



2023:JKLHC-JMU:4273

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 29.09.2023

Pronounced on: 04.10.2023

Case: WP(C) No. 2440/2023
CM No. 5744/2023

1. **Mridulla Kirti, Age 36 years** ...Petitioner/Appellant(s)
D/o Sh. Thoru Ram
R/o Village Ranjit Pura
P.O. Gole Gujral Talab Tillo, Jammu.

2. **Aman Kumar Dorhi, Age 37 years**
S/o Sh. Bans Ram Doshi
R/o Ward No. 1, JP High School, Chatha Mill,
Bhour Pind, Tehsil Jammu (South), District
Jammu.

3. **Sajad Hussain Shah, Age 35 years**
S/o Sh. Khurshid Hussain Shah
R/o Village Gursal, Tehsil Mendhar,
District Poonch.

4. **Nusrat Baby Jan, Age 37 years**
W/o Nadeem Qadri
R/o House No. 151, Lane No. C
Sector-1, Near Masjid Nouman Bin Sabet,
Opp. A.M. Hyundai Showroom, Channi
Rama
Jammu.

5. **Bhawan Kumar, Age 37 years**
S/o Sh. Varinder Sharma,
R/o Village Kotli, Tehsil Bhardwah,
District Doda.

6. **Rahul Sharma, Age 37 Years**
S/o Late Sh. Satpal Sharma
R/o Plot No. 4B1, Balwant Vihar,
Udheywala, Jammu.

7. **S. Mehraj Khalid, Age 38 years**
S/o Mushtaq Ahmed
R/o Village Moothi (Marmaat)



Tehsil and District Doda.

8. Saraswati Rao, Age 37 years

D/o Bodh Raj

W/o Sh. Ragwan

R/o Gurha Brahmana, Bantalab,

Tehsil and District Jammu.

9. Garu Mandotra, Age 35 years

S/o Sh. Baldev Ram Sharma

R/o Karalian, Tehsil Ramgarh

District Samba.

10. Priya Sharma, Age 36 years

D/o Ashok Kumar,

R/o House No. 117, Govind Nagar,

Digiana Ashram, Jammu.

11. Pawandeep Kour, Age 36 years

D/o Gurcharan Singh

R/o House No. 111, Sector-6

Nanak Nagar, Jammu.

12. Kewal Singh Manhas, Age 37 years

S/o Phool Raj

R/o Gandoh Doda

13. Meenakshi Bhatyal, Age 38 years

D/o Sh. Natha Singh

R/o House No. 5, Lane No. 1

Karan Nagar, Jammu.

14. Shah Faisal, Age 37 years

S/o Shafqat Hussain

R/o Village Kote Behrote, Tehsil Thanamandi

District Rajouri.

15. Tanveer Ahmad Bhat, Age 37 years

S/o Bashir Ahmad Bhat,

R/o Bathindi, Jammu.

16. Rauf Shah, Age 36 years

S/o Mohd. Azam Shah,

R/o Dodsan Bala, Tehsil & District Rajouri.

17. Rita Kumari, Age 37 years

D/o Ramesh Kumar

W/o Mukesh Kumar

R/o Village Tutray,



Tehsil R.S. Pura, District Jammu.

18. Nawdeep Singh Sen, Age 35 years
S/o Swami Raj Sen
R/o Zellana Lachdayaram, Near DC
Complex, Kishtwar, J&K.

19. Sunil Sharma Age 36 years
S/o Sh. Hansraj Sharma
R/o H. No. E.P. 925, Jullakha Mohalla
Jammu.

20. Deepika Datt Age 37 years
D/o Ganga Datt
W/o Amit Kumar
R/o Sarore Meen Sarkar, Samba

21. Basundhra Age 36 years
D/o Lt. Sh. Kuldip Kumar
R/o H.No. 28, Lower Laxmi Nagar,
Sarwal, Jammu

22. Vikram Singh Age 38 years
S/o Prem singh Rajoo
R/o Ward no. 1, Ramban
Tehsil & District Ramban

23. Monia Sambyal Age 35 years
D/o Late Mohd. Amin Sambyal
R/o H.no. 24, Ward no. 3, Nangal Road Katra

Mr. Abhinav Sharma, Sr. Advocate with
 Through:- Ms. Saba Atiq & Mr. Abhirash Sharma, Advocates.

