

KENDRIYA VIDYALAYA SANGATHAN AND ORS.

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v.

SAJAL KUMAR ROY AND ORS.

OCTOBER 19, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

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Service Law:

Education Code for Kendriya Vidyalayas:

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Article 45—Age limit—Provision for relaxation to candidates of specified categories—Relaxation in upper age limit directed by Tribunal and High Court to be given to candidates belonging to General Categories not falling in the specified categories—Held, Tribunal and High Court committed manifest error in issuing the directions.

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The respondents, in pursuance of an advertisement, applied for the post of Lower Division Clerk. The respondents were said to be near relatives of the employees of regional office of the appellant-Kendriya Vidyalaya Sangathan, and had crossed the prescribed upper age limit. Written and typing tests were held. Certain irregularities were alleged to have been committed in the typing test. An original application was filed in the Central Administrative Tribunal for a direction to the appellants to relax the upper age bar. The Tribunal directed for appointment of the respondents after relaxing the age limit. The High Court, in writ petition held that appointment could not have been ordered unless the appointing authority exercised the power of relaxation of age limit and directed the appointing authority to consider relaxation of age limit and thereafter issue appointment orders to the respondents on the basis of their merit.

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In the present appeal filed by Kendriya Vidyalaya Sangathan, it was contended that the regional office committed irregularities in allowing the respondents to appear in the written and typing tests as they had crossed the prescribed age limit and the Tribunal as well as the High Court committed error of law in directing to appoint them after consideration of relaxation of age bar.

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A Allowing the appeal, the Court

B HELD: It is not in dispute that the respondent, were over-aged on the relevant date. They are not members of the Scheduled Caste or Scheduled Tribe. Article 45 of the Education Code for Kendriya Vidyalayas prescribing the age limit is in two parts. The first part talks about the age limit. The second part provides for relaxation. Such relaxation can be granted for the purpose specified, i.e. in favour of those who answered the descriptions stated therein. Relaxation of age limit even in relation to Scheduled Castes and Scheduled Tribes candidates or the Retrenched Central Government employees, including the defence personnel is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limit. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As respondents do not come within the purview of the exception contained in Article 45 of the Education Code, the Tribunal and, consequently, the High Court committed a manifest error in issuing the directions. [609-F; 612-A-E]

E *Food Corporation of India & Ors. v. Bhanu Lodh and Ors.*, [2005] 3 SCC 618 and *Dr. Ami Lal Bhat v. State of Rajasthan & Ors.*, [1997] 6 SCC 614, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4569 of 2006.

F From the Judgment and final Order dated 12.8.2004 of the High Court of Gauhati at Gauhati in W.P. (C) No. 7281/2001.

S. Rajappa for the Appellants.

G Amitesh Kumar and Lakshmi Raman Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

H Appellant before us is a society registered under the Societies Registration Act. It runs a chain of schools known as Kendriya Vidyalayas

all over the country. An advertisement was issued in respect of eight vacancies which arose in the cadre of Lower Division Clerk (LDC) in the Silchar region. Respondent applied for recruitment to the said post pursuant to or in furtherance of the said advertisement. Written and typing tests were held. As per Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority) Rules, 1971 (for short, 'the Rules), the age limit prescribed therefor was 18-25 years as on 30.6.1994, which was, however, relaxable. Respondents are said to be near relatives of the employees of the Kendriya Vidyalaya Sangathan Regional Office, Silchar. The candidates who were over-aged were also permitted to appear at the examination in contravention of the Rules. Certain irregularities were also committed in the matter of conducting typing test. Higher authorities of the school were moved for cancellation of the recruitment of the LDCs.

An Original Application was filed by Respondents before the Central Administrative Tribunal, Gauhati Bench, praying for a direction upon Appellants to relax the age of the candidates. By an order dated 15.3.2001, the Tribunal directed Appellants to do so. Aggrieved by and dissatisfied therewith, a writ petition was filed by Appellants before the Gauhati High Court. By reason of the impugned judgment, the High Court directed :

“In the facts and circumstances aforesaid, we hold that direction, as issued by the Tribunal, could not have been given for appointment of the private respondents, until and unless the Appointing Authority exercises the power of relaxation of age limit. In view of the above, we direct the Appointing Authority to consider the case of respondents herein, for relaxation of the age limit within a period of 3 (three) months from the placement of a certified copy of this order before the Appointing Authority, and on relaxation of the age limit, include their names in the select list and thereafter issue appointment orders to them, in accordance with law on the basis of the merit of the candidate.”

It is not in dispute before us that Respondents were over-aged on the relevant date. The particulars of Respondents, who had filed applications pursuant to the said advertisement, are as under :

Sl. No.	Name	Date of Birth	Category
1.	Jagdish Kr. Projapati	02-05-1968	OBC
2.	Sajal Kr. Roy	30-09-1968	GEN

A	3.	Dhruba Jyoti Chakraborty 10-11-1968	GEN
	4.	Kalyan Jyoti Chakraborty 11-11-1968	GEN

B The short question which arises for consideration before us is : Whether, in terms of the extant Rules, age of the general candidates was relaxable?

