

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 14<sup>th</sup> OF DECEMBER, 2022**

**WRIT PETITION No. 27271 of 2022**

**BETWEEN:-**

**RAMKUMAR DANGI S/O RAMJI SHARAN  
DANGI, AGE 47 YEARS, OCCUPATION:  
LITIGATION, R/O 1/36, CIVIL LINE RAM  
NAGAR COLONY DATIA (MADHYA  
PRADESH)**

**.....PETITIONERS**

***(BY SHRI PRADEEP SHARMA- ADVOCATE)***

**AND**

- 1. STATE OF MADHYA PRADESH THROUGH  
PRINCIPAL SECRETARY, HOME  
DEPARTMENT VALLABH BHAVAN  
BHOPAL (MADHYA PRADESH)**
- 2. EXAMINATION CONTROLLER, MPPSC  
INDORE (MADHYA PRADESH)**
- 3. ADDITIONAL SECRETARY, GENERAL  
ADMINISTRATION DEPARTMENT,  
VALLABH BHAVAN, BHOPAL (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(SHRI C.P. SINGH- PANEL LAWYER FOR STATE)***

***(SHRI RAVINDRA DIXIT-ADVOCATE FOR RESPONDENT NO.2)***

**WRIT PETITION No. 27024 of 2022**

**BETWEEN:-**

- 1. SACHIN AGRAWAL S/O SHRI SURENDRA  
AGRAWAL, AGE - 42 YEARS,**

OCCUPATION: ADVOCATE, R/O H-10,  
JAGRATI NAGAR, LAXMIGANJ,  
LASHKAR, GWALIOR (MADHYA  
PRADESH)

2. ASHISH GANGIL S/O SHRI SURESH  
CHANDAR GANGIL, AGE 41 YEARS,  
OCCUPATION: ADVOCATE, R/O GANJ  
GATE, SADAR BAZAAR, MORAR  
(MADHYA PRADESH)
3. AJAY SHRIVASTAVA S/O SHRI VINOD  
KUMAR SHRIVASTAVA, AGE 42 YEARS,  
OCCUPATION: ADVOCATE, R/O NEAR  
SHRI KRISHNA ASHRAM, LAXMAN PURA,  
DABRA, DISTT. GWALIOR (MADHYA  
PRADESH)

.....PETITIONERS

*(BY SHRI VIVEK JAIN- ADVOCATE)*

**AND**

1. STATE OF MADHYA PRADESH, THROUGH  
THE PRINCIPAL SECRETARY,  
DEPARTMENT OF HOME, VALLABH  
BHAWAN, BHOPAL (MADHYA PRADESH)
2. THE MADHYA PRADESH PUBLIC  
SERVICE COMMISSION, RESIDENCY  
AREA, INDORE (MP) THROUGH ITS  
SECRETARY

.....RESPONDENTS

*(SHRI C.P. SINGH- PANEL LAWYER FOR RESPONDENT NO.1/STATE)  
(SHRI RAVINDRA DIXIT-ADVOCATE FOR RESPONDENT NO.2)*

**WRIT PETITION No. 28721 of 2022**

**BETWEEN:-**

1. ANJULATA SHIVHARE W/O SHRI VISHNU  
SHIVHARE, AGED 46 YEARS,  
OCCUPATION: ADVOCATE, R/O SADAR  
BAZAR, MOHNA DISTRICT GWALIOR  
(MADHYA PRADESH)
2. HEMANT SINGH TOMAR S/O LATE SHRI  
PEHLAD SINGH TOMAR, AGED 41 YEARS,

OCCUPATION – ADVOCATE, R/O NAKA  
CHANDRVATI LASHKAR (MADHYA  
PRADESH

.....PETITIONERS

*(BY SHRI IMRAN KHAN– ADVOCATE)*

**AND**

1. STATE OF MADHYA PRADESH THROUGH THE PRINCIPAL SECRETARY, HOME VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. M.P. PUBLIC SERVICE COMMISSION, THROUGH SECRETARY, M.P.P.S.C. RESIDENCY AREA, INDORE (MADHYA PRADESH)
3. ADDITIONAL SECRETARY, GENERAL ADMINISTRATION DEPARTMENT, MADHYA PRADESH BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI C.P. SINGH- PANEL LAWYER FOR STATE)*

*(SHRI RAVINDRA DIXIT-ADVOCATE FOR RESPONDENT NO.2)*

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*These petitions coming on for admission this day, the Court passed the following:*  
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**ORDER**

By this common order, **W.P. No.27271/2022** filed by Ramkumar Dangi, **W.P. No.27024/2022** filed by Sachin Agrawal and others and **W.P. No.28721/2022** filed by Anjulata Shivhare and another shall also be decided.