V/s

1. High Court of J&K and LadakhRespondent(s)
Through its Registrar General,

2. Union Territory of J&K
Through Commissioner/Secretary to Govt.
General Administration Department
Civil Secretariat, Jammu

3. Commissioner/Secretary to
Government, Law Justice and
Parliamentary Affairs, Jammu/Srinagar.



**4. J&K Public Service Commission ,
Jammu/Srinagar
Through its Secretary**

Through:-

Mr. Aditya Gupta, Advocate for R-1.
 Mr. Raman Sharma, AAG with
 Ms. Saliqa Sheikh, Assisting counsel for R-2.
 Ms. Priyanka Bhat, Advocate vice
 Mrs. Monika Kohli, Sr. AAG for R-3.
 Mr. F.A. Natnoo, Advocate for R-4.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

04.10.2023

Sindhu Sharma-J

01. The Jammu and Kashmir Public Service Commission (hereinafter referred to as 'JKPSC') invited applications for filling up 69 posts of Civil Judge (Junior Division) in Subordinate Judiciary vide its Notification No. 38-PSC (DR-P) of 2023 dated 27.08.2023. The last date for receipt of the online applications was 17.09.2023, the preliminary examination is scheduled for 08.10.2023, and the mains examination is to be held from 08.11.2023 to 19.11.2023. The prescribed age for the candidates to participate in the recruitment process, as per the notification, is minimum 18 years and maximum 35 years as on 1st of January, 2023.

02. The petitioners are aggrieved of the impugned notification dated 27.08.2023 to the extent of prescribing the maximum age limit of 35 years, ignoring the fact that they had earlier applied pursuant to Notification No. PSC/Exam/2018-19/14 dated 09.10.2019 and are entitled to one-time age relaxation as they have become overage.

03. The contention of the petitioners is that the JKPSC in the year 2019, invited applications for 24 posts of Civil Judge (Junior Division)/Munsiff, vide notification No. PSC/Exam/2018-19/14 dated 09.10.2019. The



petitioners at that point of time were fulfilling the requisite eligibility criteria had responded to the notification, but before the last date of receipt of application these posts were withdrawn vide notification dated 24.10.2019. It is submitted by the petitioners that impugned notification dated 27.08.2023 issued by respondent No. 4, for filing up 69 posts of Civil Judge (Junior Division) includes the 24 posts advertised vide notification dated 09.10.2019, but the petitioners are now ineligible to participate in the present selection process for the aforesaid 69 posts as they have become overage.

04. It is also pleaded that there was no recruitment process undertaken by the respondents for selection to the post of Civil Judge (Junior Division)/Munsiff from the year 2020 to 2022, therefore, no opportunity was available to the petitioners to participate/compete in the selection process while they were within the prescribed upper age limit, as such, they are entitled to one-time age relaxation to enable them to participate in the selection process.

05. This fact has been ignored by the respondents while notifying the maximum age limit by 35 years as on 01.01.2023 and the claim of all those candidates who had earlier applied pursuant to notification issued by the JKPSC dated 09.10.2019, against the 24 withdrawn posts have been ignored.

06. The petitioners also submitted that in terms of Rule 10 of the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, the selection for Civil Judge (Junior Division)/Munsiff as far as practicable is to be held annually. The respondents have not conducted any selection for the last three consecutive years, i.e., 2020, 2021 and 2022 due to Covid-19 pandemic and the petitioners who were within the prescribed age criteria



have now crossed the maximum upper age of 35 years and have become ineligible for participating in the selection process.

07. The petitioners, thus, submit that they have been denied the opportunity to compete in the selection process now, as they have crossed the prescribed upper age limit, as such, it is incumbent upon the respondents to grant them one-time relaxation and enable them to participate in the selection process for the post of Civil Judge (Junior Division).

