

(8) In view of above discussion, the petition is allowed to the extent that the proceedings pending in criminal complaint No. 214 of 16th August, 1994 titled S. N. Jain v. R. C. Goenka and another pending in the Court of Shri Shekhar Dhawan, Chief Judicial Magistrate, Chandigarh shall remain stayed during the pendency of the proceedings in the suit filed by the respondent against the petitioner in the Civil Court at Chandigarh. There shall be no order as to costs.

J.S.T.

Before Hon'ble R. S. Mongia & K. K. Srivastava, JJ.

KULDIP SINGH & OTHERS.—Petitioners.

versus

STATE OF HARYANA & ANOTHER.—Respondents.

C.W.P. No. 10787 of 1995

28th August, 1995

Constitution of India, 1950—Arts. 14, 16 & 320—Haryana Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1970—Rls. 8 & 22—Haryana Government Memo No. 3/1/90/CS. III dated 5th September, 1990—Selection to the posts of temporary Assistant Engineers (Civil) in Haryana Irrigation Department—Government relaxing upper age limit of 5 years for in-service candidates for recruitment to the said posts by circular dated 5th September, 1990—Such relaxation granted retrospectively from the last date of receipt of application forms for the recruitment to the said posts in the Irrigation Department, however, such relaxation not given to the candidates serving in any other department though having requisite qualifications—Haryana Public Service Commission not agreeing to the age relaxation for in-service candidates—Refusal of the Commission to issue corrigendum in view of the age relaxation granted by the Government is unjustified—Question of retrospective application of the decision of the Government to relax rules does not arise because the proposed corrigendum would have fixed fresh date for receiving applications—Words and Phrases “Suitability and Eligibility” defined and distinguished—Government restricting relaxation to Irrigation Department alone is not warranted—In-service candidates from all Government Departments, if eligible, stand on the same footing—Directions issued to the Commission to issue a corrigendum and reinstate selection process—Commission is held not justified in refusing to abide by the decision of the State Government regarding terms and conditions of eligibility and qualification for recruitment to the posts.

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Held, that the nature of advice of the State Public Service Commission as envisaged under Article 320(3) of the Constitution of India is only directory, the failure of the State Government to consult the respondent-Commission before deciding to relax the age limit for in-service candidates would not render the same invalid and illegal. The respondent-Commission has no justification in law to refuse to issue a Corrigendum after the relaxation in the age limit was allowed by the State Government to in-service candidates.

(Para 23)

Further held, that so far as the relaxation of age for in-service candidates is concerned, the same has to be applied and considered in respect of candidates who had applied earlier or would apply in pursuance of issuance of a Corrigendum by the respondent-Commission. The effect of issuance of such a Corrigendum would be to bring the applications of such candidates who had applied prior to the issuance of the Corrigendum and after the advertisement had been published, within the date of receiving application under the Corrigendum. In that view, the question of retrospective application of the relaxation of age by the respondent-Government qua the petitioner will not be there.

(Para 24)

Further held, that the settled view of law, thus, is that the eligibility of a candidate is to be seen and judged on the last date of the receipt of the application forms mentioned in the Advertisement. In the instant case, if the Corrigendum is issued by the respondent-commission as asked for by the State Government, then the last date of inviting the applications under the Corrigendum would be the date for judging the eligibility of the petitioners as well whose applications would be deemed to be under the Corrigendum so issued. The respondent-Commission in that case can have no legitimate grievance.

(Para 25)

Further held, that the criteria of age limit fixed for recruitment to a particular post is a condition of eligibility of a candidate whose suitability is to be considered by the respondent-Commission. If a particular candidate does not satisfy the condition of eligibility qua age, the question of consideration of his suitability for the post will not arise as there would be no occasion for the Commission to judge the suitability of such a candidate at the written examination and/or the personality test. Therefore, the condition regarding the age is an essential criteria of the candidate to seek admission to the recruitment test, whether written or oral. In Corpus Juris Secundum, Volume XXIX, the word 'eligibility' has been held to refer to the qualification to hold the office rather than the qualification to be elected to the office ; and in this sense, has been defined as the capacity of holding, as well as that of being elected to an office. In the said Corpus Juris Secundum, the word

'eligible' which has been derived from the latin word "eligere", conveys the idea primarily involved being that of chosen or selecting and has been defined as meaning capable of being chosen or elected ; fit to be chosen or proper to be chosen or legally qualified. Under some circumstances, the term 'eligible' has been held equivalent to or synonymous with, entitled "and qualified" ; and under other circumstances it has been distinguished from "necessary" and "qualified". So far as the word 'suitable' is concerned, it has been explained in the Corpus Juris Secundum, Volume LXXXIII meaning, 'it is said to have reference to the use and purpose of the thing spoken of, and that in order for a thing to be "suitable", as that term is commonly understood, it must be fit and appropriate for the end to which it is to be devoted. It is further defined as meaning apt, fit, fitting ; proper. The word "suitableness" has been defined in the Corpus Juris Secundum, Volume LXXXIII as the state or quality of being suitable in any sense. It is, thus, obvious that the suitability is to be seen for the end result, i.e., whether the candidate is suitable for appointment to the advertised posts looking to his qualification and personality etc., whereas eligibility as a condition precedent before such a candidate is put to the test of suitability. We, therefore, find that the criteria of age is a condition of eligibility and not suitability and in that view, it is for the respondent-Government to fix the criteria of eligibility including age limit.

(Para 26)

Further held, that the issuance of a Corrigendum in pursuance of the decision of the respondent-State Government on age relaxation for in-service candidates, the right of other candidates who had already applied under the Advertisement and some of whom, as averred in the written statement of the respondent-Commission, had been interviewed for the post, would not be adversely affected because they would be considered along with the in-service candidates who would be permitted to apply under the Corrigendum or whose applications would be deemed to have been moved as per Corrigendum and then after all the candidates have been interviewed, the final list of selected candidates will be prepared. There is, thus, no substance in the contention of the respondent-Commission that the selection process has commenced and some of the candidates have already been interviewed. As regards the commencement of the selection process, we would like to observe that the issuance of a Corrigendum would have the effect of the selection process commencing *qua* the candidates applying thereunder. In that view, there is no force in the contention of the respondent-Commission that the respondent-Government cannot change the eligibility criteria after the commencement of the selection process.

