

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

WP Nos.24341 to 24344 of 2015
M.P.Nos.1 to 1 of 2015
M.P.Nos.2 to 2 of 2015
and M.P.Nos.3 to 3 of 2015

R.Renganathan ... Petitioner in W.P.No.24341 of 2015
N.M.Saravana Kumar ... Petitioner in W.P.No.24342 of 2015
R.Vasanthi ... Petitioner in W.P.No.24343 of 2015
MD Anees ... Petitioner in W.P.No.24344 of 2015

Vs

1.Government of Tamil Nadu
rep.by the Secretary,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Park Town,
Chennai-600 003. ... Respondents in all WPs

PRAYER: Petitions filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the relevant records relating to the impugned G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010 issued by the 1st respondent herein, with regard to the amendment to the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol. I of the Tamil Nadu Service Manual 1987) by introducing Rule 54-B herein to quash the same as arbitrary, improper, unjust, unconstitutional, as it infringe the right of the petitioner from appearing in Group I Examination-2015, thereby direct the respondents to implement G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, issued by the 1st respondent herein for increasing the upper age limit of SC/ST, MBC, BC candidates from 35 years to 40 years and consequently, allow the petitioners to apply and appear for the Group I Examination 2015, notified in Advertisement No.09/2015, dated 10.07.2015.

For Petitioners : Mr.A.Kalaivanan
in all W.Ps.

For Respondents : Mr.I.Arokiasamy,
Government Advocate,
in all W.Ps

COMMON ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

After making arguments and sensing that this Court is not inclined to issue any Certiorarified Mandamus, to quash G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, issued by the Secretary to Government of Tamil Nadu, Personnel and Administrative Reforms Department, Secretariat, Chennai, respondent No.1, regarding the amendment made to the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987) by introducing Rule 54-B, Mr.A.Kalaivanan, learned counsel for the petitioners, sought for permission to withdraw the Writ Petitions.

2. We have spent considerable time hearing him and gone through the material on record. Prima facie we are not convinced that the petitioners have made out a case, even for admission and therefore, we are not inclined to grant any permission.

3. In these Writ Petitions, the challenge is to the G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, issued by the 1st respondent, with regard to the amendment to General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol. I of the Tamil Nadu Service Manual 1987) by introducing Rule 54-B, to quash the same, as arbitrary, as it infringes the right of the petitioners from appearing in Group I Examination-2015, and consequently to direct the respondents to implement G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, issued by the 1st respondent, for increasing the upper age limit of SC/ST, MBC, BC candidates from 35 years to 40 years and consequently, to allow the petitioners to apply and appear for the Group I Examination 2015, notified in Advertisement No.09/2015, dated 10.07.2015.

4. As the facts and submissions are one and the same, we deem it fit to consider the averments made in one of the Writ Petitions.

5. Supporting affidavit in W.P.No.24341 of 2015 filed by Mr.R.Renganathan, discloses that by G.O.Ms.No.212, P & AR (P) Department, dated 29.11.2001, the Government have imposed a ban on direct recruitment in State of Tamil Nadu, except certain essential posts, such as, Teachers, Doctors and Police Constables. Subsequently, vide G.O.Ms.No.14, P & AR (P) Department, dated 07.02.2006, the Secretary to Government of Tamil Nadu, Personnel and

Administrative Reforms Department, Secretariat, Chennai, respondent No.1, has withdrawn the abovesaid G.O. and lifted the ban, on direct recruitment for the posts stated therein.

6. During the ban period, several persons have lost their opportunities to take part in the recruitment process for employment in Government Departments. Therefore, the Government issued G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, directing that "the upper age limit for entering into Government Service shall be relaxed by five years, to enable the unemployed youth affected by the ban order on recruitment to apply for Government Services". Subsequently, representations have been made by persons in service, who were also affected by the ban, to appear for competitive examinations, as they were not notified during the ban period. It is the case of the petitioners that taking note of the same, the Secretary to Government of Tamil Nadu, Personnel and Administrative Reforms Department, Secretariat, Chennai, respondent No.1, issued G.O.Ms.No.152, P & AR (S) Department, dated 18.09.2006, which reads as follows:

"After careful consideration, the Government direct that the upper age limit for entering into Government Service shall be relaxed by five years to those who are already in Government service also, so as to enable them to writ the competitive examination conducted by the Tamil Nadu Public Service Commission."

