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W.P.No.10160 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.10160 of 2023
and
W.M.P.No.10186 of 2023

S.Arvinth

... Petitioner

Vs.

1.The Registrar General,
High Court of Madras,
High Court Buildings,
Chennai – 600 104.

2.The Registrar,
Recruitment Cell,
High Court of Madras,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, for issuance of writ of Mandamus, directing the respondents to consider the petitioner's representation submitted before the respondent Registrar General, High Court of Madras on 10.03.2023 in person and 13.03.2023 by Registered Post to issue a fresh notification (corrigendum) after including reservation policy to the SC/ST/OBC for the fresh law graduates also.

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For Petitioner : Mr.Prof.M.Udaya Bhanu

For Respondents : Mr.B.Vijay

ORDER

(Order of the Court delivered by S.M.SUBRAMANIAM,J.)

The writ of mandamus has been instituted to direct the respondents to consider the representation submitted by the writ petitioner to the Registrar General, High Court of Madras on 10.03.2023 in person and 13.03.2023 by Registered Post to issue a fresh notification (corrigendum) after including reservation policy to the SC/ST/OBC for the fresh law graduates.

2. During the opening arguments, Mr.Prof.M.Udaya Bhanu, learned Counsel for the petitioner would submit that the process of selection had been completed and the selected candidates were appointed and serving in the Judiciary. However, he continued to argue by stating that the injustice caused to the SC/ST candidates, in the matter of adhering to the Reservation Policy, more specifically, age relaxation deserves to be rectified at least in future notifications. Thus, it is the endeavor to ensure that the rule of



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reservation as confirmed by the Government of India, with reference to Article 16 (4) of the Constitution is to be scrupulously followed in future recruitments for selection and appointment to the post of Civil Judge in the State of Tamil Nadu and Union Territory of Puducherry.

2.1. Learned counsel for the petitioner would further contend that the petitioner is a fresh law graduate. The maximum age limit for fresh law graduate is notified as 27 years. Thus, the petitioner was prevented from submitting an application through on line. Since an opportunity to participate in the process of selection had been denied, the petitioner submitted representation to the Registrar General, to issue revised notification or corrigendum, as the case may be by implementing the Rule of Reservation, which has been done in consonance with the Central Government notification in many States, including the nearby States like Kerala, Andhra Pradesh etc., Non-consideration of the representation during the relevant time, deprived the opportunity of the petitioner to participate in the process of selection.

2.2. He would further submit that the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel &



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Training) in its Office Memorandum dated 27.03.2012, issued consolidated orders on relaxation in upper age limit allowed to various categories of Government servants. The relevant portion which is extracted as hereunder:

“The undersigned is directed to invite attention to this Department's Notification No.2/101/72-Estt(D) dated 07.03.1974 and to say that since then a number of instructions allowing relaxation in upper age to Central government servants for recruitment to various categories of posts under the Central Government have been issued. For the facility of reference and guidance, the content of the important/relevant O.M's/orders on the subject have been consolidated. The number and date of original O.M.'s have been referred under each category for easy reference to the context.

S.No.	Category of persons to whom age concession is admissible and O.M./Notification No.	Categories of posts to which the age concession is admissible	Extent of Age concession
1.	Scheduled Castes and Scheduled Tribes <u>Notification No.2/101/72-Estt(D) dated 07.03.1974</u>	All posts filled by Direct Recruitment	5 years
2.	Other Backward Class <u>O.M.No.43013/2/95-Estt.(SCT) dated 25.01.1995</u> <u>O.M.No.36012/22/93-Estt.(SCT) dated 22.10.1993</u>	All posts filled by Direct Recruitment	3 years



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2.3 The Office Memorandum stipulates that 5 years age concession is to be granted to SC/ST candidates. Three years of age concession is to be granted to 'Other Backward Class' candidates. In the present case, such age concession/relaxation has not been granted to the fresh law graduates. Therefore, they are deprived of submitting their applications to participate in the process of selection and appointment to the post of Civil Judge in Puducherry Judicial Service. Such discrimination occurred in respect of the selections conducted in the State of Tamil Nadu also.

2.4. Relying on the above Office Memorandum issued by the Government Of India, the learned Counsel for the petitioner would state that the age concession has not been granted, which resulted in denial of an opportunity to the writ petitioner to participate in the process of selection to the post of Civil Judge in the Puducherry Judicial Service.

