

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**Orders pronounced on: 3.3.2015**(I) O.A.NO.1340-CH-2013**

Dr. Aradhana Mehta daughter of Dr. S.C. Dhawan, age 48 years, working as Professor in Civil Engineering, Department of Chandigarh College of Engineering and Technology, Sector 26, Chandigarh.

By: Mr. D.R. Sharma, Advocate.

Applicant

Versus



1. Chandigarh Administration through its Administrator, Punjab Raj Bhawan, Sector 6, Chandigarh U.T.
2. Union Public Service Commission through its Secretary, Dholpur House, Shahajahan Road, New Delhi.
3. The Finance Secretary-cum-Secretary, Education, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.

Respondents

By : Mr. Aseem Rai, Advocate for Respondents No.1&3.
Mr. B.B. Sharma, Advocate, for Respondent No.2.

(ORDERS RESERVED ON : 12.02.2015)**(II) O.A.No.060/00260/2014**

Sarita Sharma d/o Hari Dutt Sharma r/o C-25, BEL Officers Colony, Sector 14, Panchkula working as Assistant Professor in Electronics and Communication Engineering Department at Chandigarh College of Engineering and Technology, Sector 26, Chandigarh.

Applicant

Versus

1. Chandigarh Administration through its Administrator, Punjab Raj Bhawan, Sector 6, Chandigarh, U.T.
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.

Respondents

By : Mr. Amandeep Saini vice Mr. Madan Lal Saini Advocate, for the applicant.
Mr. Rakesh Verma, Advocate, for Respondents No.1 & 3.
Mr. B.B.Sharma, Advocate, for Respondent No.2.

(ORDERS RESERVED ON : 19.02.2015)**(III) O.A.NO.060/00261/2014**

1. Ms. Itinder Kaur d/o Sh. S.M. Singh # 5171/GF MHC Manimajra, Chandigarh Working as Lecturer in Electronics and Communication Engineering Department at Chandigarh College of Engineering and Technology, Sector 26, Chandigarh.
2. Rajesh Sharma S/o N.D. Sharma r/o House No. 867, Sector 38-A, Chandigarh working as Assistant Professor in Mechanical Engineering Department at Chandigarh College of Engineering and Technology, Sector 26, Chandigarh.

Applicants

Versus

1. Chandigarh Administration through its Administrator, Punjab Raj Bhawan, Sector 6, Chandigarh, U.T.

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.

....

Respondents

By: Mr. Amandeep Saini vice Mr. Madan Lal Saini, Advocate, for the applicant.
 Mr. Rakesh Verma, Advocate, for Respondents No.1&3.
 Mr. B.B.Sharma, Advocate, for Respondent No.2.

(ORDERS RESERVED ON : 19.02.2015)**(IV) O.A.No.1415-CH-2013**

1. Prabhjot Kaur daughter of Jagtar Singh, age 37 years.
2. Ramanjit Kaur Bajwa daughter of Maluk Singh Gill age 35 years
3. Nidhi Duggal daughter of A.K. Ummat age 37 years
4. Simar Prabh Kaur daughter of S. Satnam Singh age 38 years



All are working as Lecturer in Clothing and Textiles in Home Science College, Sector 10, Chandigarh.

Applicants

Versus

1. Chandigarh Administration through its Administrator, Punjab Raj Bhawan, Sector 6, Chandigarh, U.T.
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.

....

Respondents

By: Mr. D.R. Sharma, Advocate, for the applicant.
 Mr. K.K. Thakur, Advocate, for Respondents No.1&3.
 Mr. B.B.Sharma, Advocate, for Respondent No.2.

(ORDERS RESERVED ON : 06.02.2015)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The facts and questions of law involved in these cases are common and as such these have been taken up for disposal by a common order. For facility of reference the facts are being taken from the case of **Dr. Aradhana Mehta Vs. Chandigarh Administration & Others.**
2. The applicant has approached this Tribunal with a prayer to accept her candidature for the post of Associate Professor (Civil Engineering) (Unreserved) and allow her to compete in the selection process by grant of relaxation in age-limit and the action of respondents in not covering the contractual employees in the category entitled for age-relaxation / concession as provided in Advertisement, Annexure A-3, be declared as null and void and that the applicant be held entitled to benefit of settled law in the matter of granting age relaxation to contractual employees.
3. First of all let us notice the bare minimum facts. The applicant is Ph.D with her date of birth as 23.05.1965. In pursuance of a selection consisting of interview carried out by respondents, after issuance of an advertisement, the applicant having been found meritorious, came to be

appointed as Professor on contract basis in Civil Engineering Department of Chandigarh College of Engineering & Technology, Chandigarh. The appointment was initially for six months' period which has been extended from time to time. It could be terminated on appointment of a regular employee through the Union Public Service Commission.