C Mr. S. Rajappa, learned counsel appearing on behalf of Appellants would submit that the High Court committed an error in directing consideration of relaxation of age bar in respect of Respondents. The learned counsel would further submit that the regional office committed illegalities in allowing Respondents to appear at the written and typing examination, although they were admittedly over-aged and, thus, were not eligible for appointment.

Mr. Amitesh Kumar, learned counsel appearing on behalf of the Respondents, on the other hand, would support the judgment.

D The Tribunal, although, noticed that Respondents crossed the age bar, but opined that keeping in view the fact that the relaxation of age was specifically referred to in the advertisement, they were otherwise eligible therefor. The Tribunal in support of its finding referred to a purported letter dated 29.3.1995 issued by Assistant Commissioner, Administration, KVS to Assistant Commissioner, KVS Silchar, which is in the following terms :

F “I am to invite a reference to your office letter No. F.2-16/94-KVS (SR) dated 15.03.1995 and to state that the process of interview/selection may kindly be completed as per the advertisement dated 28th May 3rd June 1994 and subsequent clarification thereon published in the Employment News dated 21-27 January 1995. After completion of the selection if any candidate, with overage selected by virtue of the concession at para 8(b) and (c) of the advertisement, case may be taken up for relaxation of upper age prior to issue of offer of appointment.....”

G In the aforementioned situation, it was held :

H “The action of the respondents in not issuing appointment letters to the applicants appears to be arbitrary. The applicants on their merits qualified for appointment. The age relaxation is being allowed and can be relaxed by the organization. As irregularity in the selection process has not been established the applicants request for issue of

appointment letters is justified. The respondents are directed to reconsider the applicants case for appointment. This process should be completed within a period of 3 months from the date of receipt copy of this order.”

It is not in dispute that Appellants have framed rules for recruitment known as Education Code for Kendriya Vidyalayas. Article 45 of the said Code provides for age limit in the following terms:

“45. Age Limits

The following upper age limits have been prescribed for recruitment to the posts :

Assistant Commissioner	:	30-40 years
Principal	:	35-50 years
PGT	:	40 years
TGT	:	35 years
Primary Teacher	:	30 years
Music Teacher	:	30 years
Other teachers } Including Librarian }	:	35 years
LDC and } UDC }	:	25 years
Group D } years Lab Attendants }	:	18-25

The upper age limits are relaxable in the case of special categories as follows :

- (i) Scheduled Caste/Tribe - 5 years
- (ii) Retrenched Central Govt. employees including defence personnel. } Period of their service in Civil/ Military Departments increased by 3 years.

The appointing authority can, in his discretion, relax these age-

A limits in deserving cases on the recommendation of the Appointments Committee/ Selection Committee.”

Respondents are not members of the Scheduled Caste or Scheduled Tribe. Age limit is prescribed for appointment to the general category of employees. The upper age limit for appointment to the post of LDC is 25 years. The advertisement also says so. The Rules, as noticed hereinbefore, are in two parts. The first part talks about the age limit. The second part provides for relaxation. Such relaxation can be granted for the purpose specified, i.e., in favour of those who answered the descriptions stated therein. Relaxation of age limit even in relation to Scheduled Castes and Scheduled Tribes candidates or the Retrenched Central Government employees, including the defence personnel, is, however, not automatic. The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As Respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the High Court committed a manifest error in issuing the aforementioned directions.

In *Food Corporation of India & Ors. v. Bhanu Lodh & Ors.*, [2005] 3 SCC 618, this Court stated the law thus :

F “...While the maximum age prescribed under the Recruitment Rules is 35/40 years for the posts concerned, departmental candidates in the age of 52-53 years were proposed to be appointed. Even assuming that there is a power of relaxation under the Regulations, we think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an “open sesame” for all and sundry. The wholesale go-by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the

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Act.”

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Yet again in *Dr. Ami Lal Bhat v. State of Rajasthan & Ors.*, [1997] 6 SCC 614, the law is stated in the following terms :

“...In other words, what is contended is that if on the date when the vacancy occurred, the candidates were within the maximum age prescribed by reference to the cut-off date, then if the advertisement is delayed, their age should be considered with reference to the cut-off date of 1st January following the date of occurrence of vacancy. For example, if the vacancy has occurred on 1st of April of a given year, and the applicant would be within the maximum age on the 1st of January of the following year, then such a candidate will be considered as eligible even if the advertisement is issued not in April of that year but say February of the following year. All the candidates will get age relaxation of one year. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum of age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended.”

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For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. In the facts and circumstances of the case, there shall be no order as to costs.

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R.P.

Appeal allowed.