(Para 27)

Further held, that the respondent-Commission has to issue a Corrigendum for the advertised posts for enabling the in service candidates after relaxation in age limit by five years, it would be just and proper to permit all such in-service candidates in other

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Departments in the State of Haryana who possess the requisite qualifications, to apply under the Corrigendum apart from the in-service candidates of the Irrigation Department of Haryana Government. The learned counsel took the stand that the action of the State Government discriminated the in-service employees of other Departments under the State of Haryana by granting relaxation of age only to the in-service candidates of Irrigation Department. We do not propose to enter into this aspect of the matter as no such in-service candidates of other Department is before us.

(Paras 27 & 32)

Further held, that where the rule empowers the State Government to issue order removing hardship in any particular case relating to a person, it certainly empowers the State Government to act in respect of all similarly situated persons in the same Department and consequently the decision of the State Government regarding the relaxation of age cannot be considered to be unfair, unjust and contrary to rule 22. The decision of the State Government as communicated,—*vide* letter Annexure P-4 is perfectly legal, justified and in accordance with the provisions of rule 22 of the rules and the stand of the respondent-Commission has no substance.

(Para 30)

Further held, that the Government has a right to amend the rule or relax the eligibility condition including the age limit, before the selection process commences. It is also not disputed that the selection process commences after issuance of the advertisement regarding the posts at the behest of the Government. However, in the instant case, the Commission had been requested to issue corrigendum by relaxing the age limit under rule 22 of the rules and the main consideration which weighed with the Government was that it would allow a chance for betterment of the career of in-service candidates who possessed the requisite qualifications for the Class-I post and who were debarred because of the age bar. The stand of the Commission, is not just and proper because the Commission can without adversely affecting the interests of the candidates who had already applied, issue a Corrigendum in pursuance of the request,—*vide* letter dated 16th November, 1994 and that would enable the petitioners as well as other in-service candidates of the Irrigation Department to apply for the advertised posts.

(Para 31)

R. K. Malik, Advocate, *for the Petitioner.*

Deepak Sibal, D.A.G., Hry. *for Respondent No. 1.*

Rajiv Atma Ram, Advocate, *for Respondent No. 2.*

JUDGMENT

K. K. Srivastava, J.

(1) These two civil writ petitions (CWP No. 10787 and CWP 12036, both of 1995) were disposed of by us on August 28, 1995,—*vide* following order :—

“CWP No. 10787 of 1995.

1. The respondent-commission shall issue corrigendum in the Newspaper to the advertisement dated 14th January, 1995 by which applications for filling 36 posts of Assistant Engineers (Civil) in the Irrigation Department (Haryana) was issued. to invite applications only from in-service candidates from all departments of the Haryana Government, whose age, in case of general category candidate did not exceed 40 years (45 years in case of Scheduled Caste Candidate) as on 14th February, 1995 which was the last date for submission of the application as per advertisement dated 14th January, 1995.
2. Those in-service candidates who might have applied in response to the earlier advertisement dated 14th January, 1995 and are within the age limit as mentioned above, need not apply again but their applications would be considered as per the corrigendum that would be issued in accordance with these directions.
3. The result of the candidates who might have been interviewed in response to the advertisement dated 14th January, 1995 would be finalised along with the rest of the candidates who are yet to be interviewed in response to the advertisement dated 14th January, 1995 and those who would be interviewed after the issuance of the corrigendum as per these directions. It is clarified that the candidates who have already been interviewed are not required to be interviewed afresh.

CWP No. 12036 of 1995.

1. The respondent-commission shall issue a corrigendum as Advertisement No. 5 through which 22 posts of Assistant Executive Engineer (Civil, Mechanical and Electrical)

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in P.W.D. (Irrigation Branch) were advertised for which the last date of submission of applications was 24th February, 1994 (4th March, 1994) in order to invite applications from in-service candidates from Haryana Irrigation Department whose date of birth is 1st August, 1953 or thereafter.

2. Those in-service candidates of Irrigation Department who might have applied in response to the earlier advertisement but were not within the age limit as mentioned above, need not apply again but their applications would be considered as per the Corrigendum that would be issued in accordance with these directions.
3. It will be open to the Haryana Public Service Commission to go ahead with competitive examination slated to be held from 3rd September, 1995 onwards, but, if according to the Commission it will be expedient to postpone the examination, it may do so. In case the competitive examination is held of the candidates who had already applied from 3rd September, 1995 onwards then another competitive examination be held for the applicants whose applications would be considered in response to the corrigendum that would be issued in accordance with the directions and in case the examination is postponed then the date should be fixed in such a manner so as to enable the applicants applying in response to the corrigendum also to appear in the competitive test. In either of the cases the merit list will be prepared after all the candidates, have taken the competitive test.

A copy of this order, attested by the Court Secretary, be given to Mr. Rajiv Atma Ram, Advocate for the Commission, for compliance."

(2) We had reserved the reasons for the aforesaid order. We now proceed to record reasons for our aforesaid order.

(3) In Civil Writ Petition No. 10787 of 1995, the petitioners Kuldip Singh and others are in-service candidates for thirty-six posts of temporary Assistant Engineers (Civil) which were advertised by respondent No. 2 Haryana Public Service

Commission (for short, the Commission),—*vide* Advertisement appearing in the daily newspaper “The Tribune”, dated January 14, 1995. A true copy of the relevant extract of the Advertisement has been annexed as Annexure P1. The said Advertisement prescribes the age limit as 20—35 years for general candidates. Under rule 8 of Haryana Service of Engineers, Class II, P.W.D. (Irrigation Branch) Rules, 1970 (hereinafter referred to as ‘the Rules’). The age limit has been prescribed as twenty to twenty-seven years for the general candidates. The State Government raised upper age limit to thirty-five years,—*vide* letter, dated September, 5, 1990 issued by the Chief Secretary to Government, Haryana, copy of which is Annexure P3. The upper age limit was raised subject to the conditions as under :—

- “(a) The existing instructions in regard to the relaxation of 5 years in the upper age limit in respect of Scheduled Castes, Scheduled Tribes and Backward Classes for appointment to gazetted as well as non-gazetted service or posts will continue to be in force.
- (b) The relaxation in upper age limit for recruitment in respect of ex-servicemen as contained in Haryana Government circular letter No. 4710-5GS-70/18998, dated the 15th July, 1970, will continue as heretofore. In other words, the candidates of this category may be recruited upto the age of 35 years plus continuous military service added by three years : and
- (c) If in certain service rules, the upper age limit higher than 35 years is permissible on account of special grounds or in certain circumstances those provisions shall continue to remain in force.”

