

**Preeti Sharma and Another Vs. State of U.P. and Another**

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**Court : Allahabad**

**Decided On : Jan-27-2011**

**Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.**

**Appeal No. : WRIT - A No. - 5084 of 2011**

**Appellant : Preeti Sharma and Another**

**Respondent : State of U.P. and Another**

**Advocate for Def. : C. S. C.; Pushpendra Singh, Advs**

**Advocate for Pet/Ap. : Santosh Kumar Singh; Mr. M.D. Singh, Advs**

**Judgement :**

1. We have heard Shri Santosh Kumar Singh, learned counsel for the petitioner. Learned Standing Counsel appears for the respondents.

2. By this writ petition the petitioners have prayed for direction to the respondents to accept the petitioner's application form of Combined State/ Upper Subordinate Service Examination, 2011 to be conducted by the U.P. Public Service Commission, Allahabad and to make their candidature subject to the decision of Public Interest Litigation No.1980 of 2011, Swaraj Sewa Sansthan v. State of U.P. & Ors.

3. Rule 2 of the U.P. Recruitment in Service (Age Limit) Rules, 1972 provides for the upper age limit of 35 years for recruitment to all public services in the State of U.P. under the rule making powers of the Governor. Rule 6 provides that a candidate must have attained the minimum age and must not have attained the maximum age as prescribed from time to time on the first day of July of the calendar year in which the vacancies for direct recruitment are advertised by the Public Service Commission. There is a relaxation provided for 5 years for the persons belonging to reserved category.

4. The Advertisement No.A-1/E-1/2011 published on 1.1.2011 provides for maximum age for recruitment for unreserved categories to be 35 years. Both the petitioners are unmarried and have attained the age of 35 years. They are not eligible to fill up the form to appear in the examination.

5. It is stated that in States of Rajasthan; Chattisgarh; Orissa and Jharkhand, the maximum age limit for women candidates for which reservations are provided as in the case of Uttar Pradesh to the extent of 20% in public services, the age has been relaxed by 5 years, 10 years, 3 years and 3 years respectively. Learned counsel for the petitioner submits that Art.15 (3) of the Constitution enables the State to make special provisions for women and which includes the increase in the maximum age in public services.

6. Learned counsel for the petitioner states that in view of the social conditions prevalent in the State, a girl child suffers from disadvantage as compared to the boys in the families in respect of opportunities of education. The girls in the state still marry at comparatively younger age. They are required to adjust in the families of their in-laws and raise children after the marriage. In order to preserve their strength and vigor and to allow them to compete in the open society, they should be given special relaxation, atleast in the maximum age in public employment.

7. Learned counsel for the petitioner submits that equality before law means that the law should be equally administered. The unequals should not be treated alike. Art.15 (3) of the Constitution of India, as fundamental right to equality has recognised the disadvantage suffered by women and children and has provided an exception to the Rule against discrimination provided by Clauses (1) as well as (2).

The provision of maternity leave for women workers in Art.42 was not found to be in contravention of the prohibition against discrimination under Clause (1) of Art.15. The provision for reservation for women, at 20% in public services in the State of U.P., is saved under Clause (3) of Art.15. In *Vijay Laxmi v. Punjab University*, AIR 2003 SC 3331 it was held that the provision under Art.15 (3) is not restricted in any manner by Art.16.

8. We find substance in the arguments of learned counsel for the petitioner that women on account of their biological and social needs and their traditional place in the family fall in a different class than men. Right from the stage of schooling most of the girls have to perform household work before they are allowed to go to schools. As compared to the boys a major part of school girl is devoted to household chores. They get much lesser time for proper and adequate studies as compared to the boys. After marriage their responsibilities towards their family, child bearing and raising children in their infancy, as a full time job, makes it difficult for them to take an early start. The educated women are as strong as men both in the physical tolerance and mental abilities. They equally deserve to get an opportunity to utilise their education, serve and contribute to society.

9. Art.15 (3) is an enabling provision which empowers the State Government to make, taking into account the circumstances, a policy decision to provide special relaxation and concessions for women and children. The filing of the public interest litigation and the issuance of notice to the State Government does not, however, give the petitioners any right to claim relaxation in maximum age in public services and for direction to the U.P. Public Service Commission to accept their applications.

10. The reservation and relaxation of qualifications & age is a policy matter to be decided by the State Government. The Courts do not ordinarily lay down the policy and legislate. It is for the State Government to recognise the rights of the under-privileged, handicapped and other persons and to accept the equality, which is a constitutional goal to be implemented in public employment. We strongly recommend that as in the case of States of Rajasthan, Chandigarh, Orissa and Jharkhand, the State of U.P. may also consider to grant relaxation in the maximum

age limit for woman candidates in public employment, in addition to the 20% reservation in public services. The State Government may consider in consultation with the National Commission of Women and the State Commission of Women, to take a policy decision, in this regard.

11. The writ petition is disposed of with these observations.

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