2. For the sake of convenience, the pleadings of **W.P. No.27271/2022** filed by **Ram Kumar Dangi** shall be considered.

3. This petition under Article 226 of the Constitution of India has

been filed seeking following relief:-

It is most humbly prayed to Hon'ble Court to direct the respondent no. 2 re-open the portal for filing the exam form.

Or, direct the respondent to conduct the exam, and issue the notification for session 2023, so that petitioner may not be discriminated.

4. The petitioner is a practicing Lawyer and is interested for participating in the recruitment process for the post of Assistant District Prosecution Officer (ADPO). At present, the petitioner is aged about 47 years. It is the case of the petitioner that since last 7 years, no examination has been conducted for the post of ADPO. On 17.06.2021 examination was notified and the last date for submission of application form was 16.07.2021, but the said date has been extended and examination is now fixed for 18.12.2022. It is submitted that on 18.09.2022, the GAD has issued a circular No.F-07-46/2021/A.PR./1 and granted age relaxation of 3 years to the aspirants who are interested in participating in the recruitment to the various posts of State Government. The said circular was issued in the light of the difficulties due to Covid-19 Pandemic. It is submitted that the petitioner belongs to OBC category and upper age limit for appearing in the examination of ADPO is 45 years for OBC candidate. If the petitioner is granted relaxation of three years in the light of circular dated 18.09.2022, then he would become eligible to participate in the examination. However, the portal is not being opened for filling up the examination form. Thus, it is the case of the petitioner that because of non-holding of examination for the post of ADPO for the last seven years, legitimate right of the petitioner to participate in the recruitment to the said post

has been taken away which is violative of Article 16 of the Constitution of India. Furthermore, once the State Government has decided that the relaxation of three years shall be given in respect of all government jobs in the light of Covid-19 Pandemic, then non-extension of same benefits to the advertisement in question is bad in law.

5. The respondent No. 2 has filed its return and submitted that the examination of ADPO, 2021 has been scheduled to be held on 18.12.2022. MPPSC has issued an advertisement for recruitment to the post of ADPO and the last date for filling up the examination form was 16.07.2021. On 30.05.2022 corrigendum was issued for filling up the examination form as per the directions issued by the Court vide order dated 08.03.2022 passed in W.P. No.5096/2022 for those candidates who belong to other States. As per the directions dated 08/02/2022 issued by the Division Bench of this Court in W.P. No.2108/2022, age relaxation of 5 years has been granted to EWS category and as per the corrigendum, 10 days further time was granted to fill up the examination form up to 17.06.2022. As per the condition No. 6 of the advertisement, minimum eligible age is 21 years, whereas the maximum eligible age is 40 years as on 01.01.2022. The petitioner belongs to OBC category and, therefore, the maximum age for OBC candidate is 45 years.

6. So far as the circular dated 18.09.2022 is concerned, it will have prospective effect and since it was not in existence on the last date of submission of application form, therefore, the same cannot be given retrospective effect. The Supreme Court in the case of **Hirendra Kumar Vs. High Court of Judicature at Allahabad and another** passed in **Civil Appeal No.1262/2019** has negated the contention of

the aspirants to roll back the date with reference to attainment of upper age limit.

7. The respondent No. 1 has also filed its return and submitted that the circular dated 18.09.2022 is prospective in nature and cannot be given retrospective effect. The advertisement for recruitment to the post of ADPO was issued in the year 2021 and last date for submission of application form was 16.07.2021. Last date for submission of form was extended in the light of the judgment passed by this Court and even in accordance with the corrigendum, the last date for submitting the examination form is/was 17.06.2022.