(4) The State Government decided to raise the upper age limit in order to mitigate the hardships of educated un-employed youths. It may be relevant to mention that after the Advertisement,—*vide* Annexure P1 for the said thirty-six posts had been published in the daily newspaper, “The Tribune”, dated January 14, 1995, the Financial Commissioner and Secretary to Government Haryana, Irrigation and Power Department,—*vide* letter dated March 30, 1995, intimated to the Secretary of the Commission and others, the decision of the Government to give five years relaxation in the upper age limit to those officials who were in service in the Irrigation Department for applying to the post of HSE Class II in Irrigation

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Department. The said decision was taken as per provisions in rule 8(c) of the Rules, 1970 which reads as under :—

“8. DIRECT APPOINTMENTS :

- (1) A candidate for direct appointment shall not be less than twenty years and more than twenty-seven years of age on or before the first day of August next preceding the last date of submission of applications to the Commission :—

Provided that :—

(a)

(b)

- (c) in case of candidates possessing the requisite qualifications who are already in the service of the State Government, the upper age limit shall be thirty-five years, and they shall be entitled to avail of only three chances in the examination held under this rule in addition to any chance availed of by them upto the age of twenty-seven years.”

A copy of the letter has been placed on record and is Annexure P4. The petitioners Kuldip Singh and others who were working in the Irrigation Department applied for the said thirty-six posts of temporary Assistant Engineers (Civil) as per Advertisement, Annexure P1. The respondent No. 2—Commission, however, rejected the applications of the petitioners on the ground that they were overage having crossed thirty-five years, the maximum age limit. The Secretary of the Commission did not agree to the said decision of the State Government and in his letter, dated July 10, 1995, Copy Annexure P5, addressed to the said Financial Commissioner and Secretary with reference to his letter, dated March 30, 1995 intimated the stand of the Commission that maximum age relaxation under rule 8(c) of the Rules, 1970 can only be given up to thirty-five years which has already been provided in the Advertisement, dated January 14, 1995. It was also mentioned in the reply letter that at this stage when the posts had already been advertised as per requisition of the State Government received,—vide letter, dated September 26, 1994, granting of further relaxation of five years in the upper

age limit to only those officials who were in service of the Irrigation Department, instead of all the candidates of other various Departments possessing the requisite qualifications and were already in the service of the State Government, was not justified. After receiving the reply from the Secretary of the Commission, the Financial Commissioner and Secretary to Government Haryana, Irrigation and Power Department, again sent a letter, dated July 20, 1995 to the Secretary of the Commission intimating that as per provisions contained in rule 8(c) of the Rules, 1970 read with Instructions issued by the Chief Secretary to Government Haryana in this behalf,—*vide* Memo No. 3/1/90/CS. III, dated September 5, 1990 the Government had taken decision to give the five years relaxation in the upper age limit to those officials who were already in the service of the Haryana State Government for applying for the posts of HSF Class II in the Irrigation Department. The Secretary was requested to reconsider the matter and take up the cases of all such candidates who had applied within their age of forty years. A copy of this letter has been placed on record and is Annexure P6. The Commission, however, did not agree for further relaxation of five years in the upper age limit for in-service employees of the Irrigation Department to the advertised posts and consequently, the applications of the petitioners for appointment to the said posts were rejected. These petitioners have challenged the said action of respondent No. 2.

(5) The contention of the petitioners is that respondent No. 2-Commission cannot refuse to abide by the decision of the State Government regarding relaxation of five years in the maximum age for the aforesaid posts and the action of the respondent is violative of Articles 14 and 16 of the Constitution of India. The respondent No. 2-Commission is an agent of respondent No. 1, the State Government, to recruit suitable candidates as per eligibility conditions prescribed by the State Government.

(6) Notice of Motion was issued to the respondents.

(7) Respondent No. 1 filed a separate written statement averring *inter alia* that the State had already conveyed its decision to the Commission regarding the five years relaxation in the upper age limit to the in-service candidates of the Irrigation Department for applying to the advertised posts and requested the Commission to issue the Corrigendum to that effect. It was contended by the respondent No. 1 that the Commission was duly intimated the decision of the State Government regarding the said relaxation of five years in age for in-service candidates. Even after receiving the view of

the Commission the stand of respondent No. 1 is that it is competent and empowered to relax any of the provisions under rule 21 of the Rules, 1970. The Government has taken into consideration the betterment of the career of in-service candidates who possessed the requisite qualifications for the advertised posts but had crossed the age of thirty-five years. The Government has also taken into account that the in-service candidates have sufficient experience to their credit. These in-service candidates had acquired higher qualifications and experience with the permission of the Government and had also signed a bond to serve the Department for five years after acquisition of higher qualifications of degree in Engineering. The Commission will also have sufficient number of candidates having long experience of Government service to their credit for making selection for the advertised posts. It has also been pointed out that earlier the Commission had agreed to accept the upper age limit of thirty-five years though rule 8(c) of the Rules, 1970 provides the maximum age of twenty-seven years. Respondent No. 1 prayed that respondent No. 2-Commission may be directed to issue the Corrigendum and allow the in-service candidates the benefit of relaxation of five years in upper age limit for recruitment to the said advertised posts.

