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HIRANDRA KUMAR

v.

HIGH COURT OF JUDICATURE AT ALLAHABAD & ANR.

(Writ Petition (Civil) No. 1343 of 2018)

JANUARY 29, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Uttar Pradesh Higher Judicial Service Rules, 1975 :

- C *rr. 8, 12 – Challenge to – Rule 8(1) inter alia postulates that from time to time, but not later than three years from the last recruitment, the High Court shall determine the number of officers to be taken at the recruitment – Under r.12, inter alia minimum age criterion of 35 years and maximum age limit of 45 years is stipulated – Advertisement issued for direct recruitment to the Uttar Pradesh Higher Judicial Service (UPHJS) – Petitioners applied – Debarred*
- D *on grounds of age – Constitutional validity of rr.8(1) and 12 challenged inter alia on the grounds that by operation of rr.8 and 12, candidates who have crossed the age limit prescribed between the date of the last recruitment and the present recruitment by the lapse of three years in the interregnum get debarred from appearing in the examination – And also that in view of directions of Supreme Court in **Malik Mazhar Sultan** regarding time schedule fixed for filling up vacancies in judicial services, the vacancies in HJS have to be filled up on yearly basis – Held: Constitutional validity of r.8 was upheld in **Suraj Bali Singh** by the Division Bench of the Allahabad High Court, special leave petition against which was*
- E *withdrawn – Validity of r.12 was upheld by another Division Bench of the Allahabad High Court in **Sanjay Agarwal** – Certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence – That, however, is no reason to hold that the prescribed cut-off is arbitrary – Validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application – Further, directions in **Malik Mazhar Sultan** do not create an enforceable right in any candidate for selection or to assert a right to age relaxation in violation of the rule – No merit in the challenge*
- H *to the constitutional validity of rr. 8 and 12 – Petitioners had*

sufficient opportunities in the past to appear for the HJS examinations when they were within the age limit – Having not succeeded in that, their attempt at moving Supreme Court to seek relaxation of the Rules or to challenge the Rules, is misconceived – Constitution of India – Arts.142, 233(2). A

Service Law – Selection – Age limit/Cut-off date – Challenge to – Held: Power to fix cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process – For a cut-off to be arbitrary and ultra vires, it must be fixed without any rational basis or be manifestly unreasonable to be violative of Art.14 of the Constitution – Constitution of India – Art.14. B

Rule 8(1) of the Uttar Pradesh Higher Judicial Service Rules, 1975 *inter alia* postulates that from time to time, but not later than three years from the last recruitment, the High Court shall determine the number of officers to be taken at the recruitment. Under Rule 12 of the 1975 Rules *inter alia* a minimum age criterion of 35 years and a maximum age limit of 45 years is stipulated (relaxable by three years for SC and ST candidates). An advertisement was issued for direct recruitment to the Uttar Pradesh Higher Judicial Service (UPHJS). Petitioners applied but, were debarred on grounds of age as being not compliant with the age limit prescribed in Rule 12. Writ petitions filed by the petitioners and C.A No. 1262 of 2019 filed by the appellant therein, challenging the constitutional validity of Rules 8(1) and 12 of the 1975 Rules. D

Dismissing the writ petitions and the appeal, the Court E

HELD : 1.1 The directions which have been issued in Malik Mazhar Sultan are being monitored by Supreme Court. The Allahabad High Court has been submitting progressive reports which are monitored by this Court for compliance. The purpose of the directions in Malik Mazhar Sultan was to ensure that vacancies in the district judiciary are not left unfilled over long periods of time, undermining the efficacy of the judicial system. Equally, the Court was cognizant of the fact that each High Court has its recruitment rules. It is in view of that background that the general implementation of the directions which have been issued is being continuously monitored. The directions in Malik Mazhar Sultan are intended to address the issue of vacancies in the district F G H

- A judiciary. Those directions do not override the prevailing rules which govern selections to the HJS in the States and the Union Territories nor do they create an enforceable right in any candidate for selection or to assert a right to age relaxation in violation of the rules. So long as the rules hold the field, a candidate in order to be eligible, must fulfil the requirements of age and other conditions which are prescribed by the Rules. [Paras 17, 19][619-B-C, E, F]
- B 1.2 The validity of both Rules 8 and 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975 has been addressed in decisions rendered by the Division Benches of the Allahabad High Court. The constitutional validity of Rule 8 has been upheld in Suraj Bali Singh. A Special Leave Petition against the judgment in Suraj Bali Singh was withdrawn. The validity of Rule 12 has been upheld by another Division Bench of the Allahabad High Court in Sanjay Agarwal. [Para 20][619-G-H]
- C 1.3 The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution. [Para 21][620-A-B]

