

R.N.R.

Before Ajai Lamba, J.

SUSHIL KUMAR,—Petitioner

versus

**PUNJAB PUBLIC SERVICE COMMISSION &
ANOTHER,—Respondents**

C.W.P. No. 20687 of 2010

13th December, 2010

Constitution of India, 1950—Art. 226—Punjab State Civil Services Combined Competitive Examination—A physically disabled government servant applying for examination—Upper age limit for Government employee is relaxable upto 45 years—Brochure provides age relaxation in upper age limit upto 10 years to disabled persons of Punjab—Whether entitled to double relaxation—Held, yes—Government giving such benefit to other reserve categories—Disabled persons also entitled to double benefit of relaxation—Petition allowed.

(2) AIR 1964 S.C. 477

(3) (2003) 6 S.C.C. 675

Held, that the respondents not having made any provision in the Brochure, cannot deny the benefit to the petitioner, although the same benefit, concededly, has already been provided to the persons belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab. This is particularly so because the Brochure itself provides age relaxation in upper age limit up to 10 years to disabled persons of Punjab.

(Para 11)

Further held, that the Brochure/application form is a notice to the candidate informing him/her about the conditions applicable to him/her for filling the application form. In this case, the Brochure itself is a detailed one and provides conditions favourable to the petitioner in the context of age relaxation in the context of a Government employee, as also a disabled person. In such circumstances, the respondents cannot deprive the petitioner of the age relaxation as is permissible under the Brochure provided by the respondents.

(Para 12)

Dinesh Sharma, Advocate, *for the petitioner (s)*.

Charu Tuli, Sr. DAG, Punjab.

AJAI LAMBA, J. (ORAL)

(1) This petition under Articles 226/227 of the Constitution of India has been filed praying for issuance of a writ in the nature of certiorari quashing order dated 29th October, 2010 (Annexure P-5). Further prayer made in the petition is for issuance of a writ in the nature of mandamus directing the respondents to allow the petitioner to appear as eligible candidate in the preliminary examination of Punjab State Civil Services Combined Competitive Examination, 2009, scheduled to be held on 19th December, 2010.

(2) It has been pleaded on behalf of the petitioner that the petitioner is a physically disabled person from Punjab, as per the certificate issued by Civil Surgeon, Ludhiana. The disability of the petitioner is not less than 40% as per definition in the "Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

(3) Learned counsel for the petitioner further contends that the petitioner is in government service in Revenue Department of Punjab and is serving the respondents since 1995. Learned counsel for the petitioner contends that as per the Brochure issued for filling the form for Punjab Civil Services (Executive Branch), the age relaxation has been provided. Learned counsel for the petitioner has referred to the relevant column at page 21 of the Brochure.

(4) Learned counsel for the petitioner has further argued that the petitioner is entitled to relaxation in age, being a government servant and for further relaxation being physically handicapped. The age of the petitioner is a little over 46 years.

(5) Learned counsel for the respondent-State has argued that the upper age limit for all government employees is relaxable up to 45 years, as on 1st January, 2009. The petitioner, however, cannot get the benefit of age relaxation in upper limit upto 10 years permissible for disabled persons of Punjab.

(6) On a query of the Court, learned counsel for the respondent-State, however, admits that in terms of Government instructions, a person belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab would be entitled to double relaxation i.e. age relaxation up to a maximum of 5 years, and if he is also a government employee, his age would be relaxable up to 45 years as on 1st January, 2009. The categorical case of the learned counsel for the respondent-State is that if a person is a government employee and belongs to the three categories mentioned above, he would be eligible to take the examination even if he were 50 years of age, on the first day of January of the year in which the last day falls for submission of applications to the Punjab Public Service Commission.

(7) Learned counsel for the respondent-State, however, contends that the Government instructions do not allow double relaxation in the case of a disabled person even though he is a government employee also. Learned counsel for the respondents-State, however, admits that no such provision has been given in the Brochure provided for filling the application

form, either in regard to double relaxation permissible to persons belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab, or not allowing double relaxation for disabled persons.

(8) Having heard learned counsel for the parties, so as to consider the arguments in proper context, the relevant provisions in the Brochure provided with the application form are required to be considered. Relevant portion from pages 21 and 22 of the Brochure reads as under :—

- (a) A candidate should have attained the minimum age of twenty one years and should not have attained the age of thirty five years on the first day of January of the year, in which the last day falls for submission of application to the Commission ;

xx xx xx xx xx
xx xx xx xx xx

- (b) The upper age limit for all Government employees will be relaxable upto 45 years as on 1st January, 2009.
- (c) The upper age limit prescribed above will be relaxable up to a maximum of five years for Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab.

xx xx xx xx xx
xx xx xx xx xx

- (e) Age relaxation in upper age limit, upto 10 years to the disabled persons of Punjab.

xx xx xx xx xx
xx xx xx xx xx

(9) If a reference is made to the above extracted portion in regard to the age limit, an ordinary candidate who does not claim age relaxation in any of the categories is required to be in between the age of 21 years and 35 years, as on 1st January, 2009.

(10) In the case of government employees, the upper age limit is relaxable up to 45 years as on 1st January, 2009. A person belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab is given further relaxation for 5 years. As per the case of the

respondents, thus, a person belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab would be eligible, in the context of age, if he is 50 years of age on giving him benefit of relaxation under both the categories, as on 1st January, 2009. The case of disabled persons of Punjab has been treated separately, although no such provision has been made in the Brochure. The Brochure provides age relaxation in upper age limit up to 10 years to disabled persons of Punjab. The upper age limit for all government employees is relaxable up to 45 years. The petitioner, at this point in time, is a little over 46 years of age and, therefore, if double relaxation is provided as is provided to persons belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab, the petitioner would be eligible to take the examination.

(11) I am of the considered opinion that the respondents not having made any provision in the Brochure, cannot deny the benefit to the petitioner, although the same benefit, concededly, has already been provided to the persons belonging to Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab. This is particularly so because the Brochure itself provides age relaxation in upper age limit up to 10 years to disabled persons of Punjab.

(12) The Brochure/application form is a notice to the candidate informing him/her about the conditions applicable to him/her for filling the application form. In this case, the Brochure itself is a detailed one and provides conditions favourable to the petitioner in the context of age relaxation in the context of a Government employee, as also a disabled person. In such circumstances, I am of the opinion that the respondents cannot deprive the petitioner of the age relaxation as is permissible under the Brochure provided by the respondent.

(13) The contention of the learned counsel for the respondents that the Government instructions provide for double benefit of relaxation to a person from Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab who is also in Government service, however, does not allow the same benefit to a disabled person in Government service is not acceptable as neither reference to such Government instructions has been given in the Brochure nor any clarification has been provided therein.

(14) Even in equity, relaxation is given to make up for disadvantageous position in which a person belonging to Scheduled Castes, Scheduled Tribes and Backward Classes is. I fail to understand how a disabled person is not entitled to same benefit because he is at a disadvantage too, if not more, as compared to a person from Scheduled Castes and Scheduled Tribes of all States and Backward Classes of Punjab. In my considered opinion, if such a benefit is to be given, at all, even a disabled person would be entitled to it.

(15) The petition is, accordingly, allowed.

(16) The respondents are directed to process the application form of the petitioner and issue Roll Number to the petitioner.

(17) Copy of the order be given dasti under the signatures of the Court Reader.

R.N.R.