

Before M.M. Kumar and Jitendra Chauhan, JJ.

AMIT CHILLAR,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 4717 of 2008

18th August, 2008

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.6(2)(c)—Appointment to post of Sub Inspector—Eligibility that candidate is required to be 21 years of age—Petitioner himself declaring his date of birth as mentioned in matriculation certificate—Whether birth certificate would prevail for purpose of date of birth over matriculation certificate showing different date of birth—Held, no—Petitioner cannot be permitted to carry two certificates and claiming two different dates of births—Petition dismissed.

Held, that the petitioner might have taken advantage of declaring his date of birth in his matriculation certificate at various places. The possibility of making use of the declared date of birth in matriculation certificate at various places cannot be ruled out because in number of cases it has been seen that date of birth is advanced in order to obtain benefits as has been done in the present case. According to the certificate issued by the Registrar of Birth and Deaths, the petitioner is stated to have born on 27th February, 1995 whereas in the matriculation certificate the petitioner has declared his date of birth to be 17th February, 1986. We are further of the view that the petitioner is a young person have in front of him the number of other opportunities available and therefore he is unlikely to suffer any irreparable loss as he would not be overage for induction in government service.

(Para 12)

Deepak Balyan, Mr. Jai Vir Yadav, and S.S. Dinarpur, Advocates
for the petitioner(s).

Harish Rathee, Sr. DAG Haryana.

M.M. KUMAR, J.

(1) This order shall dispose of C.W.P. Nos. 4717 of 2008, 4727 of 2008, 4866 of 2008 and 14403 of 2008 as common question of facts and law have been raised.

(2) The basic issue raised in all these petitions is whether the requirement of date of birth of a candidate for the post of Sub-Inspector of Police as per advertisement dated 7th September, 2007 (Annexure P-6) as also Rule 12.6 (2) (c) of the Punjab Police Rules 1934 (as applicable to Haryana) (for brevity 'the Rules') is violative of Articles 14 and 16 of the Constitution. An ancillary question has also been raised as to whether the birth certificate issued by the Registrar, Birth and Death would prevail for the purpose of date of birth over the matriculation certificate showing different date of birth.

(3) For the sake of convenience, facts are being referred from CWP No. 4717 of 2008 titled as Amit Chillar versus State of Haryana and another. For filling up the post of Sub-Inspector, respondent No. 2 Haryana Staff Selection Commission (for brevity 'HSSC') issued an advertisement on 7th September, 2007 inviting applications for the various posts including 100 posts of Sub-Inspector of Police (male category). The closing date for the receipt of application was 8th October, 2007. The educational qualification for appointment as Sub-Inspector as stipulated in the advertisement were :—

- (a) Graduate from recognized University.
- (B) Knowledge of Hindi/Sanskrit up to to Matric standard and
- (c) Physical standard :
 - (i) Height 5-8"
 - (ii) Chest 44 with expansion of 1.1/2.

(4) There were a number of other conditions laid down but the relevant condition regarding age reads thus :—

AGE : Not below 21 years and not over 27 years as on 1st day of February, 2007. In the case of SC/ST, BC and ESM

candidates, the upper age limit is relaxable as per Govt. instructions issued from time to time. However, for ESM candidates there should not be a gap of more than 2 years between the date of discharge from Army and joining the service in Police Department.

(5) The afore-mentioned condition has been incorporated in the advertisement on the basis of Rule 12.6(2)(c) of the Rules. The petitioner applied to H.S.S.C. Before the last date for receipt of application. He was called for written test, which was held on 24th February, 2008. The result of the written test was declared in the newspaper on 28th February, 2008 and name of the petitioner figured amongst qualified candidates (Annexure P-3). The result was provisional subject to determination of eligibility of all the candidates. On 12th March, 2008, H.S.S.C.-respondent No. 2 issued a letter to the petitioner declaring him ineligible on the ground that his age as on 1st January, 2007 was less than 21 years as per the conditions of the advertisement. The petitioner was asked to contact the H.S.S.C. personally within three days to defend his eligibility as on 1st February, 2007 (Annexure P-4). The petitioner appeared before H.S.S.C. and submitted his representation producing birth Certificate issued by the Additional Registrar, Birth and Death, Jhajjar, which was duly received. It was claimed that the date of birth of the petitioner as declared in the certificate issued by the Registrar is conclusive proof and the same is to prevail (Annexure P-5). However, the petitioner was not sent any call letter for physical test, which was to be held on 24th March, 2008 and 25th March, 2008.

(6) In the joint written statement filed by respondents reliance has been placed on Rule 12.6 (2)(c) of the Rules. It has been clarified that the Director General of police, Haryana, sent a requisition to H.S.S.C. for recruitment of candidates for the post of Sub-Inspector of Police. It has further been pointed out that the petitioner is under age on the cut off date, in terms of the requirement of the advertisement. The respondents have also asserted that the subsequent document obtained from the office of Registrar, birth and Death would not change the factual position because he himself has mentioned his date of birth to be 17th February, 1986, which is as per the Matriculation Certificate.

The petitioner cannot derive any benefit from such a certificate, which was never appended with the application form.