08. In support of their contention, the petitioners have also placed reliance on a notification bearing No. GAD-MTG0RIV/200/2021-09-GAD dated 15.02.2022 issued by the General Administration Department, granting 'one-time age relaxation' to overage candidates desirous for applying against the withdrawn posts. As per the notification, the candidates who had earlier applied against the withdrawn posts were deemed to be eligible in terms of the upper age limit, if they apply for the said posts. The petitioners submit that they too are entitled to one-time age relaxation in view of this notification, for applying for the posts of Civil Judge (Junior Division) in response to the fresh notification, as they had applied under the 2019 notification which was withdrawn.

09. The petitioners had also moved a representation for seeking one-time age relaxation, but the same has been turned down at its administrative side by the High Court of Jammu & Kashmir and Ladakh.

10. Reliance has been placed by the petitioners on the judgment "**High Court of Delhi vs. Devina Sharma,**" (2022) 4 SCC 643, in which the Hon'ble Apex Court has allowed the candidates who were overage to participate in the selection process for the posts of Delhi Judicial Service as a one-time measure.



11. The respondent No. 1, in its reply, has opposed the claim of the petitioners on the ground that there is no provision for relaxation in minimum or upper age limit in the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, any relaxation of the same would require an amendment of the rules which is not permissible when the selection process is already on, as such, the relief prayed for, cannot be granted. It is also submitted by them that 24 posts, notified in the year 2019, on which the petitioners have laid their claim were created under the, The Jammu and Kashmir Dehi Adalats Act, 2013, and these posts were subsequently withdrawn vide notification dated 24.10.2019.

12. The JKPSC, in its objections, has submitted that the 24 posts notified in the year 2019 were under the, The Jammu and Kashmir Dehi Adalats Act, 2013, which came to be withdrawn by the Department of Law and Parliamentary Affairs on the instructions of the Hon'ble High Court, and in compliance to the directions dated 31.07.2019, passed by the Hon'ble Supreme Court in Civil Appeal No. 1867/2006 titled "*Malik Mazhar Sultan and another Vs. U.P. Public Service Commission and others*". These 24 posts are not a part of the present selection process.

13. It is also submitted that the reliance placed by the petitioners on the notification of the General Administrative Department dated 15.02.2022, is misplaced, as 'one-time age relaxation' was granted vide Circular No. GAD-MTG0RBIV/200/2021-09-GAD dated 15.02.2022, to the candidates who had applied in such posts which were withdrawn and have now crossed the upper age limit against these posts re-advertised.

14. The respondents also submit that the reliance placed upon the judgment of the Devina Sharma (supra) was also different from the facts and



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circumstances of the present case, as in the present case, the recruitment process could not be held in view of amendments which were imperative due to the J&K Reorganization Act, 2019.

15. It is further submitted that in terms of the Notification No. 38-PSC (DR-P) of 2023 dated 27.08.2023, 69 posts of Civil Judge (Junior Division) in Subordinate Judiciary were advertised and in pursuance to the said advertisement notice, 3836 candidates have applied for these posts and the preliminary examination is scheduled to be held on 8th October, 2023. The respondents further submit that they have made all the necessary arrangements for conducting the said examination and the calendar dates for conducting the preliminary and mains examination have already been advertised and any change in the dates already notified would affect the upcoming examinations and would inevitably delay the other examinations also.

16. The process of filling up the vacancies of Civil Judge (Junior Division) remained pending due to delay in certain amendments in the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, which were necessitated in view of the promulgation of the Jammu and Kashmir Reorganization Act, 2019, and vide S.O 441 dated 24.08.2023, the requisite amendments were made in the recruitment rules, thereby enabling the recruitment process to be carried on. During the intervening period, 23 posts of Civil Judge (Senior Division) had also fallen vacant and as per the existing Rules, these posts are to be filled up by way of promotion from amongst the Civil Judge (Junior Division) on the basis of merit-cum-seniority. Thus, a fresh requisition was made to the Government for initiating the process for filling up of 69 vacant vacancies



(43 clear + 26 anticipated) of Civil Judge (Junior Division) in terms of the relevant recruitment rules. The 22 posts of Gram Nyaylayas created initially in the year 2014 (as Dehi Adalats) have not been made functional due to absence of requisite/necessary infrastructure including manpower and also as there was no immediate possibility of operationalizing of Gram Nyaylayas, these posts were withdrawn.

