

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**W.A. No.382/2020**

*Swaran Vibha Pandey*  
**-Versus-**  
*State of M.P. and others*

Shri K.C. Ghildiyal, Advocate for the appellant.  
Shri Ashish Anand Barnad, Deputy Advocate General for the respondents/State.

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**CORAM :**

**Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	<p>*A Rules in nature of administrative instructions without any statutory force, cannot be said to be enforced by maintaining a writ petition under Article 226 of the Constitution of India.</p> <p>*Administrative action - Executive Instructions, if are in conflict with statutory provisions, the later will prevail. But in absence of any conflict, both will prevail.</p> <p>*Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions</p>
<b><i>Significant paragraph No(s).</i></b>	8,9 & 10.

**[Hearing convened through virtual/physical mode]**

**J U D G M E N T**  
**(Jabalpur, dtd.14.9.2021)**

**Per : Vijay Kumar Shukla, J.-**

The present intra-court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand

Nyaypeeth ko Appeal) Adhinyam, 2005 being aggrieved by the order dated 17-01-2020 passed by the learned Single Judge in *WP-7265-2018 [Swaran Vibha Pandey vs. State of M.P. and others]*, whereby the writ petition filed by the writ-petitioner/appellant [hereinafter referred to as “the appellant”] has been dismissed. The appellant has challenged the order dated 23-01-2018 passed by the Selection Committee and further sought for a direction to the respondents to appoint the appellant on the post of Forest Guard.

2. In pursuance to the advertisement issued by the respondents No.6, the appellant submitted her candidature for appointment on the post of Kshetrarakshak Seoni and Vanrakshak Hoshangabad in Jail Vibhag, Karyalaya Pradhan Mukhya Van Sanrakshak and Rajya Van Vikas Nigam Limited Bhopal Combined Recruitment Test, 2017. The petitioner passed the written examination and she was declared qualified for second phase. After declaration of the result of the written examination, the letter dated 9-01-2018 was issued by the respondent No.4, asking the appellant to appear for Biometric Examination, documents verification and physical measurement on 23-01-2018 and for walking test on 24-01-2018.

3. The appellant appeared on the said date as directed for appointment on the post of Kshetrarakshak, Seoni. During course of documents verification the Selection Committee declared the appellant disqualified on the ground that she had crossed the upper age limit of 30 years as fixed by the respondent No.6. The appellant submitted a representation to the respondent No.4 taking the plea that vide Circular dated 12-5-2017 issued by the respondent No.2, relaxation of age upto 45 years has been extended to the women candidates, but the said representation was rejected.

4. The respondents filed their reply taking the stand that since the appellant has crossed the maximum age limit prescribed under the Madhya Pradesh Class-III (Non-Ministerial) Forest Service Recruitment Rules, 2000 [hereinafter referred to as “the Recruitment Rules”], therefore, she is not eligible for consideration. The respondents placed reliance on Rule 8(1) of the Recruitment Rules which provides for the minimum age and the post for which relaxation in age can be granted. The said rule being useful to refer, is extracted hereunder :

**“8. Condition of Eligibility of Direct Recruitment.-**

In order to be eligible for selection/competitive examination, the candidate must satisfy the following conditions, namely -

- (1) **Age :** (a) He must have attained the age as prescribed in Column (3) of Schedule III, and not attained the age as mentioned

in Column (4) of the said Schedule on the first day of January next following the date of commencement of selection.

(b) The upper age limit shall be relaxable upto a maximum of 5 years if a candidate belongs to Scheduled Caste, Scheduled Tribe and Other Backward Classes.

(c) The upper age limit shall be relaxable upto maximum of 10 years to a woman candidate in accordance with the provision of Rule 4 of the Madhya Pradesh Civil Services (Special Provisions for Appointment of Women) Rules, 1997:

[Provided that the above provision shall not be applicable for the recruitment on the post of Forest Guards.]

(d) The upper age limit shall also be relaxable in respect of candidates who are or have been employees of the Madhya Pradesh Government to the extent and subject to the conditions specified below :

(i) A candidate who is a permanent Government Servant should not be more than 38 years of age.

(ii) A candidate holding post and applying for another post should not be more than 38 years of age. This concession shall also be admissible to contingency paid employees, workcharged employees and employees working in the Project Implementing Committee.

(iii) A candidate who is a retrenched Government Servant shall be allowed to deduct from his age the period of all temporary services previously rendered by him up to maximum limit of 7 years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than 3 years.”