7. Vide G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, the Government have introduced Rule 54-B in the Tamil Nadu State and Subordinate Service Rules along with the notification to be published in the Tamil Nadu Government Gazette. Rule 54-B of the Tamil Nadu State and Subordinate Service Rules is extracted hereunder:

"54B Age concession for persons affected due to the ban on direct recruitment:

Notwithstanding anything contained in the Special Rules for the various State and Subordinate Services or in any ad hoc rules applicable to any temporary post, in the case of a person who has been affected due to the ban on direct recruitment that was imposed on the 29th November 2001. The upper age limit shall be raised to a maximum period of five years reckoned on and from the 17th July 2006, ending with the 16th July 2011, in computing his age for appointment to any post under the State Government, except the categories of posts of Teachers, Doctors and Police Constabulary and Shall be applicable in respect of notification issued or selections made by competent recruiting authorities or appointments made by competent appointing authorities during the aforesaid period."

8. Now, the Government have issued a Notification No.09/2015, dated 10.07.2015, for recruitment to Group I Services, specifying the upper age limit for SC's, SC(A)'s, ST, MBC's/DC's, BC's, BCM's and DW's, as 35 years. In respect of others, the age limit is 30 years, as on 01.07.2015.

9. Mr.R.Renganathan, petitioner in W.P.No.24341 of 2015 has contended that he has completed his Degree in 2001, when he was 21 years old. Due to the ban on recruitment imposed by the 1st respondent, between 29.11.2001 to 17.07.2006, there was no recruitment. He had no opportunity to appear in the competitive examinations, when he was between 22 and 27 years. According to him, he could not participate in the selection process, for 14 years, from the age of 21 years and till he reached the age of 35 years, as there was no recruitment to the posts in Group I State Services. However, during the course of hearing, Mr.A.Kalaivanan, learned counsel for the petitioners submitted that in 2007 and 2013, there was a recruitment to Group I Services, but, the petitioner did not participate in the selection.

10. Challenging, G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, as arbitrary, and contending inter alia that Rule 54-B introduced in the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987), as violative of Articles 14 and 16 of the Constitution of India, and contrary to the earlier Government Orders in G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, and G.O.Ms.No.152, P & AR (S) Department, dated 18.09.2006, the present Writ Petitions have been filed.

11. Contention has also been made by the learned counsel that the present Notification No.09/2015, dated 10.07.2015, issued by the Tamil Nadu Public Service Commission, Chennai, respondent No.2, cannot take away the vested rights of the petitioners, by stipulating a cut off date, and the Government should have relaxed the upper age limit by 5 years. In addition to the above, learned counsel for the petitioners submitted that the legitimate expectation of the petitioners is defeated by the respondents in not allowing the petitioners to take part in the competitive Group I examination, until they attain the age of 40 years. He also submitted that the Doctrine of Promissory Estoppel has to be applied to the case of the petitioners also.

12. Heard the learned counsel for the petitioners and perused the materials available on record.

13. Vide G.O.Ms.No.212, P & AR (P) Department, dated 29.11.2001, the Government have imposed a ban on direct recruitment in State of Tamil Nadu, except, certain essential posts, such as Teachers, Doctors and Police Constables. The said Government Order in

G.O.Ms.No.212, P & AR (P) Department, dated 29.11.2001, is extracted hereunder:

GOVERNMENT OF TAMIL NADU

Abstract

Public Services - Filling up of vacant posts except certain categories of posts such as Teachers, Doctors and Police Constabulary completely banned - orders issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (P) DEPARTMENT

G.O.(Ms) No.212

Dated: 29.11.2001

ORDER:

The Government have decided to effect economy in expenditure and accordingly direct that filling up of vacant posts shall be completely banned except certain categories of posts such as Teachers, Doctors and Police Constabulary which may be certified and declared as essential posts. Proposals for filling vacant posts considered essentially by and Department will be placed before a Committee consisting of Chief Secretary, Finance Secretary and Secretary (Personnel and Administrative Reforms).

(By order of the Governor)

P.SHANKAR

Chief Secretary to Government

14.Subsequently, the Government have decided to lift the ban of filling up the posts, on direct recruitment imposed in G.O.Ms.No.212, P & AR (P) Department, dated 29.11.2001, and accordingly, issued orders in G.O.Ms.No.14, P & AR (P) Department, dated 07.02.2006, which is extracted hereunder:

GOVERNMENT OF TAMIL NADU

Abstract

Public Services - Ban of filling up of vacant posts by direct recruitment except certain categories of posts such as Doctors, teachers and Police Constabulary Lifting of ban - orders issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (P) DEPARTMENT

G.O.(Ms) No. 14

Dated: 07.02.2006

Read:

G.O. (Ms) No. 212, Personnel and Administrative reforms (P) Department, dated 29.11.2001.