(8) Respondent No. 2-Commission filed a separate written statement contending, *inter alia*, that the Advertisement for the said posts was published in the daily newspaper "The Tribune", dated January 14, 1995 wherein the last date for receiving the Application Forms was February 14/March 1, 1995. A large number of candidates applied in pursuance of the said Advertisement. Respondent No. 2 contended that it is now well settled that eligibility has to be seen on the last date of submission of Application Forms. Respondent No. 1, the State Government, issued a letter dated March 30, 1995 granting relaxation of age up to forty years. The relaxation cannot be made to operate with retrospective effect as it would negate the concept of eligibility as on the last date of receipt of Application Forms. The petitioners were evidently ineligible for being considered for the advertised posts in view of the age limit prescribed in the Advertisement and, therefore, they cannot now be permitted to be considered for appointment by relaxation in age subsequent to the last date of the receipt of the Application Forms as per Advertisement. Respondent No. 2 pointed out that once the selection process had been initiated by issuance of Advertisement, the Government is not competent to make changes in the rules. The further contention was that it is well settled that an executive order can

have only prospective operation. The executive order of respondent No. 1, dated March 30, 1995 granting relaxation in age can only have prospective operation. The contention of respondent No. 2 is that the petitioners can claim relaxation in age up to forty years on the basis of order, dated March 30, 1995 only with regard to vacancies arising thereafter. Respondent No. 2 submitted that the relaxation in age,—vide Annexure P4 was given only to in-service candidates in the Irrigation Department and the same was not given to the officials serving in any other department, though having requisite qualifications. Even the factual position regarding the posts lying vacant since 1981 was denied by respondent No. 2. According to the contention of the respondent-Commission, as per Article 320 of the Constitution of India, it is mandatory that the Commission be consulted on all matters relating to recruitment to Civil Services/Civil Posts and for principles to be followed in making appointments thereto and on all matters relating to suitability of candidates for appointment to the Civil Services/Civil Posts. The Commission, it is alleged, was not consulted before issuance of the letter, Annexure P4, intimating the decision regarding relaxation of five years in the maximum age for in-service candidates of Irrigation Department.

(9) In the other Civil Writ Petition No. 12036 of 1995 (*Ashwani Narula and others v. The State of Haryana and another*), the petitioners have challenged the decision of the Haryana Public Service Commission in not agreeing to the age relaxation for in-service candidates to the HSE Class I posts which were advertised,—vide Annexure P1. The petitioners have prayed for issuance of a direction to the respondent-Commission to issue Corrigendum so that all such in-service candidates who have been granted age relaxation by the State Government—respondent No. 1 could be considered for the aforesaid posts. The relevant facts leading to the filing of this Writ Petition may be, briefly, recapitulated.

(10) The respondent No. 2-Commission advertised twenty-two posts,—vide Advertisement No. 5 in the newspaper, dated January 29, 1994. The last date for receiving the Application Forms was February 24/March 4, 1994. The eligibility regarding age was to be considered on August 1, 1993. The eligibility regarding age was between twenty—thirty-five years on the said date. The age was relaxable up to forty years for Scheduled Castes/Tribes of all States and Backward Classes of Haryana alone. Relaxation in upper age limit was also admissible to those candidates who had applied in response to the Advertisement issued in May, 1985 in the light of the order, dated March 16, 1993 of the Hon'ble Supreme Court of India

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contained in Special Leave Petition No. 3465—69 of 1988 (*Parveen Jindal and others v. State of Haryana and others*). The relaxation in the age limit for other categories of candidates was made which is not relevant for the purpose of deciding this case. The petitioners No. 1 and 4, namely, Ashwani Narula, Sub Divisional Officer Vigilance, Canal Colony, Yamunanagar and Dharambir Ratwal, Junior Engineer, Construction Division No. 6, Canal Colony, Hissar, had applied for the aforesaid posts.

(11) The respondent No. 2-Commission issued a Corrigendum and twelve more posts in the Public Works Department (Public Health) were included for recruitment in the aforesaid Advertisement No. 5. The last date for submission of the Application Forms was extended up to September 26, 1994 and the eligibility with regard to the age was to be seen on August 1, 1994. The respondent-Commission, it is averred in the petition, rejected the candidature of petitioners 1 and 4 on the ground that they had become overage as on August 1, 1993. The petitioners have annexed a true copy of the rejection letter, dated March 10, 1995 issued in respect of petitioner No. 4 Shri Dharambir and the same is Annexure P5. It has also been averred by the petitioners that the candidature of petitioner No. 1-Ashwani Narula was also rejected on the same basis as that of petitioner No. 4-Dharambir. The contention of the petitioners is that after the posts were advertised,—*vide* Annexure P1, the petitioner No. 1 along with other candidates had filed a Civil Writ Petition, being C.W.P. No. 2617 of 1994 (*S. P. Goyal and others v. State of Haryana and others*) which came up for hearing before a Division Bench of this Court on April 18, 1994 and the same was disposed of with the observations that if the petitioners would apply to the competent authority for relaxation of age, the same would be considered and appropriate orders would be passed. Consequently, a Representation was made to the Financial Commissioner and Secretary to Government Haryana, Irrigation Department, Chandigarh, on May 27, 1994 regarding the age relaxation for Departmental Officers for direct recruitment to HSE Class-I Service through competitive examination by the Haryana Public Service Commission. The respondent-State Government took a decision that relaxation in age limit be granted only to those employee working in the Irrigation Department, whose Date of Birth was August 1, 1953 or thereafter. This decision of the State Government was duly communicated to the Secretary, Haryana Public Service Commission,—*vide* letter dated November 16, 1994, a true copy of which has been annexed as Annexure P4 with the Writ Petition. The Secretary, Power and

Irrigation Department, of the respondent-State requested the Secretary of the Commission that relaxation in age limit may be granted in accordance with the aforesaid decision of the Government. As mentioned in the earlier part of this judgment, the respondent-Commission did not agree with the decision of the State Government regarding the relaxation of age to in-service candidates and the candidature of petitioner No. 4 was rejected on the ground of being overage,—*vide* letter, dated March 10, 1995, Annexure P5.

