

the definition of family. The decision, in **Mohd Ikram** (supra), is per incuriam, accordingly overruled.

23. Having regard to the discussions hereinabove, the writ petition being devoid of merit is, accordingly, **dismissed**. The impugned Rule would not fall within the embargo of Article 14 of Constitution of India.

24. The dismissal of the writ petition, however, would not preclude the respondent-wife of the deceased Government servant from making an application for compassionate appointment. In case such an application is made, the same shall be considered by the competent authority on merit.

25. No cost.

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**(2023) 5 ILRA 1587**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 07.04.2023**

**BEFORE**

**THE HON'BLE SUNEET KUMAR, J.**  
**THE HON'BLE RAJENDRA KUMAR-IV, J.**

Writ-A No. 6062 of 2023

**Prabhat Kumar Tiwari**                      **...Petitioner**  
**Versus**  
**State of U.P. & Ors.**                      **...Respondents**

**Counsel for the Petitioner:**  
Sri Seemat Singh

**Counsel for the Respondents:**  
C.S.C.

**Civil Law - Service Matter - Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service (Second Amendment) Rules, 2016 - Rule 10**

**provides 'Age-10. A candidate for direct recruitment must have attained the age of 21 years and must not have attained the age of 28 years on the first day of July of a calendar year in which vacancies for direct recruitment are advertised'. Petitioner challenged the validity of Rule 10. Petitioner, was born on 01 July, consequently attained the age of 28 years and one day on the cutoff date; hence, he was hit by Rule 10. Held: Petitioner was unable to show how the amendment in the Rules of 2016 makes Rule 10 manifestly arbitrary, merely because the rule-making authority does not want a candidate for the post of Sub-Inspector who has attained the age of 28 years on the cutoff date to be considered eligible for the post. (Para 24)**

**Dismissed.** (E-5)

**List of Cases cited:**

1. State of T.N. Vs P. Krishnamurthy, (2006) 4 SCC 517
2. Cellular Operators Association of India & ors. Vs Telecom Regulatory Authority of India & ors., (2016) 7 SCC 703
3. Indian Express Newspapers (Bombay) (P) Ltd. Vs U.O.I., (1985) 1 SCC 641
4. Khoday Distilleries Ltd. & ors. Vs State of Karnataka & ors., (1996) 10 SCC 304
5. Sharma Transport Vs Government of A.P. & ors., (2002) 2 SCC 188
6. U.O.I. Vs Pushpa Rani & ors., (2019) 9 SCC 242
7. Chandigarh Administration Vs Usha Kheterpal Waie & ors., (2011) 9 SCC 645
8. Maharashtra Public Service Commission Vs Sandeep Shriram Warade, (2019) 6 SCC 362
9. Punjab National Bank Vs Anit Kumar Das, 2020 SCC Online SC 897

10. Zahoor Ahmad Rather Vs Seikh Imtiyaz Ahmad, (2019) 2 SCC 404

11. Sanjay Kumar Manjul Vs Chairman, UPSC, (2006) 8 SCC 42

(Delivered by Hon'ble Suneet Kumar, J.  
&  
Hon'ble Rajendra Kumar-IV, J.)

1. Heard Sri Seemant Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondent.

2. Petitioner applied for the post of Sub-Inspector (Civil Police) and other equivalent post pursuant to Direct Recruitment 2020-21 initiated vide Notification dated 25 February 2021, by the second respondent, Uttar Pradesh Police Recruitment and Promotion Board, Lucknow (for short "Board").

3. By the instant petition, petitioner is challenging the validity of Rule 10 of Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service (Second Amendment) Rules, 2016 (for short "Rules 2016").