(7) Mr. Jaivir yadav, Mr. S.S. Dinarpur and Mr. Deepak Baliyan, learned counsel for the petitioner(s) have argued that the petitioner must be considered eligible as his date of birth cannot be regarded as less than 21 years. According to learned counsel the language of the Rule 12.6 (2)(c) of the Rules does not suggest that a candidate has to be 21 years of age in February of the year in which selection is to be held. They have argued that the Rule in fact provides that a candidate should be 21 years of age in February “next preceding” year in which the selection has been made. Learned counsel have then argued that the date of birth as given by the Registrar, Birth and Death would override any other date of birth including the one given in the matriculation certificate issued by the Board or the University.

(8) Mr. Rathee, learned State counsel, however, has argued that the date of birth as given in the matriculation certificates by the candidates themselves have to be considered as final because it is not the discretion of the candidates to carry two certificates showing two different date of births. According to learned State counsel, the principle of estoppel would come in operation against the petitioner and they must be held strictly to the date of birth declared by them in the application form. Mr. Rathee, learned State Counsel has further argued that there is nothing in the Rule 12.6 (2)(c) of the Rules which may suggest that the candidate is required to be 21 years on the 1st day of February in next year preceding the date of submission of the application. According to learned State counsel, the Rule has to be interpreted in the light of the advertisement, which in unmistakable term clarifies that the candidate should not be less than 21 years on 1st February, 2007.

(9) Having heard learned counsel for the parties on a considerable length and perusing the record, we are of the considered view that this petition lacks merit and is thus liable to be dismissed. The petitioner after going through the advertisement dated 7th September, 2007 understood the condition with regard to date of birth to mean that he has to be 21 years of age as on 1st February, 2007. The condition has been applied uniformly on all the candidates competing for the post.

It is thus evident that all of them have been treated alike in so far as the minimum age of 21 years as on 1st February, 2007 is concerned. Rule 12.6 (2)(c) of the Rules does not in any way advance the case of the petitioner, which reads thus :—

- (c) “He must not be, on or before the 1st day of February ‘next preceding’ the date of submission of application to the Public Service Commission/Subordinate Services Selection Board less than 21 years and more than 30 years of age for the post of an Inspector or Sub-Inspector.”

(10) A perusal of the afore-mentioned Rule shows that a candidate should not be less than 21 years of age as on 1st February next preceding the date of submission of the application. The aforementioned Rule has been clarified in the advertisement by specifically stating that the candidate should not be less than 21 years of age on 1st February, 2007. If the interpretation, which is sought by the petitioner, is adopted then it would result into sinister results. A person who is less than 21 years of age would be able to apply, although the appointment may be made in the same year or a month or two after the advertisement. Likewise, a person with age of 30 which is maximum age prescribed by the rules would be able to apply, but at the time of appointment he may be more than 30. Such an interpretation is full of inherent contradiction and would violate intent of the Rules. Therefore, proposed construction of Rule as suggested by the learned counsel does not commend itself to us. Therefore, we hold that on a correct interpretation of Rule 12.6 (2)(c), minimum age of 21 has to be on the date of 1st February, 2007. Even otherwise, the eligibility has to be settled in accordance with the date given in the advertisement. A perusal of the advertisement with regard to the age is expressly mentioned to be 1st February, 2007. In that regard reliance may be placed in the judgments of Hon’ble Supreme Court in the case of **Rekha Chaturvedi versus University of Rajasthan and others (1)**, and **Dr. M.V. Nair versus Union of India and others (2)** therefore, the writ petition is liable to be dismissed.

(1) 1993 Supp. (3) SCC 168

(2) (1993) 2 S.C.C. 429

(11) The arguments of learned counsel for the petitioner that the certificate issued by the Registrar, Birth and Death must prevail over the matriculation certificate issued by the Board or the University for the purposes of date of birth has also not impressed us because the petitioner himself has declared his date of birth in the application form to be 17th February, 1986. He has, however, later on placed reliance on the certificate issued by the Registrar, Birth and Death showing his date of birth to be 27th February, 1985. The certificate of matriculation has been issued to the petitioner long time ago. But no effort was made by the petitioner to get it corrected in accordance with the certificate of the Registrar, Birth and Death. The petitioner cannot be permitted to carry two certificates and claiming two different dates of births, which could be used on different occasions as per his convenience. Such a course would result into iniquitous result and the Courts cannot approve such a conduct. Therefore, the principle of estoppel would fully apply to the facts of the present case as has been held by Hon'ble the Supreme Court in **Union of India versus C. Rama Swamy (3)**. In Para-25, their Lordship of the Hon'ble Supreme Court has observed as under :—

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is

not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

(12) When the principles laid down in the afore-mentioned judgments of Hon'ble the Supreme Court are applied to the facts of the repent case it becomes evident that the petitioner might have taken advantage of declaring his date of birth in his matriculation certificate at various places. The possibility of making use of the declared date of birth in matriculation certificate at various places cannot be ruled out because in number of cases it has been seen that date of birth is advanced in order to obtain benefits as has been done in the present case. According to the certificate issued by the Registrar of Birth and Deaths, the petitioner is stated to have born on 27th February, 1985 whereas in the matriculation certificate the petitioner has declared his date of birth to be 17th February, 1986. We are further of the view that the petitioner is a young person have in front of him the number of other opportunities available and therefore he is unlikely to suffer any irreparable loss as he would not be overage for induction in government service.

(13) More over, a similar matter came up for consideration before this Court in C.W.P. No. 14048 of 2008 decided on 8th August, 2008 (Reena versus H.S.S.C.). We have dismissed the petition by stating that the judicial legislation is not permissible.

(14) For the reasons afore-mentioned, these petitions fails and the same are dismissed.

R.N.R.