8. Heard the learned counsel for the parties.

9. It is the case of the petitioner that because of non-issuance of advertisement for the recruitment to the post of ADPO, he could not appear in the examination and could not apply for the same. It is the case of the petitioner that the examination could not take place because of Covid-19 Pandemic.

10. The Supreme Court in the case of **Rachna and others Vs. Union of India and another**, reported in **(2021) 5 SCC 638** has held as under:-

"45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the courts to legislate. The courts do interpret the laws and in such an interpretation, certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court is called upon to consider the validity of a policy decision only when a challenge is made that such

policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Services Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right.

**46.** It has been brought to our notice that not only the petitioners-interveners before this Court, but there are large number of candidates who appeared in the various examinations in the year 2020 during COVID-19 Pandemic and everyone must have faced some constraints/impediments/inconvenience in one way or the other and this Court can take a judicial notice that these petitioners have appeared in the same pattern of examination in the previous years since the year 2015 and what is being claimed and prayed for under the guise of COVID-19 Pandemic is nothing but a lame excuse in taking additional attempt to participate in the Civil Services Examination 2021 to be held in future and we find no substance in either of the submissions which has been made before us.

**47.** The data furnished to this Court by the Commission clearly indicate that various selections have been held by the Commission for Central Services in the year 2020 during COVID-19 Pandemic and selections must have been held by the State Commissions and other recruiting agencies, if this Court shows indulgence to few who had participated in the Examination 2020, it will set down a precedent and also have cascading effect on examinations in other streams, for which we are dissuaded to exercise plenary powers under Article 142 of the Constitution.

**48.** We, however, make it clear that this decision

would not restrict the 1st respondent or the executive in exercising its discretion in meeting out the nature of difficulties as being projected to this Court, if come across in future in dealing with the situation, if required."

11. Accordingly, the circular dated 18.09.2022 shall be considered in the light of the above-mentioned judgment. The circular dated 18.09.2022 reads as under:-

**मध्य प्रदेश शासन**  
सामान्य प्रशासन विभाग  
मंत्रालय  
वल्लभ भवन भोपाल-462004

क्रमांक एफ 07-46/2021/आ.प्र./एक भोपाल दिनांक 18 सितम्बर, 2022  
प्रति,

शासन के समस्त विभाग,  
समस्त विभागाध्यक्ष,  
समस्त संभागायुक्त,  
समस्त कलेक्टर,  
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत  
मध्यप्रदेश।

विषय:- राज्य शासन की सेवाओं में सीधी भर्ती से भरे जाने वाले पदों पर नियुक्ति के लिये निर्धारित अधिकतम आयु सीमा में छूट बाबत।

संदर्भ:- विभागीय परिपत्र क्रमांक सी-3-8/2016/1/3 भोपाल दिनांक 04 जुलाई 2019

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इस विभाग के संदर्भित परिपत्र द्वारा राज्य शासन की सेवाओं में सीधी भर्ती से भरे जाने वाले पदों पर नियुक्तियों के लिये अधिकतम आयु सीमा संबंधी निर्देश जारी किये गये है।

कोविड-19 के कारण विगत तीन वर्षों से भर्ती परीक्षाएं नियमित आयोजित नहीं की जा सकी हैं, अतः अभ्यर्थियों के हितों को ध्यान में रखते हुए राज्य शासन दिसम्बर 2023 तक अभ्यर्थियों की अधिकतम आयु सीमा में तीन वर्षों की छूट भरे जाने वाले पदों के संबंध में जारी प्रथम विज्ञापन में प्रदान करता है।



मध्यप्रदेश के राज्यपाल के नाम से  
तथा आदेशानुसार

(शैलबाला ए. मार्टिन)  
अपर सचिव  
मध्यप्रदेश शासन  
सामान्य प्रशासन विभाग

12. It is nowhere mentioned that whether the circular will have retrospective effect or prospective effect, therefore, the only question for consideration before this Court is as to whether above-mentioned circular will have retrospective effect or not ?

