

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION No. 060/00824/2014

**Date of filing: 17.09.2014
Order reserved on: 16.03.2016**

Chandigarh, this the 22nd day of March, 2016

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**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J) &
HON'BLE SMT. RAJWANT SANDHU, MEMBER (A)**

...

Uma Malik, d/o Sh. Sohan Lal Malik, r/o 3137/1, Sector 20-D,
Chandigarh working as Assistant Professor in Civil Engineering
Department at Chandigarh College of Engineering and Technology,
Sector 26, Chandigarh.

....APPLICANT

BY ADVOCATE: SHRI AMANDEEP SAINI

VERSUS

1. Chandigarh Administration through its Administrator, Punjab Raj Bhawan, Sector 6, Chandigarh.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. The Finance Secretary-cum-Secretary Education, Chandigarh Administration, U.T. Secretariat, sector 9, Chandigarh.
4. Chandigarh College of Engineering and Technology through its Principal, sector 26, Chandigarh through its Director.
5. Chief Engineer, Union Territory, Chandigarh, 4th Floor U.T. Secretariat, Sector 9, Chandigarh.

....RESPONDENTS

BY ADVOCATE: SHRI ROHIT MITTAL PROXY FOR SHRI RAKESH VERMA
FOR RESPONDETNS NO. 1, 3 TO 5
SHRI B.B. SHARMA FOR RESPONDENT NO. 2.

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ORDER**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J):-**

In view of the contentions raised by counsel for the parties during the course of hearing, we need not go into the detailed facts of the case.

2. Applicant's case is that she is working as Assistant Professor (Civil Engineering) on contract basis in Chandigarh College of Engineering and Technology (Respondent no. 4) since 16.01.2012. Her date of birth is stated to be 13.10.1976. Her marriage stands dissolved vide judgment of divorce dated 08.02.2011 (Annexure A-11).

3. Respondent no. 2- Union Public Service Commissioner (UPSC) issued advertisement no. 6 of 2014 in April 2014 inviting applications for various posts. The applicant submitted application (Annexure A-3) for the post of Assistant Engineer (Public Health) in the office of Chief Engineer (Respondent no. 5) under Chandigarh Administration (Respondent no. 1) and also submitted application (Annexure A-4) for the post of Assistant Professor (Civil Engineering) in respondent no. 4 College which is also under respondent no. 1. The applicant's candidature was rejected being over-age. It may be mentioned that during the course of hearing, it was stated by counsel for the applicant that the post of Assistant Engineer (Public Health) under respondents no. 1 & 5 has since been withdrawn and now the claim is only regarding the post of Assistant Professor (Civil Engineering) under respondent no. 4 College.

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4. Closing date for submission of applications was 01.05.2014. Maximum age as on the closing date was 35 years for general category. The applicant was over age by two years six months 19 days as on the closing date of applications.

5. The applicant in the instant O.A. has sought relaxation in upper age limit on account of service rendered by her as contractual employee with respondent no. 4- College and also on account of being divorced woman. Reliance has also been placed on letter dated 01.03.1994 (Annexure A-6) regarding clarification on relaxation of age.

6. Respondent no. 2- UPSC in its written statement contested the claim of the applicant for age relaxation and pleaded that she is not eligible for the post of Assistant Professor (Civil Engineering). Reliance has been placed on O.M. dated 27.03.2012 (Annexure R-2/2), letters dated 09.01.1995 (Annexure R-2/3) and 13.01.2003 (Annexure R-2/4) and judgments of Hon'ble Supreme Court dated 02.02.2006 in Civil Appeal No. 933 of 2006 titled 'Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors. (Annexure R-2/5) and dated 05.08.2011 in Civil Appeal No. 6349 of 2011 titled 'Sec., U.P.S.C. & Anr. Vs. S. Krishna Chaitanya' (Annexure R-2/6).

7. Respondents no. 1, 2 and 4 in their written statement also controverted the stand of the applicant and pleaded that she is not entitled to age relaxation as claimed by her. It was pleaded that letter dated 01.03.1994 (Annexure A-6) stood withdrawn vide letter dated 09.01.1995 (Annexure R-1). Reliance has also been placed on letter

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dated 05.10.1990 (Annexure R-II) on the subject of age relaxation. Reference was also made by all the respondents to Recruitment Rules for the post in question.

8. The applicant field replication to the written statement of respondents no. 1, 3 and 4, wherein she controverted their stand and reiterated her own version. Reliance has also placed on Recruitment notice for the posts of Masters/Mistresses (TGT) in Education Department of Chandigarh Administration (Annexure A-13) and the Chandigarh Education Service (School Cadre) (Group-C) Recruitment Rules, 1991 (Annexure A-14). Reliance has also been placed on judgment dated 03.03.2015 (Annexure A-15) of the Tribunal in O.A. No. 1340/CH/2013 titled 'Dr. Aradhana Mehta Vs. Chandigarh Administration and others'.

9. No replication was field to the written statement of respondent no. 2.

10. Before proceeding further, it may be mentioned that vide interim order dated 18.09.2014, the respondents were directed not to reject the candidature of the applicant on the ground of being over-age and allow the applicant to participate in the selection process, if she is otherwise eligible, subject to outcome of the O.A. Resultantly, the applicant has participated in the selection process provisionally, but her result has been withheld to await the outcome of this O.A.

