



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

**D.B. Spl. Appl. Writ No. 1123/2024**

1. The State Of Rajasthan, Through Its Principal Secretary, Department Of Ayurved And Bhartiya Chikitsa, Secretariat, Jaipur.
2. The State Of Rajasthan, Through Its Joint Secretary, Department Of Unani And Indian Medical, Government Of Rajasthan Secretariat, Jaipur.
3. The Dr Sarvepalli Radhakrishnan Rajasthan Ayurved University, Jodhpur, Through Its Registrar.

----Appellants

Versus

1. Dr. Ali Taqi S/o Irtiza Hussain, Aged About 56 Years, Opposite Gayo Ki Fatak, Udaimandir, Jodhpur
2. Abdul Rauf S/o Abdul Aziz, Aged About 54 Years, Resident Of Near Neel Gharo Ki Mazid, Malpura, Tonk.
3. Saleem Khan S/o Subratee Khan, Aged About 53 Years, Resident Of Opposite Gayon Ki Fatak, Udaimandir, Jodhpur.
4. Mohammad Irfan S/o Mahammed Yamin, Aged About 56 Years, Resident Of Village And Post Navrangpura, Virat Nagar, District Jaipur.
5. Mohammad Shah Alam S/o Masood Akhatar, Aged About 53 Years, Resident Of Village And Post Bhanpur Kallan, Tehsil Jamwaramgarh, District Jaipur.
6. Gopal Singh Tanwar S/o Narayan Singh Tanwar, Aged About 56 Years, Resident Of House No. 30, Ram Gali No. 8, Near New Raja Park, Village And Post Rattewala, District Jaipur.

----Respondents

Connected With

**D.B. Spl. Appl. Writ No. 1109/2024**

1. The State Of Rajasthan, Through Its Principal Secretary, Department Of Ayurved, Yoga And Naturopathy, Unani, Siddha And Homeopathy (Ayush) Department, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Deputy Joint Secretary, Department Of Ayurved, Yoga And Naturopathy, Unani. Siddha And Homeopathy



(Ayush), Department, Government Of Rajasthan,  
Secretariat, Jaipur, Rajasthan.

3. Dr.sarvapalli Radhakrishan Ayurved University, Nagaur  
Road, Karwar, Jodhpur, Rajasthan.
4. Dr.sarvapalli Radhakrishan Ayurved University, Nagaur  
Road, Karwar, Jodhpur, Rajasthan.
5. Registrar, Dr. Sarvapalliradhakrishanayurve University,  
Nagaur Road, Karwar, Jodhpur, Rajasthan.

----Appellants

Versus

Dr. Mohd Yunus S/o Late Sharee Abdul Wase, Aged About 57  
Years, Resident Of Gajadhar Molabaxji Ki Pole, Merti Silawaton  
Ka Bas, Inside Sojati Gate, Jodhpur.

----Respondent

**D.B. Spl. Appl. Writ No. 1128/2024**

1. The State Of Rajasthan, Through Its Principal Secretary,  
Department Of Ayurved, Yoga And Naturopathy, Unani,  
Siddha And Homeopathy (Ayush) Department,  
Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
2. Deputy Joint Secretary, Department Of Ayurved, Yoga  
And Naturopathy, Unani. Siddha And Homeopathy  
(Ayush), Department, Government Of Rajasthan,  
Secretariat, Jaipur, Rajasthan.
3. Registrar, Dr. Sarvapalli Radhakrishan Ayurved University,  
Nagaur Road, Karwar, Jodhpur, Rajasthan.

----Appellants

Versus

Mohammad Sajid S/o Mohammad Ali, Aged About 53 Years, R/o  
1712, Karnal Sahab Ki Haveli, Uday Mandir, Jodhpur Cachery,  
Jodhpur, Rajasthan.

----Respondent

**D.B. Spl. Appl. Writ No. 1105/2024**

1. The State Of Rajasthan, Through Its Principal Secretary,  
Department Of Ayurved, Yoga And Naturopathy, Unani,  
Siddha And Homeopathy (Ayush) Department,  
Government Of Rajasthan, Secretariat, Jaipur,



Rajasthan.

2. Deputy Joint Secretary, Department Of Ayurved, Yoga And Naturopathy, Unani. Siddha And Homeopathy (Ayush), Department, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
3. Registrar, Dr. Sarvapalliradhakrishan Ayurve University, Nagaur Road, Karwar, Jodhpur, Rajasthan.

----Appellants

Versus

1. Dr. Ahatsham Ali S/o Munqad Husain, Aged About 57 Years, C/o Dr.himanshu, Air Force Area, Jodhpur.
2. Sayed Yasin Ashraf S/o Sayad Sarfraz Hussain, Aged About 55 Years, 1, Baba Ramdev Colony Behind Bus Stand, Lavera Baori, Jodhpur.