13. The Supreme Court in the case of **District Collector, Vellore District Vs. K. Govindaraj**, reported in **(2016) 4 SCC 763** has held as under:-

13. As mentioned above, though the legislature has plenary powers of legislation within the fields assigned to it and can legislate prospectively or retrospectively, the general rule is that in the absence of the enactment specifically mentioning that the legislation or legislative amendment concerned is retrospectively made, the same is to be treated as prospective in nature. It would be more so when the statute is dealing with substantive rights. No doubt, in contrast to statute dealing with substantive rights, wherever a statute deals with merely a matter of procedure, such a statute/amendment in the statute is presumed to be retrospective unless such a construction is textually inadmissible. At the same time, it is to be borne in mind that a particular provision in a procedural statute may be substantive in nature and such a provision cannot be given retrospective effect. To put it otherwise, the classification of a statute, either substantive or procedural, does not necessarily determine whether it may have a retrospective operation. In *Maxwell v. Murphy* [*Maxwell v. Murphy*, (1957) 96 CLR 261

(Aust)] , Dixon, C.J. formulated the aforesaid procedure in the following words:

“The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But given rights and liabilities fixed by reference to the past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption.”

14. The Supreme Court in the case of **Commissioner of Income Tax 5 Mumbai Vs. Essar Teleholdings Limited Through Its Manager**, reported in **(2018) 3 SCC 253** has held as under:-

**22.** The legislature has plenary power of legislation within the fields assigned to them; it may legislate prospectively as well as retrospectively. It is a settled principle of statutory construction that every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operations. Legal maxim *nova constitutio futuris formam imponere debet non praeteritis* i.e. a new law ought to regulate what is to follow, not the past, contain a principle of presumption of prospectivity of a statute.

**23.** Justice G.P. Singh in *Principles of Statutory Interpretation* (14th Edn. in Chapter 6), while dealing with operation of fiscal statute, elaborates the principles of statutory interpretation in the following words:

“Fiscal legislation imposing liability is generally governed by the normal

presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings. But a procedural provision, as far as possible, will not be so construed as to affect finality of tax assessment or to open up liability which had become barred. Assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time, will be subject to the rule of strict construction. In the absence of a clear implication, such a legislation will not be given a greater retrospectivity than is expressly mentioned; nor will it be construed to authorise the Income Tax Authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided, become barred. But unambiguous language must be given effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them. There is no fixed formula for the expression of legislative intent to give retrospectivity to a taxation

enactment...”

**24.** A three-Judge Bench of this Court in *Govind Das v. CIT* [*Govind Das v. CIT*, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , noticing the settled rules of interpretation laid down following in para 11: (SCC pp. 914-15)

“11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of *Laws of England* (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

‘all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only’.

15. The Supreme Court in the case of **State of Punjab and others Vs. Bhajan Kaur and others**, reported in (2008) 12 SCC 112 has held as under:-

**9.** A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.

**10.** Section 92-A of the 1939 Act created a right and a liability on the owner of the vehicle. It is a statutory liability. Per se it is not a tortious (sic tortious) liability. Where a right is created by an enactment, in the absence of a clear provision in the statute, it is not to be applied retrospectively.

16. If the facts of the present case are considered, it is clear that an advertisement was issued for recruitment to the post of ADPO in the year 2021 and on the said date, the petitioner had already crossed the upper age limit of 45 years (after relaxation for 5 years to OBC candidate).

17. It is fairly conceded by the counsel for the petitioner that the right to participate in the recruitment process is a substantive right and not a procedural law. It is well established principle of law that a substantive law shall be presumed to be prospective unless and until it is specifically provided otherwise. In circular dated 18.09.2022, the date of coming into force of the said circular is nowhere mentioned, therefore, it has to be held that the said circular dated 18.09.2022 is prospective in operation.

18. Accordingly, the only interpretation which can be given to circular dated 18.09.2022 is that the relaxation of three years shall be applicable to the advertisement which are issued on or after 18.09.2022 and on or before December, 2023. The benefit of the said circular cannot be given retrospectively to the advertisements which were already issued and recruitment is to take place in pursuance of those live

recruitment advertisements.

19. Since the petitioner had already crossed upper age limit of 45 years on the date of issuance of advertisement in the year 2021, no case is made out for interference in the matter.

20. Accordingly, the petitions fail and are hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

Abhi