

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT PETITION No. 4633 OF 2022

DR. SUNIL BHADOURIA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance :

Ms. Smrati Sharma – Advocate for the petitioner.

Shri Ankur Mody – Additional Advocate General for the respondent No.1/State.

Shri Ravindra Dixit – Advocate for respondent No.2/Public Service Commission.

ORDER

(Passed on 16th Day of June 2025)

Per: Justice Anand Pathak

Present petition is preferred under Article 226 of the Constitution of India seeking following reliefs :-

- (i) That, the impugned advertisement contained in Annexure P/1 dated 01.02.2022 so far as relates to not extending 5 years age relaxation to the petitioner EWS category and providing the same to the candidates of other categories like SC/ST/OBC etc. may kindly be quashed with all consequential effects, in the interest of justice.
- (ii) Cost of petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the petitioner.
- (iii) That, alternatively the respondents may also be directed to provide age relaxation of three years to the petitioner in tune with circular dated 18.09.2022 (Annexure – P/14) in the interest of justice.

2. Precisely stated facts of the case are that petitioner is resident of Gwalior and has completed his Bachelor of Dental Surgery (BDS) course and successfully completed the same. He falls under category of economically weaker section of society. While enacting 103rd amendment in the Constitution of India, Parliament has permitted the State Government to make special provisions for advancement of economically weaker sections of society and in pursuance thereof, State of Madhya Pradesh extended 10% reservation facility to the EWS category candidates and issued guidelines accordingly.

3. Vide advertisement dt.14.03.2002 (Annexure P/1) M.P. Public Service Commission issued an advertisement inviting applications of eligible candidates for appointment to 193 vacant posts of Dental Surgeons. As per said advertisement, candidates belonging to unreserved category ought to have minimum age of 21 years and maximum age of 40 years. However, respondents provided five years' age relaxation to candidates belonging to SC,ST,OBC, Women (general as well as reserved category) and various candidates of other categories, as referred in Clause 13 (one) of said advertisement.

4. Petitioner was otherwise eligible to participate in the aforesaid recruitment because he possessed essential qualification for the said purpose but the petitioner was not having advantage of age relaxation though he was falling under EWS category. Therefore, he preferred this Writ Petition

claiming age relaxation on two grounds. One is on the basis of EWS category because members of other categories like SC, ST, OBS, Women were given benefit of age relaxation up to 45 years. Therefore, members of EWS be also considered at par with those categories so far as age relaxation is concerned. Another ground raised by the petitioner was that vide circular dt.18.09.2022 (Annexure P/14), respondents took a decision to provide age relaxation of three years to all candidates participating in all the direct recruitments conducted for first time after COVID-19 Pandemic. However, said benefit was not granted to the petitioner and other similarly placed candidates, who were participating in the examination, which was going on and advertisement for those examinations were issued prior to 18.09.2022.

5. Since the petitioner at the relevant point of time was not granted benefit of appearing in the examination, therefore, he filed instant Writ Petition on various grounds.

6. Petitioner was given benefit of interim relief vide order dt.10.03.2022 and he was permitted to appear in the examination on the strength of order dt.08.02.2022 passed in W.P.No.2108/2022 (Sanjay Singh Parihar Vs. State of Madhya Pradesh and other) by Division Bench of this Court at Jabalpur. Vide said order, candidates belonging to category of EWS appearing in the selection process of civil services conducted by the M.P.P.S.C. was granted benefit of age relaxation up to 45 years of age.

7. In pursuance to interim order, petitioner appeared in the examination and reached up to the stage of interview. His result was not declared but kept in a sealed cover and is handed over to this Court for perusal.

8. It is the submission of learned counsel for the petitioner that impugned advertisement is issued without providing opportunity to the petitioner for age relaxation under EWS category and such approach of authority is arbitrary, illegal and discriminatory because some categories were given benefit of age relaxation whereas EWS category was not.

9. Learned counsel for the petitioner referred the corrigendum issued vide Annexure P/8 by M.P.P.S.C., in which age relaxation was based on interim order passed in W.P.No.2108/2022. That benefit has been given for “State Civil Services Examination – 2021” and “State Foreign Services Examinations – 2021” but the benefit is not extended to the present examination for appointment on the post of Dental Surgeon. It is further submitted that in almost identical fact situation, learned Single Bench of this Court discussed in detail regarding inclusion of on-going examination in the ambit of such circular regarding the age relaxation and detailed order was passed in bunch of writ petitions, in which **W.P.No.1107/2024 (Dr.Rashmi Chaudhary Vs. State of Madhya Pradesh and others) reported in 2024 (1) MPLJ 693** was a leading case. In the said case, age relaxation was granted to Guest Faculties, who were working in the Education Department.