ORDER:

The Government have issued orders completely banning the filling up of vacant posts by direct recruitment except in respect of certain categories of posts such as Teachers, Doctors and Police Constabulary, considered essential vide the Government orders read above.

2. The Government after careful consideration have decided to lift the ban order for filling up of posts by direct recruitment.

3. The Government accordingly direct that the ban on filling up of posts by direct recruitment issued in the Government Order cited be lifted with immediate effect. The orders in G.O.Ms.No.212, Personnel and Administrative Reforms (P) Department, dated 29.11.2001 are cancelled.

(By order of the Governor)

N. NARAYANAN
Chief Secretary to Government

15. As the unemployed youth were affected by the ban on recruitment, to apply for Government jobs, His Excellency the Governor of Tamil Nadu, in his address to the Tamil Nadu Legislative Assembly, on 24.05.2006, has announced that the upper age limit for entering into Government Service shall be relaxed by five years. Accordingly, the Government have issued orders in G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, which reads, as hereunder:

ABSTRACT

Personnel - Tamil Nadu State and Subordinate Services - Ban on recruitment - lifted - Relaxation of upper age limit for entering the Government service by five years to unemployed youth - Orders - issued.

PERSONNEL AND ADMINISTRATIVE REFORMS (S) DEPARTMENT
G.O.Ms.No.98

Read:

1.G.O.Ms.No.212 Personnel and Administrative Reforms (P) Department dated 29.11.2001.

2.G.O.Ms.No.14 Personnel and Administrative Reforms (P) Department dated 07.02.2006.

ORDER:-

The Government in their orders First read above, have issued orders banning the filling up of vacant posts in the State and Subordinate Services by direct recruitment, except in respect of certain categories of posts

considered essential, such as Teachers, Doctors and Police Constabulary. In their orders Second read above, the above ban on direct recruitment was lifted with immediate effect.

2. His Excellency the Governor of Tamil Nadu, in his address in the Tamil Nadu Legislative Assembly on 24.05.2006 has among others announced that the upper age limit for entering into Government service will be relaxed by five years to enable the unemployed youth affected by the ban order to recruitment, to apply for government jobs.

3. The Government after careful consideration, accordingly direct that the upper age limit for entering into Government service shall be relaxed by five years, to enable the unemployed youth affected by the ban order on recruitment, to apply for Government jobs.

4. Necessary amendments to the General Rules for the Tamil Nadu State and Subordinate Services will be issued separately.

(BY ORDER OF THE GOVERNOR)

GIRIJA VAIDYANATHAN
SECRETARY TO GOVERNMENT

16. Reading of the abovesaid Government Order makes it clear that relaxation of upper age has been given, so as to enable the unemployed youth affected by the ban order, during the period between 29.11.2001 and 07.02.2006, on recruitment, to apply for Government jobs, to be notified thereafter. Ban has been lifted in 2006 itself.

17. By referring to the above said three Government Orders stated supra, the Government have issued G.O.Ms.No.152, P & AR (S) Department, dated 18.09.2006, extending, relaxation of upper age limit by 5 years, to those who were in Government service, to write the competitive examination conducted by the Tamil Nadu Public Service Commission. The said G.O.Ms.No.152, has been issued, because, those already in Government service, also, could not appear in the competitive examinations, for other posts, during the ban period between 29.11.2001 and 07.02.2006. G.O.Ms.No.152, P & AR (S) Department, dated 18.09.2006, is extracted hereunder:

ABSTRACT

Personnel - Tamil Nadu State and Subordinate Services
- Relaxation of upper age limit by five years to those who are already in Government Service so as to enable them to write the competitive examinations conducted by Tamil Nadu Public Service Commission - Orders - Issued.

Personnel and Administrative Reforms (s) Department
G.O.(Ms.) No. 152 Dated : 18.9.2006

Read :

1. G.O. (Ms.) No. 212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001
2. G.O. (Ms.) No. 14, Personnel & Administrative Reforms (P) Department, dated 7.2.2006
3. G.O. (Ms.) No. 98 Personnel & Administrative Reforms (S) Department, dated 17.7.2006

ORDER

In the G.O. Third read above, orders were issued relaxing the upper age limit for entering into Government service by five years to enable the unemployed youth affected by the ban order on recruitment to apply for Government jobs.