11. We have heard counsel for the parties and perused the case file.

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12. Counsel for the applicant submitted that the applicant is entitled to age relaxation for the period she has served as contractual employee with respondent no. 4. It was also submitted that since she was eligible being within prescribed age limit while submitting application for aforesaid contractual employment, she has to be considered eligible for the post in question in view of judgment of the Tribunal in the case of Dr. Aradhana Mehta (Supra). Reference was also made to clarification letter dated 01.03.1994 (Annexure A-6) according to which age limit for divorced women was relaxed upto 40 years. Reference was also made to Recruitment Notice (Annexure A-13) of Education Department, according to which the age relaxation for deserted women is upto 40 years. It was submitted that the marriage of the applicant has since been dissolved vide judgment of divorce dated 08.02.2011 (Annexure A-11) and, therefore, she is entitled to age relaxation upto 40 years.

13. Counsel for the respondents controverted the arguments advanced by counsel for the applicant. It was submitted that Recruitment Notice (Annexure A-13) relates to Recruitment in Education Department for which there are separate Recruitment Rules (Annexure A-14) which are not applicable to the post in question. It was also submitted that the applicant is not even covered for age relaxation as provided in Recruitment Notice (Annexure A-13) and Recruitment Rules of Education Department (Annexure A-14) because she has not been deserted by her husband and rather divorce has been granted by mutual settlement on the ground of constructive abandonment of plaintiff (husband) by defended (wife i.e. present applicant). It was also argued that according to Recruitment Rules for

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the post in question as annexed with affidavit dated 22.09.2015, maximum age limit is 35 years as applicable to the applicant. Reliance was also placed on paragraph 20 of the judgment dated 02.02.2006 (Annexure R-2/5) of Hon'ble Supreme Court in U.P.S.C. Vs. Girish Jayanti Lal Vaghela (supra) to contend that an employee working on contract basis is not eligible for relaxation in upper age limit.

14. We have carefully considered the matter. As regards Recruitment Notice (Annexure A-13) and Recruitment Rules of Education Department (Annexure A-14), the same are obviously not applicable to the post in question for which there are separate Recruitment Rules. According to the Recruitment Rules for the post in question, the upper age limit in the case of divorced women also is 35 years. The post in question is governed by its Recruitment Rules and not by Recruitment Rules of Education Department (Annexure A-14). Consequently, benefit of Recruitment Notice (Annexure A-13) and Recruitment Rules (Annexure A-14) of the Education Department cannot be extended to the applicant for the post in question for which there are separate Recruitment Rules. Moreover, the applicant is not entitled to the said benefit even if she is ^{assumed} ~~held~~ to be governed by the same for the sake of argument only. According to the said Recruitment Notice (Annexure A-13) and Rules (Annexure A-14), age is relaxable upto 40 years interalia in the case of deserted women. The applicant, however, is not a deserted woman because she has not been deserted by her husband. On the contrary, judgment dated 08.02.2011 (Annexure A-11) titled 'Anurag Nischal against Uma Malik' reveals that divorce has been granted on the ground of constructive abandonment (desertion) of the plaintiff-husband by defendant-wife (present

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applicant). Thus the applicant herself had deserted her husband, and she has not been deserted by him. Consequently, she is not entitled to the benefit of age relaxation available to deserted women.

15. Letter dated 01.03.1994 (Annexure A-6) also does not come to the rescue of the applicant because the said letter stands withdrawn vide letter dated 09.01.1995 (Annexure R-2/5/also Annexure R-1).

16. In view of judgment of Hon'ble Supreme Court in the case of UPSC Vs. Girish Jayanti Lal Vaghela (supra), a contract employee is not entitled to age relaxation. However, even if the period of service rendered by the applicant as contractual employee since 19.01.2012 till 01.05.2014 the closing date of applications i.e. two years three months thirteen days is granted as age relaxation, even then she remains over-age because she was over age by two years six months nineteen days. Contention of counsel for the applicant that the applicant was within age limit when she applied for the post on contract basis and is, therefore, eligible for the post in question in view of judgment (Annexure A-15) of the Tribunal in the case of Dr. Aradhana Mehta (Supra) also cannot be accepted because counsel for the applicant submitted that last date for submitting applications for the post on contract basis was 21.10.2011. Consequently, even on the said date, the applicant was aged 35 years 9 days and was thus over-age even on the said date. According to letter dated 13.01.2003 (Annexure R-2/4) of the Govt. of India, age relaxation to Government Servants applies ^{only} to Central Govt. employees appointed on regular basis according to relevant Recruitment Rules and this benefit will not be admissible to those appointed on short term/on contract or

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otherwise. According to letter dated 09.01.1995 (Annexure R-2/3) also, the age limit for service in Chandigarh Administration shall be in accordance with the rules/orders issued by Govt. of India from time to time. In the instant case, according to Recruitment Rules relating to the post in question as well Govt. of India letter dated 13.01.2003 (Annexure R-2/4), the applicant is not entitled to the age relaxation claimed by her. Moreover, Recruitment Rules prevail over letters and instructions in case of conflict. Instructions may fill the void in the Recruitment Rules but cannot override the Recruitment Rules. In the instant case, as per Recruitment Rules for the post in question, the applicant is over-age and is not entitled to any age relaxation as claimed by her and is, therefore, ineligible for the post in question.

17. For the reasons aforesaid, we find that looked at from any angle the applicant being over-age is not eligible for the post in question and is not entitled to age relaxation claimed by her and even if any such age relaxation is granted even then she remains over age for the post in question. Resultantly, the O.A. is dismissed. Consequently, provisional participation of the applicant in selection process, for the post in question pursuant to interim order dated 18.09.2014 passed by the Tribunal becomes non est. There shall be no order as to costs.

(JUSTICE L.N. MITTAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 22.03.2016

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