1.4 The petitioners and the appellant desire that this Court should roll-back the date with reference to which attainment of the upper age limit of 48 years should be considered. Such an exercise is impermissible. Rule 12 prescribes a minimum age of 35 years and an upper age limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper

age limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. The validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules. [Para 27][624-G, H; 625-A, B]

1.5 There is no merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfillment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS. [Para 28][625-C-E]

1.6 For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial comparison of the Higher Judicial Service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres. There is no merit in the challenge to the constitutional validity of Rules 8 and 12. [Paras 29, 30][625-F, G]

Sandeep Gupta v. High Court of Judicature at Allahabad through Its Registrar General Decision of Supreme Court dated 19 July 2018 in Writ Petition (Civil) No. 594 of 2016 – distinguished.

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- A *Suraj Bali Singh v. Registrar General High Court of Judicature at Allahabad Decision of Allahabad High Court in Writ A. 20708 of 2012 ; Sanjay Agarwal v. State of UP (2007) 3 UPLBEC 2558 – approved.*
Dr Ami Lal Bhat v. State of Rajasthan and Others (1997) 6 SCC 614 : [1997] 1 Suppl. SCR 543 ; State of Bihar v. Ramjee Prasad (1990) 3 SCC 368 : [1990] 2 SCR 468 ; Union of India v. Sudheer Kumar Jaiswal (1994) 4 SCC 212 : Union of India v. Shivbachan Rai (2001) 9 SCC 356 ; Council of Scientific and Industrial Research v. Ramesh Chandra Agarwal (2009) 3 SCC 35 : [2008] 17 SCR 1378 – relied on.
- B *Delhi Transport Corporation v. DTC Mazdoor Congress (1991) Supp. 1 SCC 600 : [1990] 1 Suppl. SCR 142 ; Gauri Shankar Prasad v. Registrar General, High Court of Judicature at Allahabad Decision of Allahabad High Court in Writ A. No. 13309/2018 ; Malik Mazhar Sultan v. U.P Public Service Commission (2008) 17 SCC 703 – referred to.*
- C *Malik Mazhar Sultan v. U.P Public Service Commission (2008) 17 SCC 703 – referred to.*

Case Law Reference

E	[1990] 1 Suppl. SCR 142 (2008) 17 SCC 703	referred to referred to	Para 8 Para 9
F	[1997] 1 Suppl. SCR 543 (2007) 3 UPLBEC 2558	relied on approved	Para 12 Para 12
	[1990] 2 SCR 468 (1994) 4 SCC 212	relied on relied on	Para 22 Para 22
	(2001) 9 SCC 356 [2008] 17 SCR 1378	relied on relied on	Para 22 Para 22

G CIVIL ORIGINAL/APPELLATE JURISDICTION : Writ Petition (Civil) No. 1343 of 2018.

Under Article 32 of the Constitution of India.

WITH

C.A. No. 1262 of 2019, W.P.(C) No. 1382 of 2018.

H Vivek Singh, Swastik Dalai, Abhas Kumar, Sunny Choudhary,
Ms. Preetika Dwivedi, Advs. for the appearing parties.

The Judgment of the Court was delivered by A

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted in SLP(C) No. 15704 of 2018.

2 . This batch of cases consists of two writ petitions under Article 32 and a Special Leave Petition under Article 136 of the Constitution of India. B

3. The constitutional validity of Rules 8(1) and 12 of the Uttar Pradesh Higher Judicial Service Rules, 1975¹ is in issue in these proceedings. Rules 8 and 12 are extracted below:-

“8. Number of appointments to be made – (1) The Court, shall, from time to time, but not later than three years from the last recruitment, fix the number of officers to be taken at the recruitment keeping in view the vacancies then existing and likely to occur in the next two years.