----Respondents

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For Appellant(s)	:	Mr. Piyush Bhandari for Mr. Praveen Khandelwal, AAG
For Respondent(s)	:	Mr. Dinesh Kumar Ojha Mr. Mahendra Thanvi Mr. Suniel Purohit

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**  
**HON'BLE MR. JUSTICE SANDEEP TANEJA**

**Judgment**

**Reportable**

**Reserved on 28/08/2025 / 04/09/2025**

**Pronounced on 09/09/2025**

**Per Dr. Pushpendra Singh Bhati, J:**

1. At the outset, it is clarified that the present batch of special appeals arise from a similar set of facts and common issues emanating from the impugned order dated 21.05.2024 passed by the learned Single Judge. Accordingly, it would be appropriate and in the interest of judicial propriety to adjudicate them analogously.



2. For the sake of convenience, **D.B. Civil Special Appeal (Writ) No. 1128/2024** is treated as the lead case in the present adjudication. The decision rendered therein shall govern and apply *mutatis mutandis* also to the instant D.B. Civil Special Appeal (Writ) No. 1123/2024, D.B. Civil Special Appeal (Writ) No. 1109/2024 and D.B. Civil Special Appeal (Writ) No. 1105/2024.

3. **D.B. Civil Special Appeal (Writ) No. 1128/2024** has been preferred by the appellants under Rule 134 of the Rajasthan High Court Rules, 1951, read with Article 226 of the Constitution of India, seeking the following reliefs:

*"It is therefore, most respectfully prayed that this appeal may kindly be allowed, the impugned order of learned Single Judge dated 21.05.2024 passed in S.B. Civil Writ Petition No. 13771/2023 (Dr. Mohd. Sajid vs. State of Raj. & Ors.) may kindly be quashed and set aside and writ petition filed by the respondent / writ petitioner may kindly be ordered to be dismissed with cost.*

*Any other appropriate order or direction, which this Hon'ble Court considers just and proper in the facts and circumstances of this case, may kindly be passed in favour of the appellants."*

4. The brief facts leading to the instant controversy are that the appellants issued Advertisement No. 04/2023 dated 13.07.2023, inviting applications for regular appointment by way of direct recruitment to 249 posts of Unani Medical Officers under the Rajasthan Ayurvedic, Unani, Homoeopathy and Naturopathy Service Rules, 1973 (*hereinafter referred to as 'Rules of 1973'*).

4.1 The respondents/writ petitioners were among the aspirants who had applied pursuant to the said advertisement. After the conduct of the selection process for the aforesaid posts, the



appellants issued a provisional select list on 11.09.2023, followed by a final merit list on 22.09.2023, in respect of the advertised vacancies. In the said merit list, however, the candidature of the respondent/writ petitioners came to be excluded on the ground of them being over-aged.

4.2. Aggrieved thereby, the respondents approached this Court by preferring Civil Writ Petitions, wherein they *inter alia* pleaded that they were registered Unani Medical Practitioner, appointed under the National Rural Health Mission (NRHM), and have been continuously serving as temporary employees in the Medical and Health Department on the post of Unani Medical Officer. It was contended that by virtue of their service, they were entitled to age relaxation to the extent of the period of service rendered, subject to a maximum of 5 years, in terms of Clause 12 of the advertisement. In addition, being a member of the Other Backward Classes (Non-Creamy Layer), they were also entitled to relaxation under Rule 9(xi) of the Rules of 1973, as well as further relaxation under Rule 9(xii) of the said rules on account of non-holding of recruitment during the intervening years.

4.3. The case set up before the learned Single Judge was that the statutory framework under Rule 9 of the Rules of 1973, read with the Notification dated 23.09.2008, does not prohibit grant of cumulative relaxation. Therefore, the restrictive stipulation contained in the advertisement to the effect that the benefit of relaxation could not be availed cumulatively was *de hors* the Rules, and liable to be struck down.



4.4. The appellants, on the other hand, opposed the writ petition contending that the advertisement had been issued strictly in accordance with the applicable service rules, and that the age relaxation contemplated therein was intended to operate independently, without being cumulative. Reliance was placed on certain decisions of this Court, including **Dr. Dayaram Saran & Ors. v. State of Rajasthan & Ors. (S.B. Civil Writ Petition no. 13782/2023** decided by this Hon'ble Court on 27.09.2023) and **Dhuleshwar Ghogra v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 16192/2022** decided by this Hon'ble Court on 19.05.2023), to submit that the matter stood covered against the writ petitioners.

4.5. The learned Single Judge, after considering the rival submissions, came to the conclusion that the Rules of 1973 and the subsequent Notification of 2008 admit of cumulative age relaxation, and that the contrary stipulation in the advertisement could not override the statutory framework. Consequently, the writ petition was allowed by quashing the impugned stipulation in the advertisement and directing the appellants to extend the benefit of cumulative relaxation to the writ petitioners and to reconsider their candidature accordingly.