(12) The petitioners have contended, *inter alia*, that the respondent-Commission did not take any steps for issuing a Corrigendum and had issued the Time Table regarding holding of the written examination for the advertised posts from September 3, 1995 to September 5, 1995 which was published in the daily newspaper "The Tribune", dated July 31, 1995, a true copy of which has been annexed as Annexure P6. The action of the respondent-Commission in not issuing Corrigendum despite a request made by the respondent-State,—*vide* Annexure P4 is illegal, unjust, unfair, unconstitutional and arbitrary and the same was liable to be quashed. The posts which had been advertised were lying vacant since the year 1979 and due to one reason or the other the respondents could not advertise the posts resulting in the in-service candidates becoming overage. The State Government considered the hardship caused to such in-service candidates and took the decision mentioned above,—*vide* Annexure P4. The respondent-Commission cannot ignore the decision of the State Government because it is the prerogative of the State Government to prescribe the qualifications and lay down the terms and conditions of eligibility of candidates including the age limit. A reference has been made to a Division Bench judgment of this Court reported in *Dr. Surinder Nath Joshi v. The Punjab Public Service Commission and others* (1), wherein this Court held that the State Public Service Commission had no jurisdiction not to comply with the decision of the Government for relaxation in age and direction was issued to the respondents to re-advertise the post. It is averred in the petition that the case of the petitioners was squarely covered by the aforesaid judgment of the Division Bench of this Court.

(13) It was also contended that some similarly situated employees had approached the Hon'ble Supreme Court with the same grievance and those petitioners who were even older in age in comparison to

the age of the petitioners, were being considered because in their case the Hon'ble Supreme Court granted age relaxation. Some persons who were being considered for the said posts were also named in the Writ Petition as under :

(1) Satnam Singh. S.D.O. 10th April, 1952

(2) Ganga Ram Goyal 21st May, 1953

DATE OF BIRTH

(14) In a nutshell, the sum and substance of the submissions made on behalf of the petitioners is that the action of the respondent-Commission is violative of Articles 14 and 16 of the Constitution of India and grave and manifest injustice has been done to them.

(15) Notice of Motion was issued to the respondents. The respondent No. 1-State filed a short reply of Shri R. S. Sachdeva, Officer on Special Duty to Financial Commissioner and Secretary to Government Haryana, Irrigation and Power Department, supporting substantially the case of the petitioners inasmuch as the relaxation in age for in-service candidates was concerned. Respondent No. 1-State averred in the reply that it had already conveyed its decision to the respondent-Commission,—*vide* letter dated November 16, 1994 (Annexure P4) that relaxation in age limit be granted to those employees who were in the service of Irrigation Department and their Date of Birth was August 1, 1953 or thereafter and the Commission was requested to act accordingly for relaxation in age.

(16) The respondent-State further averred that it is competent and empowered under rule 22 to relax any of the provisions of PSE P.W.D. (Irrigation Branch), Class-I rules, 1964. The relaxation was allowed taking wider view in the matter and to allow a chance for betterment of their career to the in-service candidates who possessed the requisite qualifications for the post of Class-J but had crossed the upper age limit of thirty-five years. Such candidates have sufficient experience to their credit and many such officials who had acquired higher qualifications while in service with the permission of the Government and who had also signed a bond to serve the Department for five years after acquisition of higher qualifications deserved an opportunity for being considered to the said posts. Apart from it, the respondent-State contended, the respondent-Commission will have sufficient number of candidates having longer experience of Government service to their credit in the event they were allowed age relaxation of five years, which will enable the Commission to select and recommend suitable, trained and better

candidates to the Department for the senior posts of Class-I. It was also contended that the State Government is within its powers to relax the relevant rule 7(1). It has been pointed out by the respondent No. 1-State that the respondent-Commission had agreed to accept the upper age limit of thirty-five years though under the relevant rules the maximum age limit was twenty-five years.

(17) The respondent-Commission filed a separate written statement and took the plea that it is well settled that eligibility has to be seen on the last date fixed by the Advertisement in that regard or at the best on the last date fixed for receipt of the Application Forms, and for this contention, reliance was placed on the observations in *Mrs. Rakha Chaturvedi v. University of Rajasthan and others* (2) and *Dr. M. V. Nair v. Union of India and others* (3). The letter of the State Government granting relaxation in age limit, it is averred, was issued subsequent to the last date fixed for eligibility criteria/last date of submission of Application Forms. This executive order of the State Government communicated to the Commission,—vide letter, dated November 16, 1994 (Annexure P4) cannot be made operative with retrospective effect as it would negate the concept of eligibility as on the last date of the receipt of Application Forms/eligibility on the date fixed. The case of the respondent-Commission is that it is the admitted position that in accordance with the Advertisement, dated January 29, 1994/Corrigendum, the petitioners were ineligible on August 1, 1994 and/or on the last date of the receipt of Application Forms, i.e., September 26, 1994. The letter of the State Government, Annexure P4, cannot make the petitioners eligible to be considered for the advertised posts, retrospectively. Additionally, it was contended that once the selection process was initiated by issuance of Advertisement, the Government was not competent to make changes in the rules or grant relaxation. The authority cited in support of this contention is *Dr. P. K. Jaiswal v. Ms. Debi Mukherjee and others* (4). Reference was also made to the authorities reported in *Daljit Singh Narula and others v. The State of Haryana and others* (5), and *Sukhbir Singh v. The Chief Conservator of Soil, Punjab and another* (6) for the submission that the order of the Government granting relaxation in age limit can

(2) J.T. 1993 (1) S.C. 220.

(3) J.T. 1993 (1) S.C. 255.

(4) J.T. 1992 (1) S.C. 315.

(5) 1979 (1) S.L.R. 420.

(6) 1988 (1) S.L.R. 447.

only have prospective operation. The stand of the respondent-Commission further is that the respondent-State,—*vide* letter, dated November 16, 1994 granted relaxation in age limit only to those employees who were working in the Irrigation Department and the same benefit has not been given to the employees working in other Departments of the State of Haryana requisite qualifications for the posts advertised and consequently such employees of the other Departments would be discriminated and such an action of the State Government amounted to arbitrariness and is violative of Articles 14 and 16 of the Constitution of India.