(2) If at any selection the number of selected direct recruits available for appointment is less than the number of recruits decided by the Court to be taken from that source, the Court may increase correspondingly the number of recruits to be taken by promotion from the Nyayik Sewa;

Provided that the number of vacancies filled in as aforesaid under this sub rule shall be taken into consideration while fixing the number of vacancies to be allotted to the quota of direct recruits at the next recruitment, and the quota for direct recruits may be raised accordingly; so, however, that the percentage of direct recruits in the service does not in any case exceed 25% of strength of the service.

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12. Age – A candidate for direct recruitment must have attained the age of 35 years and must not have attained the age of 45 years on the first day of January next following the year in which the notice inviting applications is published;

Provided that the upper age limit shall be higher by three years in case of candidates belonging to Scheduled Castes and Scheduled Tribes and such other categories as may be notified by the Government from time to time.” G

¹ Rules of 1975

- A 4. On 10 May 2018, an advertisement was issued for direct recruitment to the Uttar Pradesh Higher Judicial Service². The petitioners applied for selection. The validity of Rule 8(1) was challenged before the Allahabad High Court in **Gauri Shankar Prasad v Registrar General, High Court of Judicature at Allahabad**³. By its judgment dated 31 May 2018, a Division Bench of the High Court noted that the Rules have been upheld by a co-ordinate Bench in **Suraj Bali Singh v Registrar General High Court of Judicature at Allahabad**⁴ (“Suraj Bali Singh”) decided on 8 May 2017. The Division Bench followed its binding precedent and held that the petitioner was not entitled to any relief. The High Court also observed that nothing prevented the petitioner from appearing in the recruitment process in 2012 and 2016 and hence, it was not open to him to make a grievance of being age barred in terms of the advertisement for 2018.

- B 5. In the Special Leave Petition arising from the judgment of the Allahabad High Court, an interim direction was issued on 18 June 2018, permitting the appellant to appear in the preliminary examination for the Higher Judicial Service and for the main examination. The result was directed to be kept in a sealed cover.

- C 6. Insofar as the petitioner in the proceedings under Article 32 is concerned⁵, an admit card was issued to him to appear in the preliminary examination in July 2018 and he was declared to be successful. The High Court published a list of candidates who had obtained qualifying marks but could not be allowed to proceed to the next stage. The name of the petitioner appeared in that list as a candidate who is debarred on grounds of age. The petitioner submitted a representation to the High Court. Not having found redressal, he moved these proceedings under Article 32 of the Constitution of India. The petitioner belongs to a reserved category but has crossed the extended age limit of forty eight years. This date of birth is 1 January 1971.

- D 7. The petitioner in the accompanying writ petition⁶ belongs to the general category. He too appeared for the preliminary examination, but when the results were declared, it was notified that he was not

² UPHJS

³ Writ A. No. 13309/2018

⁴ Writ A. 20708 of 2012

⁵ WP (C) 1343 of 2019

⁶ Writ Petition (C) No. 1382 of 2018 (Devi Dyal Singla v. High Court of Judicature at Allahabad through Registrar General)

compliant with the age limit prescribed in Rule 12. In the writ petitions filed by Hirandra Kumar and Devi Dyal Singla, the constitutional validity of Rules 8(1) and 12 have been called into question. In the accompanying special leave petition in which leave has been granted today, the validity of Rules 8 and 12 has been questioned.

8. The **first** limb of the submissions urged on behalf of the petitioners is formulated below:

- (i) Under Rule 8, the High Court is required to determine not later than three years from the last recruitment, the number of officers to be taken at the next recruitment keeping in view the existing and likely vacancies of the next two years;
- (ii) Rule 8 recognises that recruitment to the UPHJS should take place at intervals not exceeding three years;
- (iii) Rule 12 prescribes that a candidate for direct recruitment should have attained the age of 35 years and should not have crossed the age of 45 years on the first day of January, following the year in which the notice inviting applications is published;
- (iv) As a result of the operation of Rules 8 and 12, a candidate who has crossed the age limit prescribed between the date of the last recruitment and the present recruitment process would be debarred from appearing in the competitive examination;
- (v) Candidates who have become debarred by the lapse of three years in the interregnum would not be able to appear at the examination; and
- (vi) This constitutes a violation of the right to fair and equal treatment in matters of public employment guaranteed by Articles 14 and 16 of the Constitution of India. Reliance in this regard has been placed on the judgment of this Court in **Delhi Transport Corporation v. DTC Mazdoor Congress⁷**.

