

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos. 6667-6668 of 2019
(Arising out of SLP (C) Nos. 24803 - 24804 of 2018)

Dr. Professor Rajendra Chaudhary & Anr..

.... Appellant(s)

Versus

The State of Uttar Pradesh & Ors.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

1. The controversy in the above Appeals is regarding reservations to be applied for appointment by direct recruitment to the posts of Professor in Medical Colleges in the State of Uttar Pradesh and enhancement of the maximum age limit from 45 years to 65 years. There was no direct recruitment to the posts of Professors in 12 Government Medical Colleges (Allopathy) for 12 years prior to 2015. An advertisement was issued on 21.12.2015 by the Uttar Pradesh Public Service Commission seeking

applications for appointment by direct recruitment to 47 substantive vacant posts of Professors in various Allopathic Medical Colleges. The said advertisement was subject matter of challenge in a Writ Petition filed in the High Court of Judicature at Allahabad. Apart from other grounds, the main point raised by the Writ Petitioners was that no posts were reserved for Scheduled Castes, Scheduled Tribes and Other Backward Class candidates. The enhancement of the upper age limit, from 45 years to 65 years, was also questioned in the Writ Petition on the ground that it was in violation of Uttar Pradesh State Medical Colleges' Teachers Services (Second Amendment) Rules, 2005 (for short, 'Service Rules'). Another advertisement was issued on 24.10.2017 revising the eligibility criteria pertaining to educational qualifications.

2. The High Court dismissed the Writ Petitions by rejecting the submissions relating to the reservations and enhancement of the upper age limit. Hence, these Appeals.

3. The two points that fall for our consideration in these Appeals are:

a) Whether the advertisement impugned in the Writ Petition is violative of Uttar Pradesh Public Service (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short “the Reservation Act): and

b) Whether enhancement of the upper age limit for appointment to the post of Professor by direct recruitment is contrary to the Uttar Pradesh Medical Colleges Teachers’ Service (Second Amendment) Rules, 2005.

Reservation for Appointment by Direct Recruitment to the Post of Professor: -

4. The main contention of the Writ Petitioners belonging to reserved categories is that the advertisement issued for appointment by direct recruitment to the post of Professor in Government Medical Colleges is contrary to the Reservation Act as no reservations were provided for reserved category. They relied upon Section 3 of the Reservation Act to submit that reservation is mandatory for appointment by direct recruitment in public service. The

percentages of reservation for recruitment to be made as per the roster in accordance with Section 3(5) are as follows:

- *Scheduled Castes* : 21 per cent
- *Scheduled Tribes* : 02 per cent
- *Other Backward Classes* : 27 per cent

For better appreciation of the dispute, it is relevant to reproduce Section 3 of the Reservation Act which is as follows:

“Section 3: Reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. - [(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentage of vacancies to which recruitments are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, -

(a) In case of Scheduled Caste: Twenty-one per cent;

(b) In the case of Scheduled Tribes: Two per cent;

(c) In the case of Other Backward Classes of citizens:

Twenty-seven per cent:

Provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II:

Provided further that reservation of vacancies for all categories of persons shall not exceed in any year of recruitment fifty per cent of the total vacancies of that year as also fifty per cent of cadre strength of the service to which the recruitment is to be made:

(2) xxx

(3) xxx

(4) xxx

(5) The State Government shall for applying the reservation under sub section (1), by a notified order, issue a roster comprising the total cadre strength of the public service or post indicating therein the reserve points and the roster so issued shall be implemented in the form of a running account from year to year until the reservation for various categories of persons mentioned in sub-section (1) is achieved and the operation of the roster and the running account shall, thereafter, come to an end, and when a vacancy arises thereafter in public service or post the same shall be filled from amongst the persons belonging to the category to which the post belongs in the roster.”

5. The Appellants placed before us the Service Rules which govern the recruitment to the posts of Professors in Government Medical Colleges. Rule 5 of Service Rules

provides for recruitment to the posts of Professors covered by Category 'B' in Appendix 'A' by direct recruitment. Appendix 'A' to the Service Rules gives the sanctioned strength in all the specialties/ departments in the Government Medical Colleges. There are two Categories in Appendix 'A'. Category 'A' pertains to posts that are to be filled up by personal promotion and Category 'B' relates to posts that are to be filled up by direct recruitment. According to the Appellants, the total number of posts and vacancies in the entire cadre has to be taken into account for providing reservations for appointment to the posts of Professors. They allege that the action of the Respondents in not providing reservations on the ground that the number of vacancies available in each speciality/ department was less than four was unjustified.

