both the writ petitions are allowed as indicated above with no orders as to cost.

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