5. Mr. Piyush Bhandari, learned counsel appearing on behalf of the appellants submitted that the learned Single Judge erred in interpreting the Rules of 1973 to permit cumulative age relaxation. According to the appellants, the true intent of the rule-making authority, as reflected in the advertisement as well as the





consistent recruitment practice, was that age relaxation under different heads could be availed only independently and not cumulatively.

5.1. Learned counsel further submitted that once the writ petitioners had consciously applied under Advertisement No. 04/2023, they were bound by its terms and conditions. Having participated in the selection process with full knowledge, they could not subsequently challenge the stipulations of the advertisement merely because the outcome was not favourable to them.

5.2. Learned counsel also submitted that the writ petitioners were estopped, by the doctrine of estoppel and acquiescence, from questioning the validity of the advertisement after having participated in the recruitment process and having been declared ineligible on the ground of being over-aged.

5.3. Learned counsel submitted that the decisions of this Hon'ble Court in the cases of **Dr. Dayaram Saran & Ors. (supra)** and **Dhuleshwar Ghogra (supra)** clearly cover the present controversy, and the learned Single Judge failed to follow the ratio of the said judgments.

5.4. Learned counsel further submitted that age relaxation is in the nature of a concession or policy indulgence, and not a vested right of any candidate. Hence, the writ petitioners could not claim aggregation of multiple relaxations as a matter of legal entitlement.



5.5. Lastly, learned counsel submitted that acceptance of cumulative relaxation would open the floodgates for candidates far beyond the prescribed age limit to claim eligibility, thereby unsettling the level playing field in recruitment and defeating the very object of fixing an age criteria for direct recruitment.

6. *Per contra*, Mr. Dinesh Kumar Ojha, Mr. Mahendra Thanvi and Mr. Suniel Purohit, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the appellants, submitted that the advertisement No. 04/2023 in question, insofar as it restricted age relaxation to a non-cumulative basis, was contrary to the statutory framework under Rule 9 of the Rules of 1973. Since the Rules themselves contain no bar against grant of cumulative relaxation, the restriction in the advertisement was *de hors* the Rules and therefore was liable to be quashed.

6.1. It was further submitted that Rule 9 of the Rules of 1973, read with the Notification dated 23.09.2008 issued under Article 309 of the Constitution of India, explicitly contemplates additional relaxations in respect of categories such as OBC, SC/ST, women candidates, reservists, and candidates affected by non-holding of recruitment. These relaxations are to be granted *cumulatively*, and any contrary stipulation in the advertisement cannot override the statutory mandate.

6.2. It was also submitted that the respondents/writ petitioners, being contractual Unani Medical Officers serving continuously under the NRHM, were entitled to relaxation equal to their service





period (subject to 5 years), in addition to the 5 years relaxation under Rule 9(xi) of the Rules of 1973 for OBC category candidates, and the 3 years relaxation under Rule 9(xii) of the said Rules for non-advertisement of vacancies. Denial of cumulative application would defeat the very object of these provisions.

6.3. It was further submitted that the State itself had consistently adopted the principle of cumulative relaxation in earlier recruitments, such as in 2013 for Unani Medical Officers, and again in 2023 for Nursing Officers and Pharmacists, where both service-based and category-based relaxations were extended cumulatively. The State, having itself interpreted Rule 9 of the Rules of 1973 in this manner, is estopped from deviating without any amendment to the Rules.

6.4. It was also submitted that the judgments relied upon by the appellants, particularly **Dhuleshwar Ghogra (Supra)** and **Dr. Dayaram Saran (Supra)**, were distinguishable on facts. In those cases, Rule 265 of the Panchayati Raj Rules was under consideration, and the issue of relaxation on account of non-advertisement of posts was never examined. Thus, they could not govern the present controversy.

6.5. It was further submitted that reliance was instead placed on the Supreme Court judgments in **Malik Mazhar Sultan v. UPSC (2006) 9 SCC 507** and **Ashish Kumar v. State of U.P. (2018) 3 SCC 55**, which clearly held that statutory rules prevail over any contrary condition in an advertisement. Where the Rules provide



for cumulative relaxation, an advertisement cannot take away that benefit.

6.6. Lastly, learned counsel for the respondents submitted that exclusion of cumulative relaxation would amount to arbitrary discrimination under Articles 14 and 16 of the Constitution, depriving experienced contractual doctors who have long served the State of their rightful opportunity for regularization. The learned Single Judge therefore correctly quashed the restrictive clause in the advertisement and directed cumulative relaxation to be applied.

7. Heard learned counsel for the parties as well as perused the material available on record alongwith the judgments cited at the Bar.

7.1. At the outset, it must be noted that the power to prescribe qualifications, including the maximum age for entry into public service, lies within the domain of the rule-making authority. Article 309 of the Constitution of India authorizes the appropriate Legislature to regulate the recruitment and conditions of service of persons serving the Union or a State. Rules framed under Article 309 are thus binding in nature, and unless shown to be *ultra vires* the Constitution or the parent enactment, they must be applied in their plain terms.