9. The **second** limb of the submissions is as follows:

- (i) By the judgment of this Court in **Malik Mazhar Sultan v U.P Public Service Commission⁸** (“Malik Mazhar Sultan”), a time schedule has been fixed for filling up vacancies in the cadre of District Judge and for posts in the judicial service of the state;

⁷ (1991) Supp. 1 SCC 600

⁸ (2008) 17 SCC 703

- A (ii) The time schedule prescribed indicates that vacancies in the HJS have to be filled up on a yearly basis;
- (iii) In the State of Uttar Pradesh, as a result of Rule 8, the recruitment process is scheduled to be carried out at intervals of not more than three years;
- B (iv) The time schedule which has been prescribed in **Malik Mazhar Sultan** (*supra*) is mandatory; and
- (v) The cut-off for determining fulfilment of the age criterion must be prescribed with reference to the year in which recruitment must take place and hence, the debarment of officers, who have crossed the upper age limit as a result of the operation of Rule 12, is contrary to the decision of this Court.

10. The **third** limb of the submissions is that the prescription of an age limit of 45 years (48 years in the case of candidates belonging to the Scheduled Caste and Scheduled Tribe category) with reference to the first day of January of the year following the year in which the notice inviting applications is published, is arbitrary and violative of Article 14 of the Constitution.

11. The **fourth** limb of the argument is that, in determining the requirement of seven years' standing at the Bar, the advertisement for recruitment has prescribed the last date fixed for the submission of application forms as the relevant date. On the other hand, in determining the age criterion of 35 years or, as the case may be, 45 years, it is the first day of January of the year following the date on which the advertisement is issued which is adopted. This, it has been submitted, results in discrimination.

F 12. Opposing this submission, Ms Preetika Dwivedi, learned counsel appearing on behalf of the High Court has urged the following submissions:

- G (i) The Rules of 1975 are legislative in character and it is only in a situation of manifest arbitrariness that a rule can be held to be ultra vires;
- (ii) A candidate has no fundamental right to assert that vacancies for direct recruitment must be filled up every year. The right of a candidate is only to be considered for selection on the basis of the Rules as they exist when the selection takes place;

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- (iii) Rule 8(1) prescribes that recruitment shall take place from time to time, but not later than three years from the date of the last recruitment. The High Court conducted its recruitment process in 2012, 2014 and 2016 and has been submitting compliance reports periodically to this Court, which is monitoring the directions given in **Malik Mazhar Sultan** (supra). The High Court has complied with Rule 8; A
- (iv) The petitioners who did not willingly participate or having participated on previous occasions have been held to be unsuccessful, cannot assert a violation of their fundamental rights. B
- (v) The decision in **Malik Mazhar Sultan** (supra) clearly specifies that the general directions which were issued by this Court to all High Courts to hold recruitment every year is subject to the Rules of each High Court. In any event, these general directions do not vest any enforceable right in a candidate; C
- (vi) The constitutional validity of Rule 8 has been upheld by the High Court in the decision in **Suraj Bali Singh** (supra) against which a special leave petition has been dismissed as withdrawn. D
- (vii) The requirement in Rule 12 that a candidate for direct recruitment must not have attained the age of 45 years (48 years for SC/ST candidates) on the first day of January of the year following the year in which the notice inviting applications is published, is reasonable; E
- (viii) The prescription of cut-off dates falls within the realm of discretion permissible to an authority which frames subordinate legislation. Similar provisions have been upheld in several decisions of this Court including **Dr Ami Lal Bhat v State of Rajasthan and Others**⁹; F
- (ix) The validity of Rule 12 has been upheld by the Allahabad High Court in **Sanjay Agarwal v State of U P**¹⁰ (“Sanjay Agarwal”). Similar rules prescribing an age criterion are to be found in the Rules framed by other states, including States of Uttarakhand, Haryana, Rajasthan and Orissa. G