(18) The Commission also took the stand that under rule 22 of Punjab Service of Engineers Class P.W.D. (Irrigation Branch) Rules, 1964, the State Government is empowered to grant relaxation in the rules only when it is satisfied that the operation of any of these rules causes undue hardship in any particular case. On the other hand, the aforesaid decision of the State Government contained in letter, Annexure P4, granting relaxation in age in general and not in case of hardship in a particular case, is clearly violative of rule 22 *ibid*. It is well settled, as per averment made by respondent No. 2 in its reply, that an executive order cannot override the statutory rules.

(19) The last contention is about the Writ Petition being filed belatedly and the same was liable to be dismissed on the ground of laches.

(20) Relating to the individual case of the petitioners, the respondent-Commission expressed ignorance of facts and consequently denied the facts regarding the Date of Birth etc. of the petitioners. Even regarding the availability of vacancies in the year 1979, the same was denied on the ground that the petitioners had not given any details. It was, however, submitted that the Commissioner could advertise the posts only after requisition was received from the Government in that regard. Regarding the consideration of candidates applying for the posts under the directions of the Hon'ble Supreme Court, it was submitted by the respondent-Commission that these candidates had applied in pursuance of 1985 Advertisement and the judgment of the Hon'ble Supreme Court would not help the case of the petitioners. The respondent-Commission contended that it is open to the Government to prescribe the qualifications and the eligibility criteria but consultation with the Commission was required in terms of Article 320 of the Constitution of India and the same cannot be said to be arbitrary and discriminatory.

The cases of the named candidates, Satnam Singh and Ganga Ram Goyal were being considered for the advertised posts only because of the directions of the Hon'ble Supreme Court in *Parveen Jindal's* case (supra), as these persons had applied in pursuance of 1985 Advertisement.

(21) In both the Writ Petitions, the points for consideration are substantially the common. In view of the rival submissions made at the bar in both the cases, the questions which crop up for consideration are whether the respondent-Commission has a right in law to refuse to abide by the decision of the State Government regarding the terms and conditions about the eligibility, qualifications etc. It may be mentioned that the decision of the State Government in both the cases was communicated to the respondent-Commission well in time so that the Commission had sufficient time to issue the Corrigendum. There can be no dispute regarding the proposition that the State Government have the prerogative of fixing the eligibility conditions including the age limit and the qualifications for appointment of candidates to the civil posts under the State. The State Public Service Commission, is a constitutional agency of the State for selecting suitable candidates for the advertised posts and to forward the list of selected candidates for appointment to the State Government.

(22) The nature of advice tendered by the State Public Service Commission to the State Government under Article 320 of the Constitution of India came up for consideration before the Hon'ble Supreme Court in *Jatinder Kumar and others v. State of Punjab and others* (7), wherein their Lordships of the apex Court held as under :—

“.....Article 320 of the Constitution enumerates the duties to be performed by the Union or the State Public Service Commissions :—

- (i) to conduct examinations for appointments to the services of the Union and the services of the State respectively;
- (ii) if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required ;

(iii) to advise on matters enumerated under clause (3) of Article 320 ; and

(iv) to advise on any matters so referred to them and any other matter which the President, or as the case may be, the Governor of the State may refer to them.

The fact that there is no provision in the Constitution which makes the acceptance of the advise tendered by the Commission, when consulted, obligatory renders the provisions of Article 320(3) only directory and not mandatory.”

(23) In some what similar circumstances, a Division Bench of this Court in *Dr. Surinder Nath Joshi's case* (supra), held that even on first principles, it was for the employer to decide about the qualifications for eligibility of a certain post to be filled in. If at a given time the Government for a *bona fide* reason, desired to effect a change in the requirements of eligibility, it was not for the Public Service Commission to propose (oppose) any such change on the ground that it would undermine their independence. In that case before the Division Bench of this Court, the Punjab Public Service Commission at the behest of the State of Punjab had advertised one post of Assistant Professor in Dentistry by means of an Advertisement dated January 21, 1983. Apart from the basic academic qualifications and the requisite experience as Senior Lecturer in Dentistry, the Advertisement stipulated that candidates must be less than forty years of age on February 23, 1983. The aforesaid post had been advertised in pursuance of the letter of Punjab Government, dated March 11, 1981 and then twice in 1982 but due to non-availability of eligible/suitable candidates the post remained un-filled. Ultimately, the post was advertised in January 1983, in response to which some applications were received including the application of the petitioner, Dr. Surinder Nath Joshi aforesaid. The Punjab Government in the meantime amended the relevant rules regarding the maximum age by a Notification, dated December 7, 1983 and as per the amended rules the maximum age limit for direct recruits was raised to forty-five years. The petitioner, Dr. Surinder Nath Joshi was admittedly above the age of forty years as per eligibility condition *qua* age in the original Advertisement published in January 1983, but he was below forty-five years of age as per amended rules. The petitioner had a grievance that despite he

being eligible *quæ* age as per amended rules, his case was not considered by the State Public Service Commission. In that case, the State Government had asked the State Public Service Commission to re-advertise the post to enable the candidates above the age of forty years and up to fortyfive years to apply for the post. The respondent-Commission, however, did not comply with the requisition made by the Government and the stand of the Punjab Public Service Commission was that the age limit of forty years had been prescribed in the relevant rules on the basis of which the post had been advertised by the respondent and the amended rules being not applicable retrospectively, 'the respondent found it inappropriate to accept the belated revised proposal of respondent No. 2'. In the facts and circumstances of that case, this Court held that if at a given time the Government for a *bona fide* reason, desired to effect a change in the requirements of eligibility, it was not for the Public Service Commission to propose (oppose) any such change on the ground that it would undermine their independence. It was also observed that there were no allegations of *mala fide* on the part of the respondent-Government in amending the rules and requesting the State Public Service Commission to re-advertise the post. The State Public Service Commission, it was held, was not justified in not complying with the requisition of the State Government. As noticed earlier in this case also the stand of the respondent-Commission is almost similar. Since the nature of advice of the State Public Service Commission as envisaged under Article 320(3) of the Constitution of India is only directory, the failure of the State Government to consult the respondent-Commission before deciding to relax the age limit for in-service candidates, would not render the same invalid and illegal. The respondent-Commission, in the light of the authorities cited above, has no justification in law to refuse to issue a Corrigendum after the relaxation in the age limit was allowed by the State Government to in-service candidates.