7.2. In the present case, Rule 9 of the Rules of 1973 prescribes the age criteria for direct recruitment, along with distinct relaxations for specific classes such as SC/ST candidates, women, widows, divorcees, ex-servicemen, contract employees, and





postgraduates. Rule 9 of the Rules of 1973 (as amended) reads as under:

*"9. Age.— A candidate for direct recruitment to the post enumerated in the Schedule must have attained the age of 20 years and must not have attained the age of 45 years on the 1st day of January next following the last date fixed for receipt of application.*

*Provided that—*

*(i) the upper age limit mentioned above shall be relaxed—  
(a) by 5 years in the case of male candidates belonging to the Scheduled Castes and the Scheduled Tribes;*

*(b) by 5 years in the case of women candidates belonging to the general category; and*

*(c) by 10 years in the case of women candidates belonging to Scheduled Castes, Scheduled Tribes and the Other Backward Classes;*

*(ii) the upper age-limit shall be 50 years in the case of reservists, namely the Defence Service Personnel who were transferred to the Reserve;*

*(iii) the upper age limit mentioned above shall not apply in the case of an ex-prisoner who had served under the Government on a substantive basis on any post before his conviction and was eligible for an appointment under these Rules;*

*(iv) in the case of other ex-prisoners, the upper age limit mentioned above shall be relaxed by a period equal to the term of imprisonment served by him provided he was not overage before his conviction and was eligible for appointment under these Rules;*

*(v) a person appointed temporarily to the post in the Service shall be deemed to be within the age-limit had he been within the age-limit when he was initially appointed even though he has crossed the age-limit when he appears finally before the Commission and shall be allowed up to two chances had he been eligible as such at the time of his initial appointment;*





(vi) the upper age-limit mentioned above shall be relaxed by a period equal to the service rendered in the National Cadet Corps in the case of Cadet Instructors and if the resultant age does not exceed the prescribed maximum age-limit by more than three years, such candidates shall be deemed to be within the prescribed age-limit;

(vii) notwithstanding anything contained contrary in the Rules, in the case of persons serving in connection with the affairs of the State in substantive capacity, the upper age-limit shall be 40 years for direct recruitment to posts filled in by competitive examinations or in case of posts filled in through the Commission by interview. This relaxation shall not apply to urgent temporary appointments;

(viii) the Released Emergency Commissioned Officers & Short Service Commissioned Officers after release from Army shall be deemed to be within the age-limit even though they have crossed the age-limit when they appear before Commission had they been eligible as such at the time of joining the Commission in the Army;

(ix) there shall be no age limit in the case of widows and divorcee women.

*Explanation:* In the case of a widow, she will have to furnish a certificate of death of her husband from the competent authority, and in the case of a divorcee, she will have to furnish the proof of divorce;

(x) the upper age limit shall be relaxed by three years in the case of candidates holding a post-graduate degree in Ayurved;

(xi) the upper age limit mentioned above shall be relaxed by 5 years in the case of candidates belonging to the Other Backward Classes;

(xii) if a candidate would have been entitled in respect of his/her age for direct recruitment in any year in which no such recruitment was held, he/she shall be deemed to be eligible in the next following recruitment, if he/she is not overage by more than 3 years;





(xiii) the upper age limit mentioned above, for the person who is continuously working on contract basis as Ayurved Chikitsadhikari, Homoeopathy Chikitsadhikari, Unani Chikitsadhikari in Government, Chief Minister BPL Jeevan Raksha Kosh, National Rural Health Mission shall be relaxed by the period equal to the service rendered by him subject to maximum of five years."

7.3. A plain reading of Rule 9 of the Rules of 1973 makes it evident that the legislature has consciously and specifically enumerated distinct relaxations for different categories. Each of the *provisos* operates independently and caters to a particular class of candidates, having regard to the underlying object for which the relaxation is carved out. For instance, widows and divorcee women are completely exempted from the age bar; postgraduates are given a three-year relaxation; ex-servicemen and contract employees are given benefit of their rendered service, subject to ceiling. However, there is no indication that multiple relaxations may be aggregated unless so provided. The Rules, therefore, are silent on the cumulative or non-cumulative nature of age concessions.

7.4. This Court observes that the submission of the respondents that in the absence of an express prohibition, cumulative relaxation should be permitted, cannot be accepted at the outset. Firstly, Rule 9 of the Rules of 1973 has been framed under Article 309 of the Constitution of India and therefore has statutory force. As per the settled legal position, the Courts cannot add words or supply omissions to expand the scope of the Rule. Secondly, the principle of *casus omissus* is well-settled — where the Rule-maker



has not provided for a situation, the Court cannot, under the guise of interpretation, legislate.