10. Last but not the least, learned counsel did not press the petition on the ground of age relaxation for EWS category but confined argument for age relaxation on the basis of circular dt.18.09.2022.

11. Per contra, learned counsel for respondent No.1/State opposed the prayer and submits that age relaxation could not have been granted to the petitioner because circular was issued subsequent to issuance of advertisement for examination.

12. Learned counsel for respondent No.2 – MPPSC also vehemently opposed the prayer and submits that no case for interference is made out in the light of the judgment passed by the Single Bench of this Court in the case of **Ramkumar Vs. State of M.P. And others - 2023 (1) MPLJ 589**. He also relied upon the judgment passed by the Division Bench of this Court in bunch of writ petitions, in which **W.P.No.12150/2023 (Dr.Amol Soley and others Vs. State of Madhya Pradesh and others)** was a leading case decided in favour of the candidates, but it was of different examination not of instant examination. He prayed for dismissal of the instant petition.

13. Heard learned counsel for the parties at length and perused the documents appended thereto.

14. This is the case in which petitioner is around 42 years of age exceeding the maximum age of 40 years, which is prescribed for general category candidates for appearing in the government examination seeking permission.

15. W.P.No.2108/2022, on the strength of which petitioner was granted, interim relief, got dismissed later on, therefore, arguments of the petitioner, so far as age relaxation on the strength of EWS category is concerned, goes.

16. Petitioner is claiming age relaxation on the strength of circular dt.18.09.2022 issued by the General Administration Department, Government of Madhya Pradesh. For ready reference, this circular is reproduced as under :-

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

क्रमांक एफ 07-46/2021/आ.प्र./एक
प्रति,

भोपाल दिनांक 18 सितम्बर, 2022

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

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 हैं।

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

17. Said circular talks about age relaxation on the ground that due to COVID 19 pandemic, regular examination for recruitment could not be carried out for three years. Therefore, to keep the interest of candidates in mind, State Government gave age relaxation for maximum three years for those examinations, in which first advertisement comes till December 2023.

18. Therefore, intention of the State Government is to be seen and it reflects from the qualifying words “COVID 19 pandemic situation”. In other words, State Government knowingly fully well that for more than two years due to COVID 19 pandemic situation, no recruitment drive was undertaken and rightly so but during that process many aspiring candidates got over aged. Therefore, they could not participate in those examinations which were if held in post COVID 19 pandemic situation. Therefore, for welfare of candidates, this circular was issued.

19. Effect of circular for age relaxation in respect of pending examination is discussed by the learned Single Judge in the case of **Dr.Rashmi Chaudhary (supra)**. Relevant discussion is reproduced as under so as to bring clarify to the issue :-

16. The contention of respondents is that advertisement for examination of Assistant Professors was issued on 30-12-2022 and therefore, this benefit of age relaxation shall not be available to the petitioner in the present examination, rather it shall be available in three future examinations. But, it appears that interpretation is other way round, it prescribes that benefit of age relaxation shall be available to three advertisements at the most. It does not mean that it would be applicable in three future examinations but it reflects that it would be available for three further examinations. Phrase आयु सीमा में छूट आगामी 03 भर्ती विज्ञापनों

तक सीमित रहेगी is to be read as if it prescribes the extent to which benefit of age relaxation would be available in three future examinations. Therefore, “**Extent of application**” of circular cannot be construed as three future examinations excluding the present advertisement. In the considered opinion of this Court, the instant exam is included for the purpose of extending benefit of age relaxation. Therefore, on this count also, case of petitioner deserves consideration because legislative intent indicates so.

17. If the purpose of Cabinet would have been to extend the benefit in future examinations excluding instant examination, then what was the necessity to issue such circular in October, 2023. Cabinet could have decided on some other day in future when they would have undertaken another recruitment drive for appointment to the post of Assistant Professors (excluding the present advertisement). Therefore, in facts and circumstances of the case, the actual legislative intent is to be seen otherwise one may miss the purpose for which circular has been issued.

