

(2012) 07 AHC CK 0309

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 8647 of 1987

Ramesh Chandra

APPELLANT

Vs

Chief Inspector of Factories and
AnotherRESPONDENT

Date of Decision: July 27, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 14

Citation: (2012) 8 ADJ 578 : (2012) 6 AWC 6141 : (2012) 135 FLR 95**Hon'ble Judges:** S.P. Mehrotra, J; Pankaj Mithal, J**Bench:** Division Bench**Advocate:** K.P. Agarwal and Ghazala Bano Qadri, for the Appellant; D.P. Singh and S.C., for the Respondent**Final Decision:** Allowed

Judgement

1. Petitioner was appointed as a Welfare Officer Grade III in Swadeshi Cotton Mills, Naini, Allahabad, respondent No. 2 in accordance with the U.P. Factories Welfare Officers Rules, 1955 (hereinafter referred to as "the Rules") vide appointment letter dated 21.11.1985. He joined on 23.11.1985. On the date of appointment the petitioner was slightly overage. He was more than 26 years of age. His date of birth happened to be 1.3.1959. Petitioner applied to the State Government for age relaxation. He contended that his prior service as Labour Welfare Officer with M/s. Kanpur Chemical (P) Ltd., Kanpur from 11.9.1984 to 21.11.1985 i.e. for one year two months and ten days be excluded and the relaxation in age by the said period be granted. The application of the petitioner was rejected vide order dated 4.11.1986 and consequently vide order dated 21.4.1987 the petitioner was informed that in view of prescribed age limit of 26 years, as he was found overage by eight months and 22 days on the date of appointment, his services would stand automatically terminated w.e.f. 21.5.1987. The aforesaid two orders dated 4.11.1986 rejecting the application of the petitioner for exemption in age limit and the consequential order

dated 21.4.1987 terminating his services have been assailed by the petitioner by filing this writ petition.

The parties have exchanged necessary affidavits and they have agreed for final disposal of the writ petition on the basis of the pleadings on record.

2. We have heard Ms. Ghazala Bano Quadri and Sri D.P. Singh, counsel for the parties.

The main plank of the argument of the petitioner is that proviso to Rule 9 of the Rules empowers the State Government to relax the upper age limit up to a period during which the person has worked as Welfare Officer earlier. The petitioner having worked as Welfare Officer earlier from 11.9.1984 to 21.11.1985, his age limit was liable to be relaxed by the said period. The State Government in refusing to grant relaxation has acted in an arbitrary manner and the order to this effect passed by the State Government is completely a non-speaking order.

3. The petitioner is legally entitled for consideration of his application for grant of age relaxation in view of statutory provision contained in proviso to Rule 9 as well as Rule 13 of the Rules. For the sake of convenience the relevant proviso to Rule 9 and Rule 13 are quoted below:

9. Age and qualifications.-No person may be appointed as a Welfare Officer unless-

(a)...

(b)(i)...

(ii)...

(iii) he is not less than 21 years and not more than 26 years of age in case of appointment to Grade III:

(c)...

(d)...

(e)...

Provided firstly, that in the case of person, who has worked as a Welfare Officer under these rules, or the Factories Welfare Officers' Rules, 1949, the upper age limit may be relaxed by the State Government up to a period during which he worked as such officer:

.....

13. Exemption.--The State Government may, if it is satisfied that it is expedient so to do, exempt any person from all or any of the qualifications or age restriction prescribed in Rule 9 if such person-

(i) is a graduate from a University established by law, and

(ii) has had three years in the case of Grade I, two years in the case of Grade II, and one year in the case of Grade III, practical experience of work concerning or relating to the welfare of labour:

Provided that no application for exemption under this rule shall be entertained after the person concerned has already been appointed.

A plain reading of the aforesaid provisions of Rules indicate that though the necessary minimum age for appointment as Welfare Officer Grade III is 21 years and a maximum of 26 years but the same can be relaxed by the State Government provided the person has earlier worked as Welfare Officer either under these Rules or under the Factories Welfare Officers' Rules, 1949.

4. Rule 13 provides for exemption in age if a person is a Graduate from a University and is having working experience concerning to the welfare of labour for a period of three years as Grade I Officer, two years as Grade II Officer and one year as Grade III officer. However, no application for exemption under Rule 13 is permissible after the person concerned has been appointed.

5. Petitioner applied for exemption/ age relaxation after his appointment, therefore, Rule 13 may not be strictly applicable but certainly petitioner was entitled for consideration of his application for age relaxation under proviso to Rule 9 of the Rules.

6. The petitioner in his application clearly stated that he took employment as Labour Welfare Officer Grade III in M/s. Kanpur Chemical (P) Ltd. on 11.9.1984 in accordance with U.P. Factories Welfare Officers' Rules, 1955 and at that time he was less than 26 years in age. He worked there till 21.11.1985 on which date he was issued a fresh letter of appointment as Welfare Officer Grade III by respondent No. 2. He was entitled to age relaxation in the matter of grant of appointment for the period he had worked with M/s. Kanpur Chemical (P) Ltd..

7. It is said that law governs man and reason the law. Reasons are the links between materials on which conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial and reveal nexus between the facts and conclusions reached vide [Union of India \(UOI\) Vs. Mohan Lal Capoor and Others](#), and [Uma Charan Vs. State of Madhya Pradesh and Another](#), .

8. In short, fair play requires recording of germane and relevant precise reasons when an order affects the right of a citizen or a person irrespective of the fact whether it is judicial, quasi-judicial or administrative. Decision or order of any statutory or public authority bereft of reasoning would be arbitrary, unfair and unjust, violative of Article 14 of the Constitution of India.

9. In [State of West Bengal Vs. Atul Krishna Shaw and Another](#), , the Supreme Court observed "giving of reasons is an essential element of administration of justice. A

right to reason is, therefore, indispensable part of the sound system of judicial review.

10. In [S.N. Mukherjee Vs. Union of India](#), it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizons of principles of natural justice provides for recording of reasons.

11. We have perused the order of the Director Factories, Uttar Pradesh dated 4.11.1986, communicated on behalf of the State Government, rejecting the petitioner's application for age relaxation under proviso to Rule 9 of the Rules. The said order simply states that the State Government has rejected the application as it was not possible to grant any age relaxation. The aforesaid order is undoubtedly a non-speaking order. It does not contain any reason for rejecting the petitioner's application for grant of relaxation in age limit. The respondents have not brought on record any order of the State Government rejecting the exemption application of the petitioner. The only order in this regard available is the impugned order dated 4.11.1986. The said order is completely uninformed by reasons.

The impugned order does not in any manner show that the authorities had applied mind to the relevant aspects in refusing age relaxation to the petitioner.

It is settled legal position, as discussed above, that even an administrative order which have the effect of visiting a person with civil consequences have to be passed adhering to the principles of natural justice which includes recording of reasons unless specifically dispensed with by the relevant Rules or Statute. Learned Counsel for the respondents has failed to show any provision by which recording of reasons for granting or refusing age relaxation has been dispensed with. Thus, there is nothing on record to indicate application of mind by the authority concerned to the facts and circumstances culminated in the formation of opinion to refuse age relaxation and to reject his claim for relaxation in age.

In view of above, the orders dated 21.4.1987 and 4.11.1986 (Annexure 5 and 7 to the petition) are quashed and a writ of mandamus is issued directing respondent No. 1 to reconsider the grant exemption in the matter of age limit as provided under Rule 9 of the U.P. Factories Welfare Officers Rules, 1955.

The writ petition is allowed.