2.5. Further, it is contended that as many as five High Courts are following the age concession of 5 years granted to SC/ST candidates and 3 years to 'Other Backward Class' candidates. When other High Courts are



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following the age relaxation, Rule for SC/ST candidates in the State of Tamil Nadu and Union Territory of Puducherry alone such concession of age relaxation has not been granted, which resulted in discrimination and unconstitutional. Thus, the issues are to be clarified for the benefit of the SC/ST candidates, who all are aspiring to secure appointment to the post of Civil Judge in future.

3. Mr.B.Vijay, learned Counsel for the respondents would oppose the contentions raised by the petitioner by stating that an opportunity to fresh law graduates to participate in the selection process to the post of Civil Judge was granted pursuant to the recommendations of Shetty Commission. Therefore, fresh law graduates were considered as a separate category and maximum age limit of 27 years is fixed for fresh law graduates. Therefore, the age concession granted to the practising Lawyers cannot be extended to the fresh law graduates. Therefore, the contention of the petitioner is not in consonance with the principles and rules in force.

3.1. He would further submit that the Rule contemplates 27 years as the maximum age limit for fresh law graduates. Fresh law graduates being a



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distinct category, an opportunity was provided based on the recommendations of the Shetty Commission. Therefore, they cannot claim further concession on age limit, which would derail the entire process of selection.

3.2 Further, he would rely on the Judgment of the Hon'ble Supreme Court of India in the case of ***All India Judges Association and Others Vs. Union of India and Others*** reported in ***(2002) 4 Supreme Court Cases 247.***

The relevant portion is extracted as hereunder:

“32. In All India Judges' Assn. Case (SCC at p.314) this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been ad Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the



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Shetty Commission and the argument of the learned amicus curiae that it should be no longer mandatory for an applicant desirous of entering the judicial service to be an advocate of at least three years standing. We, accordingly, in the light of experience gained after the judgment in All India Judges case direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years.”

3.3 In yet another case of ***State of Punjab Vs. Anshika Goyal and Others*** reported in ***(2022) 3 Supreme Court Cases 633***, it is held as follows:

“10. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has committed a grave error in issuing a writ of mandamus and directing the State Government to provide for 3% reservation/quota for sportspersons, instead of 1% as provided by the State Government. A conscious policy decision was taken by the State Government to provide for 1% reservation/quota for sportspersons. A specific Order dated 25.07.2019 was also issued by the State Government. Therefore, the High Court



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has exceeded its jurisdiction while issuing a writ of mandamus directing the State to provide a particular percentage of reservation for sportspersons, namely, in the present case, 3% reservation instead of 1% provided by the State Government, while exercising powers under Article 226 of the Constitution of India. Therefore, the impugned common judgment and order passed by the High Court insofar as directing the State to provide for 3% reservation for sportsperson and/or provide for a sports quota of 3% in the government medical/dental colleges is unsustainable and the same deserves to be quashed and set aside.”

3.4 Relying on the above Judgments, the learned Counsel for the respondents would contend that the fresh law graduates being a distinct and separate category constituted pursuant to the recommendations of the Shetty Commission, they are not entitled to claim any age relaxation on par with the practising Lawyers, who have been already granted 5 years of age relaxation, as per the Rules.

4. Pertinently, the Rule in question remains unchallenged. The relief sought for is to consider the representation. The process of selection had already been completed. The selected candidates joined in Judicial



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services. Thus, the writ petition becomes infructuous.

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4.1 We have given a thoughtful consideration in respect of the concession of age limit granted to the Practising lawyers and denied to the fresh law graduates. In this context, Rule 21 of the Puducherry Judicial Services (Cadre and Recruitment) Rules, 2008 reads as under:

“21.Reservation:-

(1) The reservation of posts of Scheduled Castes/Scheduled Tribes/Other Backward Classes (OBC) candidates, and physically Handicapped candidates shall be in accordance with the orders issued by the Central Government from time to time.

.....”

4.2 The reservation of posts for SC/ST and 'Other Backward class' are provided in the recruitment notification. As per the notification, 4 posts of Civil Judge had been reserved for SC, and 1 post for ST and 6 posts for OBC candidates. Once reservation has been granted by allocating posts to the SC/ST/OBC candidates question arises, whether age concession granted to the practising Lawyers is to be extended to the fresh law graduates or not?

