

CASE NO.:

Appeal (civil) 7304 of 2001

Appeal (civil) 7305 of 2001

Writ Petition (civil) 521 of 2000

PETITIONER:

JASBIR RANI & ORS.

Vs.

RESPONDENT:

STATE OF PUNJAB & ANR.

DATE OF JUDGMENT: 19/10/2001

BENCH:

D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted in both the special leave petitions.

Feeling aggrieved by the judgments rendered by a Division Bench of the High Court of Punjab & Haryana on 10.1.2000 and 25.4.2000 dismissing the writ petitions filed by them, the appellants have filed these appeals assailing the said judgments.

The controversy raised in the case relates to the cut-off date fixed for fulfilling the prescribed qualification relating to age by a candidate for the post of Panchayat Secretary in the State of Punjab. The appellants are male and female candidates, who were prevented from applying for the post since they did not satisfy the qualification pertaining to age by the cut-off date fixed in the advertisements.

The relevant facts of the case leading to the present proceeding may be stated thus: The Government of Punjab issued an advertisement on 18th September, 1997 in the local newspapers inviting applications from male candidates for 700 posts of Panchayat Secretaries. In the said advertisement the cut-off date for satisfying the eligibility qualification pertaining to age was stated as 1st September, 1997. Before the selection could be made the State Government issued another advertisement on 19th September, 1998 inviting applications from female candidates for the said 700 posts of Panchayat Secretaries. In the said advertisement the cut-off date for fulfilling the eligibility qualification pertaining to age was the same date, (1st of September, 1997) as in the previous advertisement. In both the advertisements it was stated that the applicant should not be less than 18 years of age and more than 35 years of age by the cut-off date. The age qualification was prescribed in terms of Rule 5 of the Punjab Panchayat Secretaries (Recruitment and Conditions of Services) Rules,

1979 (hereinafter referred to as the Rules). As noted earlier all the appellants being below 18 years of age by the cut-off date were not eligible to apply for the posts.

The appellants filed the writ petitions challenging the cut-off date fixed in the two advertisements and also the provision of the rule prescribing the minimum and maximum age for appointment to the posts. It is relevant to state here that previously the minimum age of 17 years and maximum of 27 years were prescribed under Rule 5 which was subsequently altered to 18 years and 35 years by the Punjab Panchayat Secretaries (Recruitment and Conditions of Services) (1st Amendment) Rule, 1993. In accordance with the provisions in Rule 5 as they stood after amendment the minimum and maximum age were stated in the advertisements in the case.

It was the case of the appellants that there was no rational basis for fixing the same cut-off date of 1st September, 1997 as in the previous advertisement while issuing the second advertisement which was issued one year after the previous one. According to the appellants the cut-off date was fixed in an arbitrary manner without due application of mind.

The High Court, on consideration of the matter, held that in the facts and circumstances of the case the two advertisements were issued for the same set of vacancies; while the first advertisement was confined to male candidates only the second one was meant for female candidates; that the recruitment process was the same; therefore the State Government did not commit any irregularity in prescribing the same cut-off date in both the advertisements. Accordingly, the writ petitions were dismissed.

Shri R.K.Jain, learned senior counsel appearing for the appellants strenuously urged that the cut-off date fixed under the advertisements is contrary to the provision of the rule and therefore, is liable to be set aside. Elucidating his contention, Shri Jain submitted that rule 5 provides that a candidate is to fulfil the eligibility qualification pertaining to age on the date of his appointment and therefore, fixing a cut-off date prior to the date of appointment is not authorised by the rule and indeed is contrary to it.

Per contra Shri Laxmi Kant Pandey, learned counsel appearing for the respondents contended that in view of the provision in the rule prescribing the eligibility qualification pertaining to age of an applicant it was necessary for the appointing authority to fix a cut-off date by which the applicant was to fulfil the age qualification. In the absence of a fixed cut-off date it will be well-nigh impossible for the appointing authority to sort out applications of the candidates fulfilling the age qualification from those submitted by ineligible candidates. According to the learned counsel, for proper implementation of the provision of Rule 5 it was absolutely necessary for the appointing authority to fix a cut-off date while issuing the advertisement and in this case since the recruitment was for the same set of vacancies the process of selection was one and the same cut-off date was fixed in both the advertisements. Rule 5 of the Rules, as it stood before amendment in 1993, reads as follows :

No person shall be appointed to the Service by direct recruitment if he is less than seventeen years or more than twenty-seven years of age on the date of his appointment.

