



**ORDER****PER M ( J )**

The applicant has challenged clause 4.2 of the advertisement (Annexure-A-2) for the post of District Extension and Medical Officer, General State Service, Group B, under the Directorate of Health Services. The advertisement is for 30 posts. Clause 4 of the advertisement states about the age, which reads as under :-

4. AGE

“4.1. Not more than 35 years as on 1<sup>st</sup> July, 2008, Relaxable as per Rules.

4.2. The upper age limit shall not apply to the employees of Government of Maharashtra.

4.3. The age limit may be relaxed by Government of the recommendation of the commission in favour of candidates possessing exceptional qualification and experience.”

2. According to the applicant the said advertisement prescribing the age limit of 35 years as on 1/7/2008 is not applicable to the employees of Govt. of Maharashtra is arbitrary, irrational and discriminatory.

3. The applicant possesses the requisite qualification for the post for which the advertisement was published. He also possesses

experience of more than 20 years in Mass Education, training, health awareness programme, Publicity in field of family awareness and Health Education etc. The advertisement was published by the Respondent no.3, i.e. the Maharashtra Public Service Commission. It is stated that the upper age limit which is not applicable to the Govt. servants is discriminatory and the same is not applicable to the Z.P. employees. The upper age limit should have been made relaxable to all the employees whether the employee belongs to Govt. or Zilla Parishad and therefore the clause 4.1 is required to be struck down being arbitrary, unreasonable and violative of Article 14 of the Constitution. The applicant is therefore claiming that clause no. 4.1 and 4.2 shall be quashed and set aside.

4. The respondent no.3 has filed the affidavit-in-reply and submits that there is no discrimination. Relaxation is granted to one class and grant of such relaxation or refusal of such relaxation cannot be arbitrary. It is stated that the employees of the Z.P. and that of the Govt. are different classes of employees. The Respondent no. 3 has also placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay in W.P. No. 8507/2003 in the

case of **Yashwant Gopal Kad –vs State of Maharashtra and another** decided on 6/4/2004.

5. Heard the Id. counsel for the applicant Shri R.V. Shiralkar and the Id. P.O. for the respondents Shri A.P.Potnis. Perused the application, Affidavit, Affidavit-in-reply, Rejoinder and various documents on record.

6. The only material point to be considered is whether the relaxation of the age limit in case of Govt. employee as per clause 4 of the advertisement is legal and proper ?

7. Perusal of clause 4 which deals with the age of the candidate for responding to the advertisement shows that the upper age limit for the candidate is 35 years as on 1/7/2008. However, it is specifically mentioned that the upper age limit shall not apply to the employees of the Govt. of Maharashtra or in other words there is no age limit of 35 years for employees of Govt. of Maharashtra. According to the applicant he is an employee of Z.P. and the relaxation of the upper age limit is not applicable to the employees of the Z.P. and therefore such clause is arbitrary and against the provisions of the Constitution.

8. The Id. P.O. has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay in W.P. No. 8507/2003 as stated *supra*. In the said W.P. the Hon'ble High Court has observed in para No. 3 as under :-

**Para 3 :**

***“ This aspect is considered by the MAT and negated. We are in full agreement with the MAT. The State Government of Maharashtra while framing the rules classified its employees “ employees of the Government of Maharashtra working in the Education field” is one class and “ others working in the Education field” is the other class. The relaxation is granted to one class, grant of such relaxation or refusal of such relaxation cannot be in such circumstances called arbitrary. Hence petition is rejected.”***

9. The Id. P.O. has also placed reliance on the judgment delivered on 30/9/2010 by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 8507/2003 in case of **Ravindra Kisanrao Kapre –Vs- State of Maharashtra and another.** In para 4 of the said judgment, the Hon'ble High Court has observed as under :-

**Para 4 :**

***“ It is a settled law, that the employees of the State Government, and the employees of the local self-government, form part of separate classes. Differential treatment for different classes is permissible under Article 14 of the Constitution of India. In that view of the matter, no case is made out for interference.”***

10. In view of the aforesaid observations made by the Hon'ble High Court it will be clear that the employees of the Z.P. and those of the Govt. form part of separate classes and therefore differential treatment for different classes is permissible under Article 14 of the Constitution of India.

11. In view of the aforesaid fact, we do not find merit in the O.A. Hence the following order:-

The O.A. is dismissed with no order as to costs.

**(J.D. Kulkarni)  
Member ( J )**

**(Rajeev Agrawal )  
Vice-Chairman.**

Skt.