4. There exists a post of Associate Professor (Civil Engineering) in the respondent College which is governed by the Chandigarh College of Engineering and Technology, Chandigarh Administration, Professor, Associate Professor, Assistant Professor, Assistant Professor in Applied Sciences and Senior Librarian (Group 'A' Post) Recruitment Rules, 2012, framed under article 309 of the Constitution of India.

The pay band of the post is Rs.37400-67000 + Grade Pay of Rs.9000/-. The age limit for direct recruit is "not exceeding forty five years". It is further provided that age would be "Relaxable for Government servants upto five years in accordance with the instructions or orders issued by the Central Government". The Government of India instructions are dated 27.3.2012 (Annexure R-2) which provide for age relaxation for Group A and Group B posts filled through UPSC by a mention that "5 years (for posts which are in the same line or allied cadres and where a relationship could be



established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post".

5. Consequent upon a requisition sent by the respondent College, the UPSC issued an advertisement in the Employment News for the period 14-20 September, 2013 inviting On-Line applications for various posts including one post of Associate Professor, against Sr. No. 12 thereof. However, qua age it has been mentioned that it is available for Central Government / U.T. Govt. Servants upto 5 years etc. "but not includes a person appointed on casual / ad-hoc / daily wages / hourly~~s~~ paid / contract basis employee."

6. The applicant submitted her application also for consideration against the aforesaid post which was not accepted due to her being above 45 years of age which resulted into filing of this Original Application. While issuing notice of motion on 30.09.2013, an interim order too came to be granted that "respondents are directed to permit the applicant, as a special case, to submit her application by hand, other than online mode, in person latest by 3rd October, 2013 upto 4.00 PM. If such application is submitted by her, she may be allowed to appear provisionally in the examination. The result of the

examination qua the applicant shall not be declared without the permission of this Tribunal".

7. Hon'ble Supreme Court of India in **Steel Authority of India & Others Vs. National Union Water Front Workers and**

others JT 2001 (7) SC, 268 head held that "If the contract is found to be genuine and prohibition notification under Section 10 (1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.". The Law Department of the Chandigarh Administration taking cue from the aforesaid legal proposition advised on 23.5.2002 that the Administrative Department to regulate their course of action accordingly observing that in case the principal employer intends to



employ regular employee, he is required to give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the employees at the time of their initial employment by the contractor and also relaxing the condition as to the academic qualification other than technical qualification. It was opined while dealing with case of an employee of Government Medical College that "the principal employer is the Government Medical College, Chandigarh in the instant case obviously the contract employees directly appointed by the Institute can certainly be given the benefit of aforesaid judgement, taking an administrative decision thereto. However, employees engaged on contract basis through the contractor would not be entitled to the said benefit of age relaxation. The Joint Secretary, Personnel for Home Secretary, Chandigarh Administration, took a conscious decision on 2.9.2005 that "the benefit of judgment as aforesaid of the Apex Court can be extended in the instant case of Shri Shashi Kumar Sinha taking administrative decision thereof unless there are distinguishing circumstances".

8. The case in short setup by the applicant is that the respondents cannot discriminate between regular and
- 1
1

contractual employees for grant of relaxation in age. It is pleaded that in the year 2007 the respondents had issued an advertisement (Annexure A-2) "Age limit for the Departmental candidates is 45 years. However, age relaxation for all the categories will be given as per instructions of Chandigarh Administration issued from time to time. No candidate will be accorded age relaxation unless he/she produces the requisite certificate along with the application. Contract teachers who have been appointed by the panel of DEO/Head of the Institutions will be given age relaxation for the period they have worked on contract basis under Chandigarh Administration, Education Department subject to the maximum of 5 years". The applicant, thus, claims that there cannot be any discrimination against her in grant of relaxation in age which has been granted earlier by the Chandigarh Administration to contractual employees.