4. Rule 10 provides for eligibility in respect of age. The Rule as initially enacted reads thus:

*"Age-10. A candidate for direct recruitment must have attained the age of 21 years and **must not have attained the age of more than 28 years on the first day of July of a calendar year in which vacancies for direct recruitment are advertised:***

*Provided....."*

5. The Rule subsequently came to be amended in following terms. The amended Rule reads thus:

*"Age-10. A candidate for direct recruitment must have attained the age of 21 years and **must not have attained the age of 28 years on the first day of July of a calendar year in which vacancies for direct recruitment are advertised:***

*Provided....."*

6. Petitioner is aggrieved that as per Rule 10 of Rules 2016, a candidate must not have attained the age of 28 years on the first day of July of a calendar year. In other words, the candidate must be aged less than 28 years i.e. the candidate attaining the age of 28 years on 30 June at 12.00 P.M. becomes ineligible as he would cross 28 years on first day of July of the calendar year. As per the earlier Rule it was mandated that the candidate must not have attained the age of more than 28 years on the first day of July of the calendar year, meaning thereby, the candidate who has attained 28 years of age on first day of July was eligible. In other words, the Rule under challenge mandates that the candidate must be below 28 years of age as on first July of the calendar year. The petitioner, herein, was born on 01 July, consequently, attained the age of 28 years and one day on the cut of date i.e. he had attained the age of 28 years, hence, hit by Rule 10.

7. The afore extracted Rule is under challenge.

8. In this backdrop, it is submitted that the Rule 10 is manifestly arbitrary and is liable to be declared ultra vires of Articles 14 and 16 of the Constitution of India.

9. Rival submissions fall for consideration.

10. The question that arises is as to whether the impugned Rule is manifestly

arbitrary/unreasonable to render it violative of Article 14 of the Constitution of India.

11. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who challenges it to show that it is ultra vires/invalid. It is also well recognized that subordinate legislation can be challenged under any of the following grounds:

(a) *Lack of legislative competence to make the sub-ordinate legislation.*

(b) *Violation of Fundamental Rights guaranteed under the Constitution of India.*

(c) *Violation of any provision of the Constitution of India.*

(d) *Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*

(e) *Repugnancy to the laws of the land, that is, any enactment.*

(f) **Manifest arbitrariness/unreasonableness (to an extent where the**

**Court might well say that the legislature never intended to give authority to make such rules)."**

(Refer: State of T.N. vs. P. Krishnamurthy & Cellular Operators Association of India and others vs Telecom Regulatory Authority Of India and others<sup>2</sup>)

12. One of the tests for challenging the constitutionality of subordinate legislation is that the subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available to challenge plenary legislation. (**Refer: Indian Express Newspapers (Bombay) (P) Ltd. vs. Union of India<sup>3</sup>**)

13. That takes us to consider the test of 'manifest arbitrariness'. It is well explained in **Khoday Distilleries Ltd. and others vs. State of Karnataka and others<sup>4</sup>**, which reads thus:

*"13. . . . The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121 : (1985) 2 SCR 287], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary" . . . In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in*

*conformity with the statute or that it offends Article 14 of the Constitution."*  
(emphasis supplied)

14. Also in **Sharma Transport vs. Government of A.P. and others**<sup>5</sup>, the Supreme Court held as follows:

*"25. . . . The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. . . ."*

(emphasis supplied)

15. It is well settled that the power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any Constitution or statutory provision or is patently arbitrary or is vitiated due to mala fides. It is settled legal position that matters relating to creation and abolition of posts formation or structuring and restructuring of cadres, prescribing mode of recruitment and qualifications, criteria of selection, evaluation of candidates/employees falls within the exclusive domain of the employer.