13. The rival submissions fall for consideration.

⁹ (1997) 6 SCC 614

¹⁰ (2007) 3 UPLBEC 2558

- A 14. Rule 6 of the Rules of 1975 prescribes the quota for various sources of recruitment to the UPHJS. 75% of the posts have to be filled up through candidates drawn from the Uttar Pradesh Nyayik Sewa. This comprises of (i) 65% candidates selected on the basis of merit-cum-seniority and the passing of a suitability test by judicial officers of the rank of Civil Judge (Senior Division); and (ii) 10% from amongst Civil Judge (Senior Division) rank officers with not less than five years' service drawn on the basis of merit through a limited competitive examination. The balance of 25% is to be drawn by direct recruitment from the Bar.
- B 15. Rule 8(1) postulates that the High Court shall from time to time, determine the number of officers to be taken at the recruitment, keeping in view the vacancies which then exist and which are likely to occur in the next two years. Sub-rule (2) of Rule 8, however, prescribes that if the number of selected direct recruits available for appointment is less than the number decided by the Court from that source, the Court may correspondingly increase the number of recruits taken by promotion from the Nyayik Sewa.
- C 16. Under Rule 12, a minimum age criterion of 35 years and a maximum age limit of 45 years is stipulated which is relaxable by three years for Scheduled Caste and Scheduled Tribe candidates. The age limit is prescribed with reference to the first day of January of the year which follows the year in which the notice inviting applications is published.
- E 17. The submission which was urged on behalf of the petitioners is based on the decision of this Court in **Malik Mazhar Sultan** (*supra*). While formulating a time schedule for the filling up of vacancies both in the Higher Judicial Service and at all other levels in the district judiciary, this Court was cognizant of the fact that recruitment rules are in operation in all the States and Union Territories. Bearing this in mind, this Court observed:
- G “5. Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and District Courts, it is necessary to note that selections are required to be conducted by the authorities concerned as per the existing Judicial Service Rules in the respective States/Union Territories. We may, however, note that, progressively, the authorities concerned would consider, discuss and eventually may
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arrive at a consensus that the selection process be conducted by the High Court itself or by the Public Service Commission under the control and supervision of the High Court.”

The directions which have been issued in **Malik Mazhar Sultan** (supra) are being monitored by this Court. The Allahabad High Court has been submitting progressive reports which are monitored by this Court for compliance. The purpose of the directions in **Malik Mazhar Sultan** (supra) was to ensure that vacancies in the district judiciary are not left unfilled over long periods of time, undermining the efficacy of the judicial system. Equally, the Court was cognizant of the fact that each High Court has its recruitment rules. It is in view of that background that the general implementation of the directions which have been issued is being continuously monitored.

18. The real issue is as to whether the decision in **Malik Mazhar Sultan** (supra) can be construed as leading to a vested right in a candidate who applies for recruitment to the HJS to assert that they may be granted an age relaxation by virtue of the fact that between the last date of recruitment and the current, the candidate has crossed the prescribed age limit.

19. The directions in **Malik Mazhar Sultan** (supra) are intended to address the issue of vacancies in the district judiciary. Those directions do not override the prevailing rules which govern selections to the HJS in the States and the Union Territories nor do they create an enforceable right in any candidate for selection or to assert a right to age relaxation in violation of the rules. So long as the rules hold the field, a candidate in order to be eligible, must fulfil the requirements of age and other conditions which are prescribed by the Rules.

20. The submission which has been urged in these proceedings is that the prescription “of not later than three years” in Rule 8 and of the upper age limit in Rule 12 is ultra vires and arbitrary. The validity of both Rules 8 and 12 has been addressed in decisions rendered by the Division Benches of the Allahabad High Court. The constitutional validity of Rule 8 has been upheld in **Suraj Bali Singh** (supra). The same submission that has been urged before this Court was considered in that decision by the Division Bench.

A Special Leave Petition against the judgment in **Suraj Bali Singh** (supra) was withdrawn on 4 August 2017. The validity of Rule 12 has been upheld by another Division Bench of the Allahabad High Court in **Sanjay Agarwal** (supra).

- A 21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.
- B 22. Several decisions of this Court have dealt with the issue. In **Dr Ami Lal Bhat v. State of Rajasthan**¹¹, a two judge Bench of this Court dealt with the provisions contained in the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rule 11(1) prescribed that a candidate for direct recruitment should not have attained the age of 35 years on the first day of January following the last date fixed for the receipt of applications. Rejecting the contention that the cut-off was arbitrary, this Court held that the fixation of a cut-off prescribing maximum or minimum age requirements for a post is in the discretion of the rule making authority. The Court held thus:
- C “5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable.”
- D The same view has been adopted in other decisions, including those in (i) **State of Bihar v Ramjee Prasad**¹² (“Ramjee Prasad”);

H ¹¹ (1997) 6 SCC 614

H ¹² (1990) 3 SCC 368

(ii) **Union of India v Sudheer Kumar Jaiswal**¹³ (“Sudheer Kumar Jaiswal”); (iii) **Union of India v Shivbachan Rai**¹⁴ (“Shivbachan Rai”) ; and (iv) **Council of Scientific and Industrial Research v Ramesh Chandra Agarwal**¹⁵ (“Ramesh Chandra Agarwal”).