6. Respondent Nos. 1 and 2 justified their action in not providing reservations for appointment by direct recruitment to the posts of Professors. According to the Rules, 75 per cent of the posts shall be filled by personal promotion and remaining 25 per cent by direct recruitment. Reservation for candidates belonging to Scheduled Castes,

Scheduled Tribes and Other Backward Classes category is provided in Rule 6 of the Service Rules. The Reservation Act has been incorporated by reference into the Service Rules. The State contends that the proviso to Rules 6 is significant. The proviso makes it clear that the total number of posts belonging to each speciality/ department in Category 'A' shall be deemed as a single unit. In other words, reservation for the posts to be filled up in Category 'A' shall be speciality/ department wise. Reference is drawn to Section 3 of the Reservation Act to contend that the percentage of vacancies fixed therein relate to the stage of direct recruitment only. Relying upon the note to Appendix 'A', the Respondents urge that reservations for appointment by direct recruitment can be implemented only in case there are more than four posts available in each department. It is the submission of the Respondents that the available posts in all the departments were less than four. Though five posts were available in General Medicine and General Surgery specialties, the number of posts to be filled up were only two in each department in view of an interim order passed by the High Court of

Judicature at Allahabad in Writ - A No. 7910 of 2006. Therefore, the State submitted that reservations could not be provided for in the advertisement in accordance with the Service Rules. Reliance was placed on a judgment of this Court in ***State of U.P. v. M.C. Chattopadhyaya***¹ in support of the submission that the entire cadre cannot be taken into account for providing reservations. In support of the above submission, the Respondents relied upon a decision of the Full Bench of the High Court of Judicature at Allahabad in ***Heera Lal v. State of U.P. & Ors***².

7. Rule 6 of the Service Rules makes reservation applicable for appointment to direct recruitment to the posts of Professors. There is no dispute that the proviso postulates that each speciality/ department in Category 'A' shall be deemed as a single unit. Category 'A' pertains to posts earmarked for promotion to the extent of 75 per cent of the cadre posts. The remaining 25 per cent are to be dealt with in Category 'B' which shall be filled up by direct recruitment. A perusal of Category 'B' of Appendix 'A' to the Service Rules would disclose that the departments to

1 (2004) 12 SCC 333

2 (2010) 82 ALR 453 (FB)

which advertisement was issued for appointment of Professors have less than four posts, except two departments *i.e.* General Medicine and General Surgery. In these two departments, only two posts of Professors in each department were available for being filled up. Therefore, only four posts in each department were available for being filled up by direct recruitment as per the advertisement dated 21.12.2015.

8. It is relevant to refer to a judgment of the High Court of Judicature at Allahabad in ***Dr. Juhi Singhal & Ors. v. State of U.P. & Anr.***³ which examined a challenge to the advertisement dated 21.12.2015 which is the subject matter of these Appeals. The High Court upheld the notification by holding that there is no infringement of the Service Rules.

9. A full Bench of the High Court of Judicature at Allahabad considered the applicability of reservations to Scheduled Castes under the Reservation Act, as applicable to the aided institutions. It was held that the Reservation Act cannot be pressed into service where the number of

³ Service Bench No.4292 of 2016

posts in the cadre are less than five. After considering the facts placed before us and the submissions made on behalf of the Appellants and the Respondents, we are satisfied that no error has been committed by the Respondents in not providing reservations for appointment by direct recruitment to the post of Professor in Government Medical Colleges. The unit of appointment is speciality/ department and the number of posts available in each speciality/ department is less than five. Category 'B' in Appendix 'A' of the Service Rules refers to direct recruitment which is the subject matter of the advertisement. The Appellants' contention that the cadre of Professors in all the departments put together has to be taken into account for providing reservations has rightly been rejected by the High Court of Judicature at Allahabad.