7.5. It is also deemed appropriate to recall the observations of the Hon'ble Supreme Court made in the case of ***Rachna v. Union of India, (2021) 5 SCC 638*** at page 657, para 43, wherein it was held thus:

*"The horizontal reservation and relaxation... is a matter of governmental policy... It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution."*

Further, in para 45 at page 658, it was clarified that:

*"Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different... It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration... The court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right."*

Thus, while the Court can interpret and clarify the application of existing Rules, it cannot direct the State to legislate or frame policy in a particular manner.

7.6. Having regard to the above framework, this Court is of the considered view that the scheme of Rule 9 of the Rules of 1973 demonstrates a deliberate legislative design in carving out age relaxations category-wise. Article 309 of the Constitution of India







empowers the rule-making authority to stipulate such conditions of eligibility as it may deem fit in public interest. Once the authority, acting under such constitutional mandate, has consciously provided differentiated relaxations with clear limits, the Court cannot, in exercise of interpretative power, either enlarge the scope or permit cumulative benefits in the absence of an express enabling provision.

7.7. The very object of distinct relaxations is to balance the considerations of equity and administrative efficiency for each class of candidates. For example, unlimited relaxation for widows and divorcees is premised on their peculiar social disadvantage; a capped relaxation for contract employees seeks to recognize service already rendered; a limited relaxation for postgraduates reflects the State's policy to incentivize higher education without disturbing the overall age balance in service. To allow aggregation across these categories would dilute the carefully crafted scheme, leading to anomalous results unintended by the rule-making authority.

7.8. Moreover, the principle that separate relaxations cannot be clubbed unless specifically provided has been consistently recognized. In service jurisprudence, cumulative relaxation is treated as an exception and not the norm. The absence of any enabling clause in Rule 9 of the Rules of 1973 must, therefore, be construed as a conscious exclusion by the framers of the Rules. To read into it a right of cumulative relaxation would not only violate



the settled doctrine of *casus omissus* but also amount to judicial legislation, which is impermissible.

7.9. In this backdrop, the plea advanced on behalf of the respondents, that cumulative relaxation must be inferred in the interest of fairness, is untenable. Fairness in recruitment is itself a product of adherence to the rule of law. Once the Rules of 1973, framed under Article 309 of the Constitution of India, prescribe distinct relaxations, fairness demands their uniform application to all candidates in that category, not their alteration through judicial innovation. Thus, the interpretation that emerges is that each relaxation carved out under Rule 9 operates within its own field and must be applied independently. Cumulative relaxation is impermissible unless expressly provided by the Rules themselves.

7.10. At this stage, it is considered appropriate to make reference of the judgment of this Hon'ble Court rendered in the case of ***Alsa Ram Meghwal v. RPSC & Anr., (D.B. Civil Special Appeal (W) No. 1141/2008, decided on 29.04.2016)***. In the said case, the Hon'ble Division Bench was confronted with a claim for cumulative relaxation by an in-service candidate who also belonged to a reserved category. The Court categorically rejected such claim, holding that once the Rules prescribe a distinct upper age limit for in-service candidates, the same is a substantive provision and not a relaxation, and that no further benefit can be superimposed thereupon under other clauses.

7.11. Furthermore, the *Explanatory Note* appended to the advertisement in ***Alsa Ram Meghwal (Supra)***, which stipulated



that if a candidate was entitled to relaxation under more than one category, he/she could avail benefit under only one clause. The Hon'ble Division Bench upheld the validity of such stipulation, observing that it was consistent with the scheme of the Rules and that permitting aggregation would amount to reading into the Rules what was never intended by the rule-making authority.

7.12. The principle emerging from ***Alsa Ram Meghwal (Supra)*** thus reinforces the position that each category of relaxation has an independent policy rationale, and that cumulative relaxation is not permissible unless expressly provided for either in the Rules or in the advertisement.

7.13. It is noteworthy that the aforesaid judgment was subsequently relied upon by the judgment of learned Single Judge in the case of ***Dhuleshwar Ghogra (Supra)***. In ***Dhuleshwar Ghogra (Supra)***, the Court reiterated the principle that cumulative relaxation in age is impermissible under the Rules of 1973, and that each relaxation provision applies to a distinct class of candidates with its own policy objective. Thus, the present controversy stands squarely covered by the ratio of ***Alsa Ram Meghwal (Supra)*** as affirmed and applied in ***Dhuleshwar Ghogra (Supra)***.