17. The sole claim laid down by the petitioners is with regard to the fact that they had applied earlier in terms of advertisement notification dated 09.10.2019 and since these posts were withdrawn, they are entitled to be given one-time age relaxation in these posts. This contention of the petitioners cannot be accepted on the ground that the posts which were advertised were under the, The J&K Dehi Adalats Act, 2013, which did not materialize due to the intervening directions of High Court. The petitioners, thus, cannot rely upon 2019 notification for the post of Dehi Adalats to allow them to participate in the present selection by granting them age relaxation.

18. The reliance placed by the petitioner on Rule 10 of the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, also will not come to their aid as Rule 10 provides that examination for selection of candidates shall as far as practicable be held annually. The examination could not be conducted, when it was practicable to do so every year. It was not practicable for the respondents to hold the examinations for the aforesaid posts as there were certain amendments which were necessitated in the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, in view of the promulgation of the Jammu and Kashmir Reorganization Act, 2019. These amendments were brought into force by



S.O. 441 dated 24.08.2023, removing the difficulties and immediately thereafter, the process for selection to the posts of Civil Judge (Junior Division) was initiated. In view of these peculiar circumstances, it was not practicable to hold examination for the aforesaid posts of Civil Judge (Junior Division)/Munsiffs from 2020 to 2022.

19. It is not the case of the petitioners that they had no opportunity to participate or compete in any of the selection process conducted by the respondents' preceding the present one rather, their only contention is, that because they could not participate in 2019 selection process, therefore, they be provided age relaxation and an opportunity to participate in the selection process.

20. The selection for the post of Civil Judge (Junior Division) was conducted in the year 2009, 2012, 2013, 2017 and 2018 since 2008 till date. The petitioners being eligible at that time also, had the opportunity to participate in the aforementioned selection process. The petitioners, thus, cannot seek relaxation as a matter of right, if they are otherwise not eligible merely because they could not participate in the selection process in the year 2019, when the posts were withdrawn.

21. It is well settled that while participating in the recruitment process, a candidate must possess the prescribed eligibility and unless there is any express provision to the contrary, there cannot be any relaxation in the requisite eligibility criteria. Admittedly, there is no provision for relaxation in minimum or upper age limit in the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967. Reliance has been placed on the judgment of Devina Sharma (supra), which is not applicable to the facts and circumstances of the present case. Rule 13 of Delhi Judicial

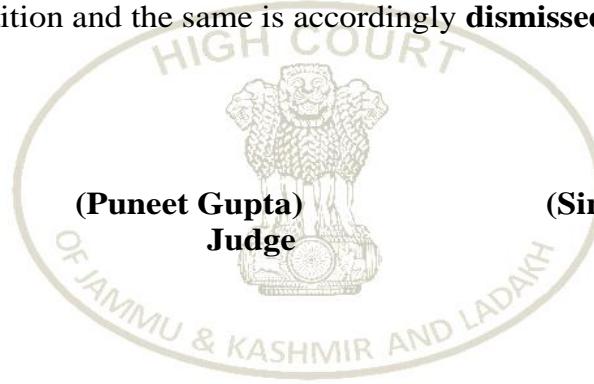


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Services provides that the examination will be held by the High Court in Delhi, preferably once a year, subject to vacancy position. This rule is different from Rule 10 of the Jammu and Kashmir Civil Service (Judicial) Recruitment Rules, 1967, which provides that the examination for selection of candidates shall as far as practicable be held annually.

22. The process of selection is already underway, the ensuing examination is to be held on 08.10.2023 and all the preparation for the same have been made, permitting the petitioner at this stage will, in any case, set at naught the entire process.

23. In view of the aforementioned facts and circumstances, there is no merit in this petition and the same is accordingly **dismissed**.

**Jammu:**

04.10.2023

Michael Sharma

<i>Whether approved for speaking</i>	:	<i>Yes</i>
<i>Whether approved for reporting</i>	:	<i>Yes</i>