As noted earlier, in 1993 the minimum and maximum age prescribed for the post were changed to 18 and 35 years.

No doubt, the Rule does not provide a cut-off date by which an applicant is to satisfy the prescribed eligibility qualification pertaining to age. In the absence of a statutory provision in that regard the date has to be fixed at the time of issuing the advertisement. This is necessary not merely to enable the appointing authority to sort out the applications of the eligible candidates from those candidates who do not fulfil the prescribed qualification, but also to avoid criticism of a favoritism and nepotism against the authority. In the first advertisement issued in the case on 18th September, 1997 the cut-off date was fixed as 1st September, 1997 i.e. about two weeks prior to the advertisement. In the second advertisement which was issued one year after the first one ordinarily the appointing authority could have similarly fixed a date a few days prior to the date of issue of the advertisement; but as noted earlier, in the first advertisement the applications were invited from male candidates only; perhaps realising that there was no reasonable basis for confining the recruitment to male candidates only it was decided to throw open the recruitment to eligible female candidates also and in pursuance of the said decision the second advertisement was issued on 19th September, 1998. In such circumstances the appointing authority while issuing the second advertisement fixed the same cut-off date as in the first. If this had not been done then there would have been a difference in date by which the eligibility qualification pertaining to age was to be complied by male and female candidates. Such action would have exposed the authorities to criticism of discrimination. In the circumstances no exception can be taken to the action of the authority fixing the same cut-off date in both the advertisements.

Coming to the contention raised by Shri R.K.Jain that prescribing a cut-off date prior to the date of appointment for the purpose of satisfying the eligibility qualifications pertaining to age is impermissible under the Rule, we are not inclined to accept the contention. Rule 5, as we read it, merely prescribes the eligibility qualification (minimum and maximum) pertaining to age for appointment to the post of Panchayat Secretary. The rule neither prescribes a cut-off date nor bars fixing of such a date by the authority competent for making the appointment. In the absence of any such provision it cannot be held that Rule 5 even by implication prohibits fixing a cut-off date regarding the age. This Court in the case of Bhupinderpal Singh & Ors. Vs. State of Punjab & Ors., 2000 (5) SCC 262 disapproving of the practice prevalent in the State of Punjab to determine the eligibility with reference to the date of interview, made the following observations :

Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18, A.P.Public Service Commission v. B.Sarat Chandra, (1990) 2 SCC 669, Vizianagaram Social Welfare

Residential School Scoeity v. M.Tripura Sundari Devi (1990) 3 SCC 655, Rekha Chaturvedi v. Univesity of Rajasthan 1993 Supp;.(3) SCC 168, M.V.Nair (DrP v. Union of India (1993) 2 SCC 429, and U.P.Public Service Commission U.P., Allahabad v. Alpana (1994) 2 SCC 723, the High Court has held (i)that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellant-petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such candidates have been seeking employment as were not eligible on the date of making the applications or the last date apointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified

but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence.

(Emphasis supplied)

The position that emerges from the discussions in the foregoing paragraphs is that the State Government cannot be faulted for fixing a cut-off date in the first advertisement and in the circumstances of the case in adopting the same cut-off date in the second advertisement. Therefore, there is no merit in these appeals which are accordingly dismissed. There will, however, be no order for cost.

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For the reasons set out in the above judgment the writ petition is devoid of merit. Indeed, no separate arguments were advanced on behalf of the writ petitioners in the writ petition. Accordingly, the writ petition is dismissed. No costs.

.J.
(D.P.MOHAPATRA)

J.
(SHIVARAJ V.PATIL)

October 19, 2001