7.13.1. In ***Dhuleshwar Ghogra (supra)***, the learned Single Bench of this Court, by giving a concrete example, demonstrated the impractical outcome of permitting cumulative relaxations of the kind claimed in the present case. It was observed that such an interpretation would virtually nullify the prescribed upper age limit



and lead to indefinite eligibility, which the Rule-making authority never intended. For ready reference, the relevant portion of the judgment in **Dhuleshwar Ghogra (supra)** is reproduced as under:



*"For example, if a Scheduled Caste woman candidate is working with the respondent-Department on contractual basis, then as per the contention of the learned counsel for the petitioners, she is required to be given relaxation in upper age limit of 18 years (10 yrs. for SC Category, 5 yrs. for working on contractual basis & 3 yrs. for not conducting recruitment) i.e. upto the age of 53 years (35 yrs. + 10 yrs. + 5 yrs. + 3 yrs.). The intention of the legislature is not to be taken in such a fashion that it breaches the basic and fundamental principle of consideration of the age as provided in the rule itself which clearly prescribes the age of a candidate to be considered between 18-35 years only and proviso provides for certain relaxations in certain conditions."*

7.14. It is of significance that in the instant case also advertisement pursuant to which the present selection process was initiated expressly stipulates that the benefit of age relaxation shall be non-cumulative. The relevant portion of the advertisement in question i.e. Advertisement No.04/2023 reads as follows :-

विभिन्न वर्गों /अन्य विशिष्ट श्रेणियों हेतु देय आयु सीमा में छूट के प्रावधान		
क्र. सं.	अभ्यर्थियों का वर्ग एवं अन्य विशिष्ट श्रेणियां	अधिकतम आयु में देय छूट
1.	राजस्थान राज्य के अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ा वर्ग एवं आर्थिक रूप से कमजोर वर्ग के पुरुष अभ्यर्थी Male candidates belonging to the Scheduled Castes, Scheduled tribes, Other Backward Classes, Most Backward Classes of Rajasthan State and EWS.	5 वर्ष
2.	समान्य वर्ग की महिला Women Candidates belonging to General Category.	5 वर्ष
3.	राजस्थान राज्य के अनुसूचित जाति, अनुसूचित जनजाति, पिछड़ा वर्ग	10 वर्ष



	एवं आर्थिक रूप से कमजोर वर्ग की महिला अभ्यर्थी Women candidates belonging to the Scheduled Castes, Scheduled tribes, Other Backward Classes, Most Backward Classes of Rajasthan State and EWS.	
4.	विधवा एवं विछिन्न विवाह (परित्यक्ता) महिला Widow and divorcee Women  <b>Explanation :-</b> In the case of widow, she will have to furnish a certificate of death of her husband from the Competent Authority and in case of divorcee, she will have to furnish the proof of divorce.	अधिकतम आयु सीमा नहीं
5.	रिजर्विस्ट अर्थात प्रतिरक्षा सेवा के कर्मचारी जिनका रिजर्व में सीमान्तरण कर दिया गया हो, के मामले में उपरिवर्णित उपरी आयु सीमा 50 वर्ष होगी। The upper age limit shall be 50 years in the case of reservists, namely the Defence Service personnel who were transferred in the Reserve.	
6.	उपरिवर्णित उपरी आयु सीमा ऐसे भूतपूर्व कैदी के मामले में लागू नहीं होगी, जो अपनी दोषसिद्धि के पूर्व सरकार के अधीन किसी पद पर substantive तौर पर सेवा कर चुका था और इन नियमों के अधीन नियुक्ति का पात्र था। The upper age limit mentioned above shall not apply in the case of an ex-prisoner who had served under the Government on a substantive basis on any post before his conviction and was eligible for appointment under these Rules.	
7.	अन्य भूतपूर्व कैदी जो दण्डित होने से पूर्व अधिकायु का नहीं था और इन नियमों के तहत नियुक्ति के योग्य था, के मामले में कारावास में व्यतीत की गई अवधि के बराबर उपरिवर्णित उपरी आयु सीमा छूट में होगी। In the case of other ex-prisoners, the upper age limit mentioned above shall be relaxed by a period equal to the term of imprisonment served by him provided he was not over age before his conviction and was eligible for appointment under these Rules.	
8.	इस सेवा (राजस्थान आयुर्वेदिक, यूनानी, होम्योपैथिक एवं भारतीय चिकित्सा सेवा नियम, 1973) के किसी पद पर अस्थाई नियुक्त व्यक्ति यदि प्रारम्भिक नियुक्ति के समय आयु सीमा में थे तो उन्हें आयु सीमा में ही समझा जायेगा, चाहे वे डॉ. सर्वपल्ली राधाकृष्णन राजस्थान आयुर्वेद विश्वविद्यालय, जोधपुर के समक्ष आखरी उपस्थिति के समय उसे पार कर सके हो। और यदि वे प्रारम्भिक नियुक्ति के समय इस प्रकार पात्र थे तो उन्हें अवसर दिये जावेंगे। <b>A person appointed temporarily to the post in the service (The rajasthan ayurvedic, Unani, Homeopathy and naturopathy service Rules 1973) Shall be deemed to be within the age limit had when he was initially appointed even though he has crossed the age limit when he appears finally before the Dr. Sarvapalli Radhakrishnan Rajasthan Ayurveda University Jodhpur and shall be allowed upto two chances had he been eligible as such at the time of his initial appointment.</b>	
9.	कैडेट अनुदेशकों के मामले में उपरिवर्णित उपरी आयु सीमा में, उनके द्वारा राष्ट्रीय कैडेट कोर में की गई सेवा के बराबर की कालावधि को शिथिल किया जायेगा यदि परिमाणिक आयु विहित अधिकतम आयु सीमा से तीन वर्ष से अधिक न हो तो ऐसे अभ्यर्थी को विहित आयु सीमा में समझा जायेगा। That the upper age limit mentioned above, shall be relaxed by a period equal to the service rendered in the National Cadet Corps in the case of Cadet Instructors and if the resultant age does not exceed the prescribed maximum age limit by more than three years, such candidates shall be deemed to be within the prescribed age limit.	
10.	निर्मुक्त आपात कमीशन प्राप्त अधिकारियों को एवं लघु सेवा कमीशन प्राप्त अधिकारियों को, सेना से निर्मुक्त होने के पश्चात जब वे राजस्थान आयुर्वेद विश्वविद्यालय, जोधपुर के समक्ष उपस्थित हो, आयु सीमा में	