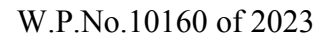


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4.3 Further, question arises whether practising lawyers and fresh law graduates can be discriminated in the process of same selection? Admittedly, the selection process is one and the same and the procedures followed are not distinct and different. It is only the eligibility for submitting an application makes a difference and on receipt of application, all the candidates are pooled together and the process of selection will be conducted by following the procedures. The practising Lawyers and the fresh law graduates are competing as equals. Therefore, creating a clause within a clause for the purpose of granting age relaxation seems not satisfying the constitutional requirements. When the fresh law graduates and practising lawyers are considered as equals for the purpose of submitting the applications and to participate in the process of selection, denial of age concession to the fresh law graduates alone amounts to discrimination.

4.4 Learned Counsel for the petitioner solicit our attention with reference to the practice being followed in many other High Courts. The Telangana State issued a Notification No.123/2023-RC, dated 01.02.2023 for Direct Recruitment and Recruitment by Transfer to the post of Civil Judge



(Junior Division) in the Telangana State Judicial Service. Clause 6 provides for 'Qualifications and Age Limit', which reads as follows:

“Only those candidates who possess the qualification and eligibility prescribed under Telangana State Judicial (Service and Cadre) Rules, 2023 shall be eligible to apply.”

The age relaxation of 5 years has been granted to the fresh law graduates belonging to SC/ST and Section 6 (A) (ii) (a) and Section 6 (A) (ii) (b) which reads as under:

(ii) (a) Must be a Law Graduate possessing a Degree in Law from a recognised University as mentioned in Clause (I) above, who is eligible to be enrolled as an Advocate and who has secured an overall 60% marks in acquiring such a Law Degree in case of open categories and 55% marks in respect of other reserved categories (SC/ST/BCs) and has not enrolled as an Advocate. To fall into this category, candidate must have obtained Degree of Law within a period of three years prior to the date of Notification.

(b) Must have attained the age of 23 years and must not have completed the age of 26 years as on the date of notification for selection to the post is issued i.e., 01.02.2023. The upper age limit is relaxable by 5 years in case of persons belonging to Scheduled Castes,



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Scheduled Tribes and Backward Classes.”

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4.5 Similar age relaxations are granted in other States including Andra Pradesh, Kerala, West Bengal, etc., When the benefit of 5 years of age relaxation has been granted to SC/ST candidates in all other States, the said benefit has been denied to the SC/ST candidates in the State of Tamil Nadu and Union Territory of Puducherry.

4.6 We are of the considered opinion that the Rule of Reservation once granted by allotting number of posts, the age relaxation is consequential. Once the Recruiting Authorities have allotted number of posts to the SC/ST candidates, then such candidates are entitled for special concession in consonance with Article 16(4) of the Indian Constitution. Therefore, on allocating number of posts to SC/ST candidates, grant of age relaxation becomes consequential and in the absence of such age relaxation, the very purpose of rule of reservation will be defeated.

4.7 The social backwardness may result in completion of education belatedly and these candidates may not be in a position to compete with other



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general candidates. For example, a city student may complete the law degree at his age of 22 years and the same may not happen in respect of rural candidates. In order to maintain social justice, such age concession is granted for the benefit of the students who are completing their educational qualification belatedly on account of varieties of societal reasons. Therefore, the rule of reservation and allotment of posts includes age relaxation, which cannot be segregated.

4.8 In the event of separating the rule of reservation by allotting the posts and concession of age limit, the same will result in unconstitutionality and the candidates though provided reservation, may not be in a position to compete on account of not granting the age relaxation as contemplated in various services across the country. In all other States both practising lawyers and fresh law graduates are considered as a single category except in the State of Telangana. Though, they were considered as single category or separate category, process of selection is one and the same and only for submission of application, these two categories are identified. While so, the age relaxation granted to the practising lawyers are to be extended to the fresh law graduates.



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4.9 Since this area of consideration is lingering in our mind, we direct the Registrar General, High Court of Madras to consider and review the Rules relating to age relaxation by considering the Procedures and Rules in force in other States.

5. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
20.02.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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