

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.66724 of 2017

Siraj ur Rehman Jasra Vs Government of Punjab, etc

J U D G M E N T

Date of Hearing	25.09.2017.
Petitioner By:	Mr. Saif ur Rehman Jasra, Advocate.
Respondents By:	Mr. Anwaar Hussain, Addl.A.G with Imran Sajjad, Law Officer, PPD. Mian Ghulam Shabbir Thaheem, Advocate/Law Officer, PPSC.

Ayesha A. Malik J: This single judgment decides upon the issues raised in the titled Writ Petition as well as WP No.69026 of 2017 as common question of law and facts are involved.

2. The Petitioners are candidates for the post of Assistant District Public Prosecutor (“ADPP”) for which the closing date for submitting applications was 14.09.2017. Their grievance is that in terms of the impugned advertisement candidates who are between the ages 25 to 35 years can apply for the post but the cut off date for determining the eligibility of age was mentioned as 01.01.2017 whereas for the purposes of experience the cut off date was 14.09.2017. The case of the Petitioners is that the cut off date for determining the eligibility of age is arbitrary and discriminatory. He argued that the Petitioners were underage on 01.01.2017 but become eligible prior to 14.09.2017. Learned counsel further argued that the cut off date as given in the advertisement is contrary to the requirements of law which has no justification. It is also argued that previously in the years 2011, 2012, 2015 and 2016 applications for the same post were advertised without any cut off date and suddenly in the impugned advertisement the cut off date is incorporated. Learned counsel argued that this is a case of blatant discrimination because there is no cut off date for determining age for any posts, including posts advertised in the last one week. In this regard various

different advertisement issued by the Punjab Public Service Commission (“PPSC”) have been placed on record.

3. Report and parawise comments have been filed by Respondents No.2 and 3. On behalf of the stated Respondents, it was argued that the fixation of the age is as per Policy Decision No.8.1 which is in line with the requirements of the Punjab Civil Servants (Appointment and Conditions of Services) Rules, 1974 (“Rules”), which also provides that the age shall be determined as on the first of January of the year in which the examination is proposed to be held.

4. Learned Law Officer on behalf of Respondent No.1 stated that the requirement of the law is given in Rule 18 of the Rules and the policy and practice must be in line with the requirements of the law. Learned Law Officer stated that so far as the allegation of discrimination is concerned, it is for Respondents No.2 and 3 to explain why they have acted in contravention to the requirements of the Rules which have been in place since 1976. He further highlighted that the Petitioners before the Court claim to be underage on 01.01.2017, however, there will be other candidates who will be prejudiced if the cut off date is changed to 15.09.2017 as they will become overage on the said date.

5. Heard and record perused.

6. The basic grievance of the Petitioners is with respect to the cut off date for the post of ADPP given in the advertisement dated 24.08.2017. In terms of the age requirement it is noted that this post was also advertised in the years 2011, 2012, 2015 and 2016 and no cut off date was prescribed in any of those years. Policy Decision No.8.1 came in October, 2016 and provides that *in the case of Competitive/Combined Competitive Examination, the qualifying age shall be reckoned as on the first of January of the year in which the examination is proposed to be held*. This Policy Decision is stated to be in terms of the requirement of Rule 18 (2) of the Rules, which provides that *where recruitment is to be made on the basis of a written examination, age shall be reckoned as on the first of January of the year at which the examination is proposed to be held and in all other cases it*

shall be on the last date fixed for submission of application for appointment. Admittedly, the Policy Decision came in October 2016 and prior to October 2016 despite the fact that Rule 18 (2) of the Rules provided the requirement for determining age, it was not followed by the PPSC. The effect of this negligent act on behalf of the PPSC is that they have developed a practice of recruiting, for competitive posts and in this case for the post of ADPP, without resort to cut off date of first of January of the year in which the examination is proposed to be held. Consequently, aspiring applicants to this post pursuant to the impugned advertisement 2017 are not aware of the requirement of Rule 18 (2) of the Rules or Policy Decision 8.1. The Respondent PPSC in October 2016 incorporated the requirement of the Rules in its Policy Decision and on the basis of the same has issued the impugned advertisement with the cut off date without any notice or information to the public.

7. The PPSC is a statutory authority which is required to conduct test and examination for recruitment to provincial services and posts connected with the affairs of the Province. Recruitment is based on the requisition of the department which stipulates its requirements and number of vacant posts. The PPSC is required to fill the vacant posts in a transparent manner through competitive examination. In doing so the Rules are binding on the PPSC and neglecting to follow the Rules is failure on its part to do its job with care and attention as required under the PPSC Act. As per the record, the PPSC over the years has evolved its own mechanism for recruitment to the post of ADPP which is not in accordance with the specific requirement of Rule 18 of the Rules. Counsel for the PPSC was unable to explain the past practice and why PPSC has neglected to ensure that recruitment to the post of ADPP did not prescribe the cut off date stipulated clearly in Rule 18 of the Rules. Under the circumstances due to the irresponsible acts of the PPSC the present Petitioners along with all applicants for the post of ADPP cannot be burdened with discriminatory treatment on account of an established practice of PPSC. The PPSC brought about a sudden change in its Policy in October, 2016 wherein Policy Decision 8.1 was introduced for the first time, be in

line with the requirements of the Rules. Even this Policy Decision was never made public or properly announced well before the recruitment process. Hence the Petitioners and other applicants were not aware of the Policy Decision. Therefore as a one time exemption, in order to ensure that the Petitioners along with all other applicants are not prejudiced in any manner, they be allowed to compete for the post of ADPP wherein the cut off date 01.01.2017 will not be made applicable and instead the cut off date of 14.09.2017 will be relevant for the purposes of determining age. In this regard, it is clarified that the applicants who were underage as on 01.01.2017 and/or who have become overage after 01.01.2017 will be eligible to compete for the post of ADPP so long as they are eligible with reference to age as on the cut off date of 14.09.2017. However, as a future course of action the PPSC will ensure to public its Policy Decision No.8.1 not only on the website but also in leading newspapers so that the public at large is informed that the policy requirement as of October 2016 for the purposes of recruitment made on the basis of written examination, the age shall be determined as on first January of the year in which the examination is proposed to be held.

8. For what has been discussed above, both these petitions are **allowed** and it is ordered that the benefit of this judgment shall be extended to all applicants by the Respondents for the post of ADPP who are not party to this case or before the Court yet fall in the category as explained above, with reference to the cut off date for age determination, in order to avoid multiple litigation.

(AYESHA A.MALIK)
JUDGE

Approved for reporting.

JUDGE