23. In **Ramjee Prasad** (supra), the State issued advertisements for the post of Assistant Professors and prescribed 31 January 1988 as the last date for the receipt of applications. Applicants must have had three years of experience. Contending that applicants could not meet the prescribed requirement of experience by the date prescribed, the cut-off date was challenged as being arbitrary and ultra vires Article 14 of the Constitution. A two judge Bench of this Court upheld the cut-off date and held thus:

“8. It is obvious that in fixing the last date as January 31, 1988 the State Government had only followed the past practice and if the High Court’s attention had been invited to this fact it would perhaps have refused to interfere since its interference is based on the erroneous belief that the past practice was to fix June 30 of the relevant year as the last date for receipt of applications. Except for leaning on a past practice the High Court has not assigned any reasons for its choice of the date. **As pointed out by this Court the choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g. the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates, etc.** It is not the case of anyone that experienced candidates were not available in sufficient numbers on the cut-off date. Merely because the respondents and some others would qualify for appointment if the last date for receipt of applications is shifted from January 31, 1988 to June 30, 1988 is no reason for dubbing the earlier date as arbitrary or irrational.”

(Emphasis supplied)

24. In **Sudhir Kumar Jaiswal** (supra), the date with reference to which the age eligibility of a person desirous of sitting in the competitive examination for recruitment to the Indian Administrative Service/Indian

¹³ (1994) 4 SCC 212

¹⁴ (2001) 9 SCC 356

¹⁵ (2009) 3 SCC 35

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- A Foreign Service was fixed as 1 August of every year. The preliminary exam would normally be held annually before 1 August. Rejecting the contention that that the cut-off date is arbitrary and hence ultra vires, a two judge Bench of this Court held thus:
- B “5. As to when choice of a cut-off date can be interfered was opined by Holmes, J. in *Louisville Gas & Electric Co. v. Clell Coleman* [277 US 32 : 72 L Ed 770 (1927)] by stating that if the fixation be “very wide of any reasonable mark”, the same can be regarded arbitrary. What was observed by Holmes, J. was cited with approval by a Bench of this Court in *Union of India v. Parameswaran Match Works* [(1975) 1 SCC 305 : AIR 1974 SC 2349] (in paragraph 10) by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.
- C 6. The aforesaid decision was cited with approval in *D.G. Gouse and Co. v. State of Kerala* [(1980) 2 SCC 410 : AIR 1980 SC 271] ; so also in *State of Bihar v. Ramjee Prasad* [(1990) 3 SCC 368] ...
- D 7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void...
- E 8. ...As to why the cut-off date has not been changed despite the decision to hold preliminary examination, has been explained in paragraph 3 of the special leave petition. The sum and substance of the explanation is that preliminary examination is only a screening test and marks obtained in this examination do not count for determining the order of merit, for which purpose the marks obtained in the main examination, which is still being held after 1st August, alone are material. In view of this, it cannot be held that continuation of treating 1st August as the cut-off date, despite the Union Public Service Commission having introduced the method of preliminary examination which is held before 1st August, can

be said to be “very wide off any reasonable mark” or so capricious or whimsical as to permit judicial interference.” A

25. In **Shivbachan Rai** (supra), the Union Public Service Commission advertised for direct recruitment to the post of Assistant Director in the Central Poultry Breeding Farms and prescribed an age limit of 35 years as on 31 May 1990 with a relaxation of five years for government servants. The earlier notification did not provide a limitation on the age relaxation. The five-year stipulation was challenged as being arbitrary and ultra vires. A two judge Bench upheld the notification and held thus:

“6. ...**Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy.** It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation...” (Emphasis supplied)

