

STATE OF UTTAR PRADESH AND OTHERS

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v.

SHANTI DEVI

(Civil Appeal No. 5207 of 2022)

AUGUST 08, 2022

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**[DR DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]**

Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules 1992 – r.3 – Uttar Pradesh Child Development and Nutrition (Subordinate) Service Rules 1992 – rr. 5(4), 10, 15A, 15B – Mukhya Sevika – Appointment of – Claim for age relaxation – Selections were to be made to the post of Mukhya Sevika from the post of Anganwadi Karyakatri – Eligibility for the same was High School qualified Anganwadi Karyakatrises who had completed 10 years of service and had not crossed 50 years of age – Respondent had crossed the upper age limit of 50 years – Respondent filed writ petition and sought age relaxation – Single Judge of the High Court directed the competent authority to consider the claim of the respondent for grant of an age relaxation – Appeal filed before the Division Bench was dismissed – On appeal, held: The State had uniformly applied the prescribed age limit of 50 years to all applicants – On the direction of the Single Judge of the High Court, the State had applied its mind and considered the representation for the grant of age relaxation twice – In its discretionary power, the appellant decided that the respondent was not eligible for the grant of age relaxation – The respondent cannot claim age relaxation under the Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules 1992 as a matter of right – Eligibility criteria should be uniform and there cannot be scope of arbitrary selections – A candidate cannot have a vested right to claim an exemption from a uniformly applicable criterion – A selective grant of an age relaxation will cause serious prejudice in the process of selection and render the process arbitrary – Therefore, the impugned judgment of the Division Bench of the High Court is hereby set aside – In consequence, the writ petition instituted by the respondent is dismissed.

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5207 of 2022.

From the Judgment and Order dated 13.12.2019 of the High Court of Judicature at Allahabad in Special Appeal Defective No. 570 of 2019.

B Tanmaya Agarwal, Wrick Chatterjee, Advs. for the Appellants.

The Judgment of the Court was delivered by

DR JUSTICE DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

C 2. The appeal arises from a judgment dated 13 December 2019 of a Division Bench of the High Court of Judicature at Allahabad (at Lucknow).

D 3. The issue which falls for determination is whether the Single Judge of the High Court was justified in directing the State to consider the claim of the respondent for the grant of an age relaxation in making

appointments to the post of Mukhya Sevika. The Single Judge in a judgment dated 11 April 2018 directed the State to consider the claim of the respondent for age relaxation in terms of the provisions of the Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules 1992¹. The judgment of the Single Judge was affirmed in a Special

E Appeal² preferred by the State of Uttar Pradesh.

F 4. Recruitment for the post of Mukhya Sevika is specified in The Uttar Pradesh Child Development and Nutrition (Subordinate) Service Rules 1992³. The UP Service Rules of 1992 have been framed under the proviso to Article 309 of the Constitution. The service which is

G constituted in terms of the Rules comprises of group ‘C’ posts. Rule 5 deals with the sources of recruitment. Among the posts specified in Rule 5, the following provision is made for the post of Mukhya Sevika:

“5(4) Mukhya Sevika—

H (i) Fifty percent through the Selection committee from amongst female candidates on the basis of competitive examination.

(ii) Fifty percent by direct recruitment through the Selection Committee in Accordance with Rule 15-B from amongst High

¹ “Age Relaxation Rules of 1992”

² “Special Appeal Defective No 570 of 2019”

H ³ “UP Service Rules of 1992”

School or Equivalent examination pass Anganwadi Workers who have completed Ten years continuous service as such and have not attained the age of more than fifty years on the first day of the year of recruitment.” A

5. On 9 January 2018, a circular was issued by the Directorate of Child Development Services & Nutritious Meals, UP to all District Programme Officers stating that selections were to be made to the post of Mukhya Sevika from the post of Anganwadi Karyakatri under the Directorate. Since the appointments were to take place at the district level, instructions were issued to collect details pertaining to eligible candidates from amongst High School qualified Anganwadi Karyaktris who had completed 10 years of service and had not crossed 50 years of age as on 1 July 2017. B

6. Admittedly, the respondent had crossed the upper age limit of 50 years on the relevant date. On 12 March 2018, the respondent submitted a representation to the District Program Officer praying for age relaxation on the ground of her continuous service rendered since 1987 as an Anganwadi worker. She later filed a writ petition in the High Court seeking the grant of an age relaxation in terms of the Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules 1992. Before the High Court, counsel for the state submitted that the benefit of the Age Relaxation Rules of 1992 cannot be granted to the respondent as she held a post of Anganwadi Karyakatri, established under a scheme of the state government, and was not a government employee. C D E

7. The Age Relaxation Rules of 1992, which have been framed under Article 309 of the Constitution, contain the following stipulation:

“Relaxation of the age-limits for recruitment.— F

3. Notwithstanding anything to the contrary in any rule regulating the maximum age of recruitment to a service or post in connection with the affairs of the state, relaxation in the maximum age-limit may be granted by the governor in favour of a candidate or a class or candidate.” G

Provided that in the case in which recruitment is made through the Commission, that body shall be consulted before the relaxation is granted.” H

A 8. The claim of the respondent was accepted in the judgment of the Single Judge on 11 April 2018 based on the Age Relaxation Rules of 1992. The Single Judge directed the competent authority to consider the claim of the respondent for grant of an age relaxation:

B "It is admitted case of the petitioner that she has cross the age limit prescribed for consideration of promotion on the post of Supervisor (Mukhya Sevika). It has not been disputed that for relaxation in age she approached the competent authority under Rule 1992. These fact has also not been denied by the learned Additional Chief Standing counsel. From a long span of time no proceeding for grant of promotion on the post of supervisor has been finalized. Thus, the claim of the petitioner for grant of age relaxation under the aforesaid rules appears to be justified. This Court in the aforesaid judgement referred hereinabove has clearly held that Rule of 1992 is having overriding effect upon all the rules in regard to the grant of age relaxation. In view of the above, the petitioner has made out a case for issuance of direction to the competent authority to consider her claim for grant of age relaxation in accordance with Rule of 1992"

C 9. The State of Uttar Pradesh filed a Special Appeal against the judgment dated 11 April 2018, which was dismissed by a Division Bench of the High Court on 13 December 2019. The High Court in the impugned judgment noted that the State in the Special Appeal had not taken a ground that the respondent was not a government employee. Further, it relied on a judgment dated 16 December 2017, where a Division Bench of the Allahabad High Court had directed the competent authorities to consider whether there should be an age relaxation under Rule 3 of the Age Relaxations Rules of 1992 for candidates appearing for different posts advertised by the UP Public Service Commission.

D 10. We have heard Mr Tanmaya Agarwal, counsel appearing on behalf of the appellant, the State of Uttar Pradesh, and the counsel appearing on behalf of the respondent.

E G 11. In compliance with the judgment dated 11 April 2018, the appellant in the exercise of its discretion, considered and rejected the representation of the respondent on 3 October 2018. The representation was reconsidered by the Personnel Department on 13 November 2018. It noted that the case of the respondent did not fall within the ambit of

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Rule 3 of the Age Relaxation Rules of 1992 and denied the grant of an A
age relaxation to the respondent:

“7. In this regard, case was revisited in the light of the provisions B
of Uttar Pradesh Public Service (Relaxation of Age Limit for
Recruitment) Rules, 1992 and it was found that since the post
of Anganwadi worker is not in regular Government service
post (post of Anganwadi worker is service based on honorary),
for this reason, aforesaid case is not covered by aforesaid
rules.”

12. Rule 3 of the Age Relaxation Rules of 1992 which is extracted C
above begins with a *non obstante* provision which operates
notwithstanding anything to the contrary contained in any rule regulating
the maximum age of recruitment to a service or post in connection with
the affairs of the State. The rule entrusts the Governor with a discretion
to grant a relaxation in the maximum age limit in favour of a candidate or
a class of candidates. Counsel for the appellant submits that Rule 3 of
the Age Relaxation Rules of 1992 is only applicable to candidates who
are recruited from open category by advertisement on the basis of
competitive examination.

13. Rule 5(4) of the UP Service Rules of 1992 which has been D
extracted in the earlier part of this judgment provides two sources of
recruitment to the post of Mukhya Sevika. The first source is through
selection on the basis of a competitive examination. Rule 15A provides
for the procedure for direct recruitment through a selection committee E
on the basis of a competitive examination conducted by the Commission.
Rule 10 states the maximum age limit for candidates for direct recruitment
shall be 40 years on the first day of the year of recruitment in which F
vacancies for direct recruitment are advertised by the commission. The
second source is by direct recruitment through a selection committee
from amongst Anganwadi workers who have passed High School and G
have completed 10 years of continuous service and have not attained 50
years of age on the first day of the year of recruitment. Rule 15B provides
for the constitution of the selection committee for making appointments
through direct recruitment to the post of Mukhya Sevika under Rule
5(4)(ii).

14. The court was apprised by counsel appearing on behalf of the H
appellants that under Rule 5(4)(ii) read with Rule 15B of the UP Service

- A Rules of 1992, the Department received a list of 70,000 eligible Anganwadi workers against 975 vacant posts of Mukhya Sevika. The UP Service Rules of 1992 stipulate that the upper age limit for the post of Mukhya Sevika under Rule 5(4)(ii) is 50 years as on the first day of recruitment year.
- B 15. In the present case, the State uniformly applied the prescribed age limit of 50 years to all applicants considered under Rule 5(4)(ii) read with Rule 15B of the UP Service Rules of 1992. On the direction of the Single Judge of the High Court on 11 April 2018, the State applied its mind and considered the representation for the grant of an age relaxation to the respondent twice — on 3 October 2018 and on 13 November 2018. In exercise of its discretionary power, the appellant decided that the respondent was not eligible to be granted the benefit of an age relaxation. No individual candidate can claim a vested right to age relaxation which lies in the discretion of the appointing authority. The respondent cannot claim age relaxation under the Uttar Pradesh Public Services (Relaxation of the Age limits for Recruitment) Rules 1992 as a matter of right. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections. A candidate cannot have a vested right to claim an exemption from a uniformly applicable criterion. A selective grant of an age relaxation will cause serious prejudice in the process of selection and render the process arbitrary.
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- D Services (Relaxation of the Age limits for Recruitment) Rules 1992 as a matter of right. Eligibility criteria should be uniform and there cannot be scope of arbitrary selections. A candidate cannot have a vested right to claim an exemption from a uniformly applicable criterion. A selective grant of an age relaxation will cause serious prejudice in the process of selection and render the process arbitrary.
- E 16. For the above reasons, we allow the appeal and set aside the impugned judgment of the Division Bench of the High Court of Judicature at Allahabad (at Lucknow) dated 13 December 2019 in Special Appeal Defective No 579 of 2019. In consequence, the writ petition which was instituted by the respondent shall stand dismissed.
- F 17. Pending applications, if any, stand disposed of.

Ankit Gyan
(Assisted by: Rahul Rathi, LCRA)

Appeal disposed of.