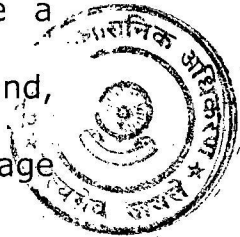


9. Reliance in support of aforesaid claim is placed upon the decision in the case of **UPSC Vs. Dr. Jamuna Kurup**, (2008) 11 SCC 10 in which the expression employees of MCD in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaid was held to include both permanent or temporary, regular or short term contractual or ad hoc employees of the MCD and accordingly,

those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The applicant claims that she was within the age-limit at the time of her appointment on 20.7.2007 and has become overage due to long duration spent in contractual employment and as such she cannot be denied benefit of age relaxation. Reliance in support of the claim is also placed upon decision of Principal Bench of this Tribunal in **Sujeet Kumar Vs. Municipal Corporation of Delhi** (O.A.No. 3989/2011 decided on 10.05.2012); **Sonika Kohli and Others Vs. Chandigarh Administration & Others** and **Krishan Kumar Vs. U.T. Chandigarh**, 2004 (3) (CAT) 63; **Sushma Sharma & Others Vs. U.T. Chandigarh** decided on 14.9.20004; O.A.No. 33-CH-2011 (**Vandana Jain & Others Vs. Union of India & Others**), decided on 31.3.2011 etc.

10. The UPSC has filed reply contesting the claim of the applicant. It is pleaded that in pursuance of direction of this Tribunal on interim relief the applicant was allowed to participate in the selection process on provisional basis. It is submitted that relaxation in age is to be given in terms of instructions dated 27.3.2012 (R-2) which do not cover the persons working on contract basis and as such the applicant being not a Central or Union Territory Government Servant, is

not entitled to seek relaxation in age. Moreover, the advertisement in para 5 (c) makes it clear that the relaxation would not be available to "contract employees". As per instructions dated 13.1.2003 (R-3) the age relaxation applies to Government servants only, appointed on regular basis according to the relevant recruitment rules and not to those appointed on short term on contract or otherwise. Reliance has also been placed on a decision of Hon'ble Supreme Court in Appeal (Civil) 933 of 2006 (**UPSC Vs. Girish Jayanti Lal Vaghela & Others**) decided on 2.2.2006 in which it was held that since the employee could not be said to be a government servant as he was working on contract basis and, therefore, he was not eligible for any relaxation in upper age limit.



11. The Respondents No. 1&3 have pleaded that the relaxation in age had been granted earlier to contractual employees of U.T. Administration was qua Group 'C' only and the selection in question is qua Group 'A' and as such similar benefit cannot be extended to the applicant. In this case the Rules have been framed under article 309 of the Constitution of India which provide for age relaxation as per Government of India instructions and as such the applicant cannot claim age relaxation. They submit that in any case the instructions

qua relaxation in age issued by Chandigarh Administration were withdrawn by the Joint Secretary and as such the same cannot be pressed into service by the applicant in support of her claim.

12. The applicant has filed a replication to meet the averments taken by the respondents in their reply statements.

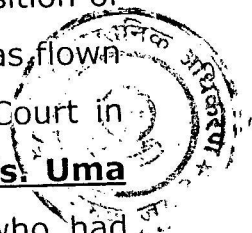
13. We have heard learned counsel for the parties and length and examined the material on the file with their able assistance.

14. The issues and point of law as involved in these cases has been have been considered and answered by this very Bench of the Tribunal recently in a bunch of petitions in O.A.No.857-CH-2013 - **Ms. Meeta Kaushik etc. Vs. U.T. Chandigarh & Others** decided on 20.2.2015 in the following words :-

"26. Learned counsel for Chandigarh Administration tried to distinguish the aforesaid decisions by stating that those selections were related to Group "C" posts whereas in this case the selection is qua a Group 'A' post. We are not prepared to accept the differentiation sought to be projected by the respondents for the simple reason that a decision of court of law is followed for the point of law propounded in it and not the facts. Once it has conclusively been held that the contractual employees are entitled to relaxation in age, the term or

point of law settled by a court cannot be restricted to Group 'C' or 'D' employees as the aim and intention of the Court of law cannot be defeated by the administrative authorities by indulging in hair splitting. Thus, the action of respondents in withdrawal of the instructions on the basis of article 14 does not appear to be reasonable and defeats the very purpose of selection of the best available candidate in the market.