18. The circular which has been discussed above is to be read in its entirety because its purpose is to do justice to all the parties. Any construction leading to confusion and absurdity must be avoided. The construction that results in hardship, serious inconvenience or anomaly or gives unworkable and impracticable results, should be avoided. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it {**Vide: In Directorate of Enforcement Vs. Deepak Mahajan, AIR 1994 SC 1775, Corporation Bank Vs. Saraswati Abharansala & Anr., (2009) 1 SCC 540, Sonic Surgical Vs. National Insurance Co. Ltd., (2010) 1 SCC 135 and Union of India v. Ranbaxy Laboratories Ltd., AIR 2008 SC 2286**}.

19. Purposive interpretation needs to be given to the circular and that interpretation leads to one conclusion that examinations for which advertisement is issued is also included in which benefit of age relaxation can be availed of. Otherwise, timing of circular would be missed absolutely.

20. Present examination is nowhere excluded in specific term and unless instant examination would have been excluded through interpretation, the whole purpose of issuance of circular would have been deviated. Because the State Government is not sure when next advertisement would be issued, therefore, it would be travesty of justice to issue such circular which does not include the present advertisement for age relaxation. In **Sheikh Gulfan Vs. Sant Kumar Ganguli, AIR 1965 SC 1839**, it has been held:

“78. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the Court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.

79. Thus, it is evident from the above referred law, that the Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation.”

20. Not only this, even Division Bench of this Court at Jabalpur in the case of **Dr.Amol Soley** (supra) discussed about the resultant exigency of COVID-19 pandemic situation. In para 20, discussion finds place as under :-

“20. The said circular clearly mentions that the recruitment tests have not been regularly advertised since last 3 years due to Covid-19 pandemic and therefore, the State will grant additional 3 years relaxation in maximum age limit for the “next first advertisement”. Even looking to the basic purpose of this circular, it is evident that it is for those vacancies that are being advertised for the first time after Covid-19 pandemic. The TET 2018 for Uchch Madhyamik Shikshak was notified and conducted prior to Covid –19 pandemic and the number of vacant posts of Uchch Madhyamik Shikshak were also clearly notified i.e. 17000 posts. The number of Middle School Teacher vacancies were also notified as 5670 posts. The circular dated 18.9.2022 was not meant for posts that were already advertised and notified prior to Covid-19 pandemic. If the respondents Departments in these particular cases granted such relaxation to repeated rounds being carried out for posts notified prior to Covid-19 pandemic, then it

was their choice but that would not take away the special age relaxation for the posts being notified for the first time after Covid-19 pandemic, as provided in circular dated 18.9.2022. Nothing could be placed on record by the State to show whether any fresh vacancies apart from the vacancies forming part of TET notification of 2018 were advertised by the State between 18.9.2022 and May 2023. Considering the above fact situation, it is clear that petitioner, who is more than 42 years of age and if succeeds in the examination, then on the pretext of applicability of circular in future examination would amount to denial of justice to the candidate and would frustrate the cause of justice.”

21. Considering the above fact situation, it is clear that petitioner, who is more than 42 years of age and if succeeds in instant examination but denied admission on technical pretext or adopting hyper technical view, then on the pretext of applicability of circular in future examination would amount to denial of justice to the candidate and would frustrate the cause of justice.

22. This Court called the result of petitioner in sealed envelop. When it is opened, it is found that petitioner is selected for the post of Dental Surgeon by the M.P. P.S.C. Since a direction was issued by this Court to respondent No.2 M.P.P.S.C. not to declare the result of the petitioner, therefore, result has not been declared yet. However, on perusal of the result sheet, it appears that petitioner, who stood successful in merit list, has all the more reasons to get relief because otherwise petitioner may have to wait for long for another examination if at all conducted in near future and by that period, he may exceed maximum age prescribed by the authority. Therefore, to do substantial justice also moulding of relief is a device which can be exercised in exceptional circumstances. Peculiar fact situation of this case warrants

interference to the extent that case of petitioner deserves to be allowed and age relaxation be awarded to the petitioner in peculiar fact situation so that petitioner can be appointed on the post of Dental Surgeon if he fulfills other conditions.

22. Resultantly, petition stands **allowed**. The respondents are directed to provide three years's age relaxation to the petitioner in tune with circular dated 18.09.2022 (Annexure – P/14) in the interest of justice and as per result when petitioner is declared successful/selected candidate, then needful be done for issuance of appointment order and other formalities in accordance with law. Original result paper of petitioner be returned back to M.P.P.S.C./counsel.

Petition stands **allowed** with no order as to costs.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE

SP