(24) So far as the relaxation of age for in-service candidates is concerned the same has to be applied and considered in respect of candidates who had applied earlier or would apply in pursuance of issuance of a Corrigendum by the respondent-Commission. The effect of issuance of such a Corrigendum would be to bring the applications of such candidates who had applied prior to the issuance of the Corrigendum and after the advertisement had been published, within the date of receiving applications under the Corrigendum. In that view, the question of retrospective application of the relaxation of age by the respondent-Government *quæ* the petitioners will

not be there. There is no dispute about the proposition of law as mentioned in the written statement of the respondent-Commission regarding the executive orders and amendment of rules being prospective unless and until the amended rule is specifically made operative retrospectively. (See in this context cases reported in *T. C. Sreedharan Pillai and others v. The State of Kerala and others* (8), *Daljit Singh Narula and others v. The State of Haryana and others* (9), *M. M. C. Fernandes, Section Superintendent Mormugao Port Trust v. The Mormugao Post Trust and others* (10), and *Sukhbir Singh v. The Chief Conservator of Soil, Punjab and another* (11).

(25) The contention of the learned counsel for the respondent-Commission further is that the eligibility of a candidate is to be seen on a date specifically mentioned in the Advertisement or in its absence on the last date of receipt of the Application Forms from the candidates in response to that Advertisement. The apex Court in *Mrs. Rekha Chaturvedi's case* (supra) held that in the absence of fixed date indicated in the Advertisement/Notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for scrutiny of the qualifications will be the last date for making the application. Similar view was taken in *Dr. M. V. Nair's case* (supra). The settled view of law, thus, is that the eligibility of a candidate is to be seen and judged on the last date of the receipt of the Application Forms mentioned in the Advertisement. In the instant case, if the Corrigendum is issued by the respondent-Commission as asked for by the State Government, then the last date of inviting the applications under the Corrigendum would be the date for judging the eligibility of the petitioners as well whose applications would be deemed to be under the Corrigendum so issued. The respondent-Commission in that case can have no legitimate grievance.

(26) The learned counsel for the respondent-Commission submitted further that the criteria of age for recruitment to the civil posts is, in fact, suitability of a candidate and is not a condition of his eligibility. In view of this argument, it was submitted that the respondent-Commission is the sole Authority under the Constitution

(8) 1973 (1) S.L.R. 478.

(9) 1979 (1) S.L.R. 420.

(10) 1985 (2) S.L.J. 439.

(11) 1988 (1) S.L.R. 447.

to judge the suitability of a candidate for appointment to the posts advertised. We are afraid, this submission is not legally correct. The criteria of age limit fixed for recruitment to a particular post is a condition of eligibility of a candidate whose suitability is to be considered by the respondent-Commission. If a particular candidate does not satisfy the condition of eligibility *qua* age, the question of consideration of his suitability for the post will not arise as there would be no occasion for the Commission to judge the suitability of such a candidate at the written examination and/or the personality test. Therefore, the condition regarding the age is an essential criteria of the candidate to seek admission to the recruitment test, whether written or oral. In *Corpus Juris Secundum*, Volume XXIX, the word 'eligibility' has been held to refer to the qualification to hold the office rather than the qualification to be elected to the office ; and in this sense, has been defined as the capacity of holding, as well as that of being elected to an office. In the said *Corpus Juris Secundum*, the word 'eligible' which has been derived from the latin word "eligere", conveys the idea primarily involved being that of chosen or selecting and has been defined as meaning capable of being chosen or elected ; capable of holding rather than qualified to be elected ; fit to be chosen or proper to be chosen or legally qualified. Under some circumstances, the term 'eligible' has been held equivalent to or synonymous with, entitled "and qualified"; and under other circumstances it has been distinguished from "necessary" and "qualified". So far as the word 'suitable' is concerned, it has been explained in the *Corpus Juris Secundum*, Volume LXXXIII meaning, 'it is said to have reference to the use and purpose of the thing spoken of, and that in order for a thing to be "suitable", as that term is commonly understood, it must be fit and appropriate for the end to which it is to be devoted. It is further defined as meaning apt, fit, fitting; proper. The word "suitableness" has been defined in the *Corpus Secundum*, Volume LXXXIII as the state or quality of being suitable in any sense. It is, thus, obvious that the suitability is to be seen for the end result, i.e., whether the candidate is suitable for appointment to the advertised posts looking to his qualification and personality etc., whereas eligibility is a condition precedent before such a candidate is put to the test of suitability. We, therefore, find that the criteria of age is a condition of eligibility and not suitability and in that view, it is for the respondent-Government to fix the criteria of eligibility including age limit.

(27) The issuance of a Corrigendum in pursuance of the decision of the respondent-State Government on age relaxation for in-service candidates, the right of other candidates who had already applied

under the Advertisement and some of whom, as averred in the written statement of the respondent-Commission, had been interviewed for the post, would not be adversely affected because they would be considered along with the in-service candidates who would be permitted to apply under the Corrigendum or whose applications would be deemed to have been moved as per Corrigendum and then after all the candidates have been interviewed, the final list of selected candidates will be prepared. There is, thus, no substance in the contention of the respondent-Commission that the selection process has commenced and some of the candidates have already been interviewed. As regards the commencement of the selection process, we would like to observe that the issuance of a Corrigendum would have the effect of the selection process commencing *qua* the candidates applying thereunder. In that view, there is no force in the contention of the respondent-Commission that the respondent-Government cannot change the eligibility criteria after the commencement of the selection process. Since in our view, the respondent-Commission has to issue a Corrigendum for the advertised posts for enabling the in-service candidates after relaxation in age limit by five years, it would be just and proper to permit all such in-service candidates in other Departments in the State of Haryana who possess the requisite qualifications, to apply under the Corrigendum apart from the in-service candidates of the Irrigation Department of Haryana Government.