	<p>समझा जायेगा चाहे उन्होंने आयु सीमा पार कर ली हो यदि वे सेना में कमीशन ग्रहण करने के समय आयु सीमा की दृष्टि से पात्र थे।</p> <p>That the Released Emergency Commissioned Officers &amp; Short Service Commissioned Officers after release from Army shall be deemed to be within the age-limit even though they have cross the age-limit when they appear before University had they been eligible as such at the time of their joining the Commission in the Army.</p>
11.	<p>राजस्थान दिव्यांगजन अधिकार नियम, 2018 के अनुसार निःशक्तजन व्यक्तियों के लिये उपर उल्लेखित उपरी आयु सीमा में 05 वर्ष की छूट देय होगी।</p> <p>According to the Rajasthan Rights of Persons with Disabilities Rules, 2018, the upper age limit mentioned above shall be relaxed by 05 years for persons with benchmarks disabilities.</p>
12.	<p>जो व्यक्ति राज्य सरकार, एन.आर.एच.एम मुख्यमंत्री बी.पी.एल. जीवन रक्षा कोष के तहत यूनानी चिकित्साधिकारियों के पद पर लगातार काम कर रहा है, को की गई सेवा के बराबर अवधि में उपर्युक्त अधिकतम आयु सीमा में छूट दी जायेगी जो कि अधिकतम पांच वर्ष की होगी।</p> <p><b>The upper age limit mentioned above, for the person who is continuously working as Unani Chikitsadhikari in Government, Chief Minister BPS Jeeva Raksha Kosh, National Rural Health Mission shall be relaxed by the period equal to the service rendered by him subject to maximum five years.</b></p>
13.	<p>यूनानी में स्नातकोत्तर उपाधि रखने वाले उम्मीदवारों के मामले में उपरी आयु सीमा में तीन वर्ष की छूट दी जायेगी।</p> <p>The upper age limit shall be relaxed by three years in the case of candidates holding post graduate Degree in Unani.</p>
14.	<p>(अ) – कार्मिक विभाग की अधिसूचना दिनांक 23.09.2008 के अनुसार गत वर्षों में इन पदों पर भर्ती नहीं किये जाने के कारण अधिकतम आयु सीमा मे 03 वर्ष शिथिलता दिये जाने का प्रावधान है।</p> <p>As per DOP Notification No.F.7(6) DOP/A-II/2008 Dated 23-09-08 "If a candidate would have been entitled in respect of his/her age for direct recruitment in any year in which no such recruitment was held, he <i>she shall be deemed to be eligible in the next following recruitment, if heshe</i> is not overage by more than 3 years."</p> <p>उक्त प्रावधानों के अन्तर्गत चूंकि विभाग द्वारा वर्ष 2013 में भर्ती की गई है जिसमें आयु गणना तत्समय के आधार पर की गई है अतः अधिसूचना दिनांक 23.09.2008 के क्रम में नियमानुसार अधिकतम आयु सीमा में 03 वर्ष की शिथिलता देय होगी।</p>
15.	<p>राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेलन) नियम, 1988 के अनुसार भूतपूर्व सैनिकों को उपरी आयु सीमा में 05 वर्ष की छूट देय होगी पारन्तु यह कि शिथिलीकरण के पश्चात यदि अनुज्ञेय आयु 50 वर्ष से अधिक निकलती है तो तो उपरी आयु सीमा 50 वर्ष लागू होगी।</p> <p>According to the Rajasthan Civil Services (Absorption of Ex-servicemen) Rules, 1988, relaxation in upper age limit shall be five years to Ex-servicemen. Provided that if permissible age after relaxation works out to be more than 50 years then upper age limit of 50 years will be applicable.</p> <p>स्पष्टीकरण :- कार्मिक (क-2) विभाग के परिपत्र दिनांक 22.08.2019 के अनुसार राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेलन) नियम, 1988 यथासंशोधित के प्रावधानों के होते हुए भी किसी भर्ती से संबंधित सेवा नियमों में आयु संबंधी जो शिथिलता अन्य लोक <u>सेवकों/अभ्यर्थियों</u> को देय है, वह भूतपूर्व सैनिक को भी देय होगी अर्थात आयु संबंधी शिथिलता के सम्बंध में दोनों नियमों में जो भी हितकर प्रावधान है,उउसका लाभ भूतपूर्व सैनिकों को मिलेगा।</p>
नोट—	
1.	<p><u>उपर्युक्त वर्णित आयु सीमा में छूट के प्रावधान अंसचयी .(non-cumulative) है, अर्थात अभ्यर्थियों को उपर्युक्त वर्णित किसी भी एक प्रावधान का अधिकतम आयु सीमा में छूट का लाभ दिया जायेगा, एक से अधिक प्रावधानों को जोड़ कर आयुसीमा में छूट का लाभ नहीं दिया जायेगा।</u></p>
2.	<p>विशेष योग्यजन को उपरी आयु सीमा मे नियमानुसार देय छूट के पश्चात अतिरिक्त छूट देय होगी।</p>