16. In **Union of India vs. Pushpa Rani and others**<sup>6</sup>, it was held that Court and Tribunals can neither prescribe the

qualifications nor sit in appeal over the judgment of the employer laying down the criteria and methodology of recruitment and selection. Paragraph 37 reads thus:

*"3.....What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."*

(emphasis supplied)

17. Similarly, in **Chandigarh Administration vs. Usha Kheterpal Waie and others**<sup>7</sup>, Supreme Court, in paragraph 22, observed thus:

*"22. It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the functions and duties attached to the post*

*and are not violative of any provision of the Constitution, statute and rules. [See J. Rangaswamy vs. Govt. of A.P. (1990) 1 SCC 288 and P.U. Joshi vs. Accountant General (2003) 2 SCC 632]. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable. Therefore, it cannot be said that the prescription of Ph.D. is unreasonable."*

18. It is settled principle of law that the employer is at liberty to legislate and provide the conditions of recruitment and selection, including, age. The Court would not substitute the discretion of the employer until it is shown that the Rule itself is inherently arbitrary to be violative of Article 14. No such ground has been raised while challenging the constitutional validity of Rule 10 of Rules 2016.

19. Accordingly, the employer has the sole discretion to prescribe qualification, age and decide the mode of recruitment. The Court under the garb of judicial review would not substitute the Rule making authority to decide what is best suited for the employer in the recruitment process. Having regard to the nature of duty, the selected candidates have to perform, it is always open to the employer to provide the upper age limit. Mere reduction of the age by one day would not render the Rule 10 manifestly arbitrary to make it contrary to the Constitution.

20. In **Maharashtra Public Service Commission vs. Sandeep Shriram Warade**<sup>8</sup>, the Court observed as under:

*"9. The essential qualifications for appointment to a post are for the*

*employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."*

21. In **Punjab National Bank vs. Anit Kumar Das**<sup>9</sup>, the Court observed as under:

*"21. it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications....."*

22. Similarly, in **Zahoor Ahmad Rather vs. Seikh Imtiyaz Ahmad**<sup>10</sup>, Supreme Court made the following observation:

*"27. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a public employer may well take into account social*

*perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily"*

23. Supreme Court similarly in **Sanjay Kumar Manjul vs. Chairman, UPSC11**, observed as under:

*"25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefore.*

*27. It is well settled that the superior courts while exercising their jurisdiction under articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post."*

*(emphasis supplied)*

24. On specific query, learned counsel for the petitioner is unable to show as to how the amendment in the Rules 2016 makes Rule 10 manifestly arbitrary merely for the reason that the Rule making authority does not want a candidate for the post of Sub-Inspector who has attained the age of 28 years on the cut of date to be considered eligible for the post.

25. Having regard to the discussions hereinabove, the writ petition being devoid of merit is, accordingly, **dismissed**.

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**(2023) 5 ILRA 1592**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 07.04.2023**

**BEFORE**

**THE HON'BLE SUNEET KUMAR, J.**  
**THE HON'BLE RAJENDRA KUMAR-IV, J.**

Writ-A No. 6089 of 2023

**Satya Narain Dubey** ...Petitioner  
**Versus**  
**U.O.I. & Ors.** ...Respondents

**Counsel for the Petitioner:**  
Sri Santosh Kumar Kushwaha

**Counsel for the Respondents:**  
A.S.G.I.

**Civil Law - Service Matter - Railway Servants (Discipline & Appeal) Rules, 1968 - Rule 14(1) - Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Issue: Whether the disciplinary authority is required to pass a reasoned and speaking order under Rule 14(1) of the Rules, 1968? Held: The requirement of the Rule mandates the disciplinary authority to 'consider the circumstances' of the case, i.e., the trial court judgment leading to the conviction of the officer. The conduct/role which led to the conviction of the officer on a criminal charge has to be considered. The disciplinary authority is not required to enter into the merits/evidence of the trial proceedings. The Rule does not mandate the authority to pass a reasoned and speaking order. The disciplinary authority is not required to sit in appeal on the findings returned by the trial court convicting the government servant. In the instant case, the order of punishment imposed by the disciplinary authority categorically records that the explanation of the petitioner was considered and that the charge against the petitioner in the trial was duly proved. The Court held that it was sufficient compliance with Rule 14(1) of the Rules, 1968. (Para 16, 17)**

**Dismissed. (E-5)**