Enhancement of Upper Age Limit:

10. Rule 9 of the Service Rules provides that maximum age limit for appointment to the post of Professor is 45 years. It is the case of the Appellants that the upper age limit of 65 years prescribed by the advertisement is

contrary to Rule 9 of the Service Rules. The Appellants argued that the enhancement of the upper age limit was done by a Government Order dated 06.02.2015. According to them, a rule made under the proviso to Article 309 of the Constitution of India could not be overridden by an executive order.

11. The Respondents contended that minimum qualifications for teachers in Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (for short, '*the Regulations*') were framed by the Medical Council of India (MCI) governing the maximum age for appointment of Professors in Medical Colleges. They have been amended from time to time. According to the said amended Regulations, the maximum age is set at 70 years. The Government considered it appropriate to enhance the upper age limit for appointment of direct recruitment to the post of Professor from 45 years to 65 years. The Government Order issued on 06.02.2015 for increasing the age has not been challenged by the Appellants. The Respondents relied upon the judgment of the High Court of Judicature at Allahabad in the case of ***Dr. Juhi Singhal***

(supra) which pertains to the same advertisement that is the subject matter of these Appeals. Reliance is also placed upon the judgment in ***Navyug Abhiyan Samiti v. State of U.P.*** In the said case, the High Court was concerned with the appointment to the post of Principal (Allopathy) and the challenge of the Writ Petitioners therein was relating to the increase of the upper age limit to 65 years. The Division Bench examined the provisions of the MCI Regulations referred above, by which the maximum age for the post of Principal was fixed at 70 years and held that the age of recruitment as prescribed by the MCI in the Regulations shall prevail over the provisions of Rule 9 of the Service Rules. The Special Leave Petition filed against the said judgment was dismissed by this Court on 08.05.2019. It was stated on behalf of the Government that no direct recruitment to the posts of Professors in Government Medical Colleges could be made for 12 years prior to 2015 since eligible and competent persons were not coming forward to participate in the selections. To ensure larger participation for selection to the posts of Professors, the Government was of the view that the upper age limit

should be enhanced to 65 years. It was further argued on behalf of the Government that no prejudice is caused to the Petitioners by the increase in the maximum age.

12. Having considered the submissions of the parties, we approve the finding recorded by the High Court that the decision to increase the upper age limit from 45 years to 65 years is not vitiated. The High Court rejected the challenge to the enhancement of upper age limit for direct recruitment to the post of Professor in ***Dr. Juhi Singhal*** (supra) by holding that the Regulations framed by the MCI would prevail over the Service Rules. In the said judgment, the High Court was of the view that the Government Order dated 06.02.2015 only supplements the Rules and does not supplant them. The High Court further observed that the relaxation was done in view of the shortage of teachers in Medical Institutions who are qualified for appointment to the posts of Professors. The relaxation of the upper age limit was applicable only to those departments where 25 per cent or more posts were vacant and in respect of other departments, the State Government decided not to fill them up. In ***Navyug Abhiyan Samiti*** (supra), the Division

Bench of the High Court followed the same logic and reasoning while considering the increase of upper age limit to the post of Principals in Government Medical Colleges. We see no reason to disagree with the said findings recorded by the High court. There can be no manner of doubt that the Regulations framed by the MCI relating to the conditions of service of Professors in Medical Colleges shall prevail over the Service Rules framed by the State of Uttar Pradesh. The Government Order dated 06.02.2015 has not been challenged by the Appellants for which reason they cannot make any grievance about the same.

13. The posts of Professors in Government Medical Colleges being manned for 15 years prior to 2015 by unqualified persons indicates the distressing state of affairs of medical education in the State of Uttar Pradesh. To remedy a grave situation, the State has taken a decision to make appointments by increasing the maximum age limit. The sincere attempt made by the State to have qualified doctors holding the posts of Professors has not yielded any results due to the pendency of cases which are filed challenging the advertisement. The Respondents are

directed to expedite the process of selection to the posts of Professors and make appointments at the earliest.

14. For the aforementioned reasons, the Appeals are dismissed.

.....J.
[L.
NAGESWARA RAO]

.....J.
[HEMANT
GUPTA]

**New Delhi,
August 28, 2019**