3.	कार्मिक (क-2) विभाग के परिपत्र दिनांक 26.07.2017 के अनुसार यदि किसी आरक्षित वर्ग (SC/ST/BC/MBC/EWS) के अभ्यर्थी द्वारा शुल्क के अतिरिक्त उनको देय किसी अन्य रियायत (जैसे –आयुसीमा आदि) का लाभ दिया जाता है तो उसे अनारक्षित रिकित्यों के प्रति विचारित नहीं किया जायेगा।
4.	राजस्थान सेवा नियम के अनुसार सरकारी कर्मचारी हेतु सेवानिवृति की आयु 60 वर्ष निर्धारित है। इसलिए नियुक्ति दिनांक तक अभ्यर्थी की आयु 60 वर्ष से अधिक नहीं होनी चाहिए।
5.	आयु सीमा में छूट के प्रावधान हिन्दी व अंग्रेजी भाषा में अंकित किये गये हैं। किसी प्रकार के विधिक वाद की स्थिति में अंग्रेजी भाषा में अंकित प्रावधान ही मान्य होंगे।



7.14.1. This Court further observes that once such a condition is notified to all prospective applicants at the very threshold, it binds both the candidates as well as the recruiting authority, as participation in the process is premised on acceptance of those terms. It is a settled principle that conditions of recruitment specifically incorporated in the advertisement cannot be diluted or re-written by judicial interpretation, unless they are shown to be in direct conflict with the parent Rules or the Constitution. In the present case, the stipulation of non-cumulative relaxation is not only consistent with the scheme of Rule 9 of the Rules of 1973 but also reinforces the legislative intent that each category of relaxation operates independently. This leaves no scope to infer a right of cumulative benefit.

7.15. In this backdrop, the correct legal position can be summarized in the following manner:

- **If the Rule itself provides for cumulative relaxation, the same must be respected.**
- **If the Rule prescribes non-cumulative relaxation, then the Rule will prevail.**
- **If the Rule is silent, the advertisement will govern the recruitment (as in the present case).**



- **If both the Rule and the advertisement are silent, the default position is that relaxation will be non-cumulative.**
- **If the State intends to extend cumulative benefit, it must do so by express stipulation in the Rule or the advertisement.**
- **Thus, if the Rule is speaking, the Rule will prevail; if silent, the advertisement will prevail. ("Rules of the game cannot be changed midway after the process of appointment to public post has already begun.")**

7.16. Tested on these touchstones, the respondents/writ petitioners cannot claim cumulative relaxation, as the Rules of 1973 are silent and the advertisement explicitly rules out such aggregation. Thus the binding terms of the advertisement cannot be disregarded and travelled beyond the governing framework.

7.17. Thus, in view of the foregoing discussion, this Court holds that the Rules of 1973 do not envisage cumulative age relaxation across different categories. Each relaxation under Rule 9 of the said Rules is to be applied independently within its own sphere. The express stipulation in the advertisement that relaxations shall be non-cumulative is consistent with the statutory framework and cannot be termed arbitrary or *de hors* the Rules. Therefore, the learned Single Judge was not justified in directing the appellants to extend cumulative relaxation to the respondents.

8. Consequently, the present special appeals are ***allowed***, and accordingly, the impugned judgment dated 21.05.2024 passed by





the learned Single Judge is quashed and set aside. All pending applications stand disposed of.

**(SANDEEP TANEJA),J**

**(DR.PUSHPENDRA SINGH BHATI),J**



SKant/-