(28) As regards the validity and legality of letter, dated November 16, 1994, a copy of which is Annexure P4 on the file of Civil Writ Petition No. 12036 of 1995, the respondent-State Government defended its action by submitting that it issued the said letter in exercise of its powers under rule 22 of the Punjab Service of Engineers Class I P.W.D. (Irrigation Branch) Rules, 1964 (for short, the Rules) which has been quoted by the respondent-Commission in Para 5 of the written statement. The same may be reproduced hereunder for ready reference :

“Rule 22 :

Power to relax :

- (1) Where Government is satisfied that the operation of any of these rules causes undue hardship in any particular case it may, by order dispense with or relax the requirements of that rule to such extent, and subject to such conditions, as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that if relaxation of any rule involves financial implications prior concurrence of the F.D. shall be obtained.

- (2) Notwithstanding anything contained in these rules, it shall be open to Government to recruit a person other than an Indian citizen to the Service, in which event it shall, in consultation with the Commission, pass such orders as it considers appropriate in respect of the qualifications required for appointment and in respect of all other matters which arises in connection with such an appointment."

(29) A perusal of rule 22 *ibid* will go a long way to show that the Government can relax or dispense with the requirement of any rule to such an extent and subject to appropriate conditions for removal of undue hardship caused by such rules in any particular case. The State Government considered the hardship caused to the applicant before it, and took action under rule 22 *ibid* to remove that hardship by giving relaxation in the age limit. The contention of the learned counsel for the respondent-Commission was that under rule 22 of the rules, relaxation can be granted by the Government only where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case and, therefore relaxation can only be granted in case of hardship in a particular case. On the other hand, the order dated November 16, 1994 granting relaxation in age is in general and not in any particular case of hardship. It was contended further that such an order granting general relaxation will run counter to the afore-said rule. It is well settled, the learned counsel submitted further, that an executive order cannot override the statutory rules. In view of this stand, it was argued by the learned counsel for the respondent-Commission that the order, dated November 16, 1994 granting relaxation of age cannot be sustained being contrary and violative of the statutory rules.

(30) The learned counsel for the petitioners as also learned Deputy Advocate-General for the State of Haryana, asserted with one voice with the rule enables the State Government to relax any rule which caused hardship in a particular case. They contended that the Government considered the cases of such in-service candidates of the Irrigation Department who faced such difficulty and hardship was caused to them by the age limit and keeping in view the fact that some of the in-service candidates who were of more

age than the petitioners, were allowed to apply for the advertised posts by the Hon'ble Supreme Court,—*vide* order passed in *Parveen Jindal's case* (supra) and, therefore, particularly in-service candidates, the Government,—*vide* order dated November 16, 1994 proceeded to remove the hardship caused and grant relaxation of age to such-in-service candidates of the Irrigation Department. We have considered the rival contentions in this regard at a considerable length and are of the firm view that where the rule aforesaid empowers the State Government to issue order removing hardship in any particular case relating to a person, it certainly empowers the State Government to act in respect of all similarly situated persons in the same Department and consequently the decision of the State Government regarding the relaxation of age cannot be considered to be unfair, unjust and contrary to rule 22 *ibid*. The decision of the State Government as communicated,—*vide* letter, Annexure P4, in our view, is perfectly legal, justified and in accordance with the provisions of rule 22 of the rules and the stand of the respondent-Commission has no substance.

(31) The contention of the learned counsel for the respondent-Commission further was that the State Government could not amend the rules or relax the age after the selection process commenced after issuance of the Advertisement and in support thereof he placed reliance on the observations in *Dr. P. K. Jaiswal v. Ms. Debi Mukherjee and others* (12). In that case, the Government withdrew the requisition regarding the selection for the post in question, before the Commission initiated the selection process or gave an Advertisement for the post. The Hon'ble Supreme Court held that if the Government was at a given point of time considering the question of amending the recruitment rules with a view to providing for promotion to the post in question, the Government could before an Advertisement was issued by the Commission and the process of selection was under way, request the Commission to withdraw the same till it decided on the question of amending the rules. In that case, the decision of the Government to withdraw the requisition sent to the Commission in November 1989 before the issuance of the Advertisement did not interfere with any vested right of selection because that stage had yet not reached. The

Hon'ble Supreme Court held further that whether to provide for promotion as a mode of appointment to the post in question is a matter of policy left to the Government to decide and if it desired that the selection process should be held in abeyance till the question was examined and a final decision was taken thereon, it was not open to the Commission to ignore the communication of the Government in that behalf and proceed to set the selection process in motion. It was held further that the action of the Commission was somewhat hasty and unjustified.

(31) It follows, therefore, that the Government has a right to amend the rule or relax the eligibility condition including the age limit, before the selection process commences. It is also not disputed that the selection process commences after issuance of the Advertisement regarding the posts at the behest of the Government. However, in the instant case, the Commission had been requested to issue Corrigendum by relaxing the age limit rule 22 of the rules and the main consideration which weighed with the Government was that it would allow a chance for betterment of the career of in-service candidates who possessed the requisite qualifications for the Class-I post and who were debarred because of the age bar. The stand of the Commission, in our view, is not just and proper because the Commission can without adversely affecting the interests of the candidates who had already applied, issue a Corrigendum in pursuance of the request made.—*vide* letter dated November 16, 1994, Annexure P4 and that would enable the petitioners as well as other in-service candidates of the Irrigation Department to apply for the advertised posts.

(32) Lastly, the learned counsel took the stand, that the action of the State Government discriminated the in-service employees of other Departments under the State of Haryana by granting relaxation of age only to the in-service candidates of Irrigation Department. We do not propose to enter into this aspect of the matter as no such in-service candidate of other Department is before us.

(33) After examining the various submissions raised by the respondent-Commission, we are of the view that there is no impediment in law for issuance of a Corrigendum to carry out the request of the respondent-Government and the respondent-Commission, as a Constitutional agency for recruitment has to comply with the decision of the employer Government-respondent. In view of these reasons, we have passed our order in both the writ petitions (C.W.P. No. 10787 OF 1995 and C.W.P. No. 12036 OF 1995), referred to above.