26. In **Ramesh Chandra Agarwal** (supra), the Council of Scientific and Industrial Research framed a scheme for the absorption of researchers working in their laboratories and institutes following the directions of this Court. It was prescribed that eligible applicants must have 15 years of continuous research on 2 May 1997. The Director was conferred powers to relax the requirement. Contending that that the tenure of researchers is ordinarily 13 years, the prescription of 15 years was challenged as being ultra vires and arbitrary. This contention was accepted by the High Court. On appeal, a two judge Bench of this Court examined the scheme and applicable avenues to researchers. Noting that there was no ceiling of 13 years on researchers, this Court upheld the prescription of 15 years and the cut-off date. The Court held thus:

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- A “29. "State" is entitled to fix a cut-off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2-5-1997 was the date fixed as the cut-off date in terms of the Scheme. The reason assigned therefore was that this was the date when this Court directed the appellants to consider framing of a regularisation scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. As rightly contended by Mr Patwalia, by choosing 2-5-1997 as the cut-off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary.
- B 30. The High Court, however, proceeded on the basis that the cut-off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The Court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut-off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut-off date.”
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(Emphasis supplied)

- G 27. These judgments provide a clear answer to the challenge. The petitioners and the appellant desire that this Court should roll-back the date with reference to which attainment of the upper age limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age limit is prescribed with reference to the first day of January of the year following the year in which the H notice inviting applications is published. If the relevant date were to be

rolled back, as desired by the petitioners, to an anterior point in time, it is true that some candidates who have crossed the upper age limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are advertizing to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.

28. We do not find any merit in the grievance of discrimination. For the purpose of determining whether a member of the Bar has fulfilled the requirement of seven years' practice, the cut-off date is the last date for the submission of the applications. For the fulfillment of the age criterion, the cut-off date which is prescribed is the first day of January following the year in which a notice inviting applications is being published. Both the above cut-off dates are with reference to distinct requirements. The seven year practice requirement is referable to the provisions of Article 233(2) of the Constitution. The prescription of an age limit of 45 years, or as the case may be, of 48 years for reserved category candidates, is in pursuance of the discretion vested in the appointing authority to prescribe an age criterion for recruitment to the HJS.

29. For the same reason, no case of discrimination or arbitrariness can be made out on the basis of a facial comparison of the Higher Judicial Service Rules, with the Rules governing Nyayik Sewa. Both sets of rules cater to different cadres. A case of discrimination cannot be made out on the basis of a comparison of two sets of rules which govern different cadres.

30. For the above reasons, we hold that there is no merit in the challenge to the constitutional validity of Rules 8 and 12. We concur with the reasoning of the High Court in upholding Rules 8 and 12 in the judgments noted earlier.

31. In the alternative, it has been urged on behalf of the petitioners that since they have been granted permission to appear at the examinations in pursuance of the interim directions that were issued during the pendency of these proceedings, the Court may exercise its jurisdiction under Article 142 of the Constitution of India to direct that the results be declared.

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- A 32. We are unable to accede to that request. For one thing, there would be other candidates who have not approached this Court and who would have been in the same position of not meeting the age criterion. Moreover, allowing a group of candidates to breach the age criterion by taking recourse to the power under Article 142 of the Constitution of India would, in our view not be appropriate inviting, as it does, a breach of the governing Rules for the UP Higher Judicial Service.
- B 33. We find that the order of this Court in **Sandeep Gupta v. High Court of Judicature at Allahabad through Its Registrar General¹⁶**, dated on 19 July 2018 is distinguishable. While taking recourse to the power vested in this Court under Article 142 of the Constitution of India, a two Judge Bench of this Court had observed that the order was passed in the peculiar facts and circumstances and shall not be treated as a precedent. Moreover, in that case, the results had already been declared which was a consideration which weighed with the Court in taking recourse to the power under Article 142.
- C 34. In the facts and circumstances of the present batch of cases, we see no reason or justification to interfere. The petitioners had sufficient opportunities in the past to appear for the HJS examinations at a time when they were within the age limit. Having not succeeded in that, their attempt at moving this Court to seek a relaxation of the Rules or through a challenge to the Rules, is misconceived.
- D 35. For the above reasons, we find no merit in the writ petitions or in the appeal. The writ petitions as well as the civil appeal shall accordingly, stand dismissed. However, there shall be no order as to costs.

Nidhi Jain

Writ petitions and appeal are dismissed.

¹⁶ Writ Petition (Civil) No. 594/2016