5. The learned counsel appearing for the appellant heavily relied on the Circular dated 12-5-2017 and submitted that the maximum aged limit has been relaxed for women candidates upto 45 years and, therefore, the appellant is entitled to the benefit of the said Circular. It is further submitted that if the Jail Department followed the GAD Circular without any amendment in the Recruitment Rules, why it could not have been done in the case of the Forest

Department, as both are the Departments of the same Government. It is further argued that the State Government cannot take a stand that the Circular dated 12-5-2017 is contrary to the statutory provisions. Hence, it should not have been given effect to and it cannot override the statutory provisions. Can the said Circular be declared illegal at the instance of the State Government. The State cannot be permitted to plead before the Court that their Circular be declared illegal by a judicial pronouncement. In this regard reliance is placed on the decision of the Apex Court rendered in the case of **Pune Municipal Corporation and another vs. Kausarbag Co-operative Housing Society Limited and another, (2014) 15 SCC 753**.

6. The respondents have taken a specific stand in the return that the M.P. Rajay Van Vikas Nigam Limited has adopted the Recruitment Rules. It is strenuously urged that the nature of duties, functions and responsibilities of a Field Man is similar/akin to that of a Forest Guard. As per the Recruitment Rules the minimum age limit for appointment on the post of Forest Guard is 18 years and the maximum age limit is 30 years.

7. From a perusal of the Rule 8 it is luminescent that age relaxation of 10 years granted to the female candidates is not applicable in the case of women candidates for being appointed as a

Forest Guard/Field Man of the M.P. Rajya Van Vikas Nigam. In regard to the Circular issued by the General Administration Department dated 12-5-2017, it is putforth that the maximum age limit for direct recruitment in case of female candidates is 45 years, but the said Circular would not be applicable in the case of the appellant, as there is no amendment in the Recruitment Rules. It is submitted that after issuance of the said Circular a clarification was issued by the Jail Department on 25-5-2017 in which it is stipulated that the maximum age limit for a female candidate would be 45 years in view of the Circular dated 12-5-2017 but, no such clarification was issued either by the respondents or by the Forest Department.

**8.** The respondents have further canvassed that a general circular cannot override the Recruitment Rules. Unless the Recruitment Rules are amended the benefit of relaxation of upper age limit cannot be granted to the appellant. It is well settled law that Circulars or Executive Instructions cannot override the statutory rules. We are examining the issue that whether the appellant is entitled for relaxation of age as per Recruitment Rules or not. Apparently, the Rules do not permit relaxation of age of women candidates in the case recruitment on the post of Forest Guards. Therefore, there is no merit in the contention of the learned counsel for the appellant that the State cannot take a stand that the Circular is

contrary to the Recruitment Rules. The factual position is that the relaxation of age to female candidates is not applicable in the case of female candidates for being appointed as Forest Guard/Field Man in the Madhya Prajya Van Vikas Nigam. The judgment relied upon by the learned counsel for the appellant in **Pune Municipal Corporation and another (supra)** would not apply in the facts of the present case where the statutory rules are specific and unequivocally provides that benefit of relaxation of upper age limit cannot be granted to the recruitment to the post of Forest Guards. The Circular dated 12-5-2017 would not be applicable in the case of the appellant herein.

9. A five Judges Bench of the Apex Court in the case of **The State of Assam and another vs. Ajit Kumar Sarma and others, AIR 1965 SC 1196**, held that the Rules in nature of administrative instructions without any statutory force, cannot be said to be enforced by maintaining a writ petition under Article 226 of the Constitution of India.

10. In another decision rendered in the case of **DDA and others vs. Joginder S. Monga and others, (2004) 2 SCC 297** the Supreme Court ruled that Administrative action - Executive

Instructions, if are in conflict with statutory provisions, the later will prevail. But in absence of any conflict, both will prevail.

11. The Apex Court in the case of **Punjab Water Supply & Sewerage Board vs. Ranjodh Singh and others, (2007) 2 SCC 491** in para 19 of the judgment held that any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions.

12. In this connection, we may usefully refer to the judgment of the Supreme Court in **State of Orissa vs. Prasana Kumar Sahoo, (2007) 15 SCC 129**. Their Lordships of the Apex Court, while dealing with a similar situation of conflict between executive instructions and statutory rules, in para – 12 of the report, held as under :

“12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.”

Similar view has been taken by the High Court of Orissa at Cuttack in the case of **Gopinath Sahu vs. State of Orissa and others, AIR 2020 Ori 150**.



13. In the present case, the Circular dated 12-5-2017, which is a general circular regarding grant of age-relaxation to the candidates, would not override the specific provisions of the Rule 8(1) of the Recruitment Rules.

14. In the conspectus of the aforesaid enunciation of law, we do not perceive any illegality in the impugned order passed by the learned Single Judge, warranting any interference in the present intra-court appeal. Accordingly, the **writ appeal being sans merit, is dismissed** without any order as to costs.

**(Mohammad Rafiq)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*