27. The learned counsel for the respondents have placed heavy reliance on the decision in the case of Girish Jayanti Lal Vaghela (supra) to claim that in that case the Hon'ble Apex Court has held that the contractual employees are not entitled to age relaxation. One cannot dispute about the proposition of law laid down in the said case but much water has flown down the river since then. The Hon'ble Apex Court in the case of **Secretary, State of Karnataka Vs. Uma Devi**, (2006) 4 SCC 1 has held that those who had been continuing to serve either in adhoc or temporary basis will be allowed to compete in the selection process. Many of them might have become overage by the time. Therefore, the Hon'ble Supreme Court waived the age restriction imposed by the Recruitment Rules and also gave some weightage for their service rendered for such a long spell of time. It was felt that grave injustice will be done unless such relaxations are extended to those employees. Thus, for doing complete justice, the Hon'ble Supreme Court exercised its power under Article 142 of the constitution. It may be mentioned here that decision in the case of Baghela (supra) was also considered in the said case. Though a



Tribunal does not have such power, still taking a cue from Uma Devi's case, we can hold that indeed contractual employees too are entitled to relaxation in age. This is more so when the applicant is qualified and has spent best part of her life to serve the College and she has gained lot of experience which would be beneficial to the College. This will, in fact, further the aim and intention for which the instructions that one is entitled to age relaxation who has worked in same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post.

28. One cannot lose sight of the fact that the applicants are working on contract basis and has applied for appointment on regular basis permanent posts. They are indeed entitled to age relaxation for service rendered by them on contract basis in view of decision in the case of Uma Devi (supra) by 5 Judges Bench.

28. Reliance is also placed upon decision of Hon'ble High Court of Punjab and Haryana in LPA No. 1202 of 2010 (O&M) decided on 1.11.2010 (**Harnam Singh Vs. State of Haryana etc.**) in which case was of a Fireman appointed on adhoc / temporary basis for two decades and his services were terminated. It was directed to take steps to fill up the post in question in accordance with law and the petitioner may be granted relaxation of upper age limit which he may have crossed by then and due weightage of experience.

The applicants have continued to work in the respondent Administration for quite some time and have

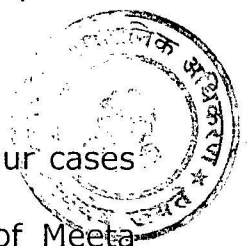
become over age by now. Now when the posts have been advertised for filling up on regular basis, it would be too harsh to deny them a consideration more so when they have the experience of working in same line. Therefore equity also demand that the applicants be granted benefit of age relaxation and be given a platform to compete with others candidates on eligibility conditions otherwise it will be grave injustice. Our view also finds support from the decision of lordships in case of Uma Devi's case Para 46, where Lordships have exercised its power under Article 142 of the constitution. We are conscious that this Tribunal does not have such power. However following the principle, as laid down in Para 46 of Uma Devi's case, we are in agreement with the contentions raised by the learned counsel for the applicant that they are also entitled to relaxation in age for the service rendered by them on contractual basis with the Administration on the same terms as has been extended to the Government Employees. However, such relaxation in age is not automatic and the respondents are under obligation to verify as to whether the initial appointment of the applicants are done with a positive act of selection recognized by a court of law and that they were within the age limit at the time of initial entry in the employment of the respondents. These are some pre-requisite for a person working on contractual basis to claim that he or she is entitled to relaxation in age.

29. In the backdrop of aforesaid discussion, this Original Application is allowed. The respondents are directed to consider the claim of the applicant for relaxation in age



29

in terms of the observations made above and if they are found to be entitled to relaxation at par with the Central Government employees, then declare their result and take further action as per rules. Needful be done within a period of two months from the date of receipt of a certified copy of this order."



15. The facts and point in issue raised in the instant four cases are fully covered by the view taken by us in the case of Meeta Kaushik & Others (supra) and as such these are disposed of in the same terms as given in the extraction above.

16. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh

Dated: 3.3.2015

HC*

Certified True Copy/प्रमाणित सत्य प्रतिलिपि

Rajw Kumar
अनुभाग-अधिकारी (नियंत्रण, सचिवालय/Secy. (Adm. & Secy.))
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
चण्डीगढ़ पीठ/ Chandigarh Bench
चण्डीगढ़ / Chandigarh

8/13