2. In the meantime, several representations have been received from the employed youth and also from the Tamil Nadu Secretariat Association wherein they have requested that the age relaxation of 5 years may be made applicable to the employed persons also so to enable them to write the competitive exams, since those who are already employed were also affected by the ban on recruitment and they were not able to write the competitive exams and when the ban was lifted they became overaged.

3. After careful consideration, the Government direct that the upper age limit for entering into Government service shall be relaxed by five years to those who are already in Government service also, so as to enable them, to write the competitive examinations conducted by the Tamil Nadu Public Service Commission.

4. Necessary amendment to General Rules for Tamil Nadu State and Subordinate Services will be issued separately.

(By order of the Governor)

T.S. Sridhar
Special Commissioner and
Secretary to Government.

18. From the reading of the Government Orders, extracted supra, it could be deduced that the intention of the Government was only to enable those who were not in service and in service, and not able to participate in the competitive examinations, due to the ban imposed, during the period from 29.11.2001 to 07.02.2006, to participate in the subsequent recruitment process. Because of the ban, during the abovesaid, they were affected and hence, the Government have thought it fit to give concession, thereby, relaxing the upper age limit, by 5 years. Government have not intended to extend the upper age, for all the recruitments, to be made. The Government cannot say, that in all future recruitments, upper age limit would be relaxable by five

years, which would be contrary to the age prescribed in the statutory rules, for the respective posts. That is not the purport of the Government Orders, extracted. Thus taking note of the aforesaid Government Orders issued, in respect of those unemployed youth affected by the ban order on recruitment, to apply for Government Jobs, between the period between 29.11.2001 and 07.02.2006, the Government have issued G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, making an amendment to the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987).

19. By G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, the Government have incorporated Rule 54B to the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987), which reads as follows:

"54B Age concession for persons affected due to the ban on direct recruitment:

Notwithstanding anything contained in the Special Rules for the various State and Subordinate Services or in any ad hoc rules applicable to any temporary post, in the case of a person who has been affected due to the ban on direct recruitment that was imposed on the 29th November 2001. The upper age limit shall be raised to a maximum period of five years reckoned on and from the 17th July 2006, ending with the 16th July 2011, in computing his age for appointment to any post under the State Government, except the categories of posts of Teachers, Doctors and Police Constabulary and shall be applicable in respect of notification issued or selections made by competent recruiting authorities or appointments made by competent appointing authorities during the aforesaid period."

20. Reading of the said Government Order makes it manifestly clear that between 2001 and 2006, there was a ban, on direct recruitment in Government Services, due to which, many of the unemployed youth, as well as those already in Government services were affected, by the ban on recruitment and that they were not able to participate in the competitive examinations, because there was a ban. During the ban period they became overaged. Therefore, the Government have thought it fit, to provide, concession in the upper age to the above said two categories of the persons, namely, those who were not in service i.e., unemployed youth and the others, already in Government Service, and could not participate in the competitive examination conducted by the Tamil Nadu Public Service Commission, Chennai, because there was ban during the period and thus, by giving retrospective effect, the Government have made an amendment, by incorporating Rule 54-B to the General Rules in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the

Tamil Nadu Service Manual 1987), by specifically stating that the amendment made shall be come into force on 17th July 2006.

21. From the reading of G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, it could be further deduced that because there was ban for 5 years between 29.11.2001 and 07.02.2006, the Government have granted concession of upper age limit, to a maximum period of 5 years, reckoned on and from 17th July 2006, ending with the 16th July 2011, in computing the age for appointment, to any post under the State Government, except the categories of posts of Teachers, Doctors and Police Constabulary.

22. Government Order also makes it clear that the Government have fixed a specific date, for computing the upper age limit, while granting relaxation for applying to any post under the State Government. Concession granted is given only to those who were affected and could not participate in the competitive examination, during the ban period between 2001 and 2006, by giving a specific reason that on account of the ban, during the said period, they became over-aged. After five years period, the concession granted, no longer continued.

23. Reverting to the case of the petitioner in W.P.No.24341 of 2015, in 2001, he was 21 years. Ban was imposed between 29.11.2001 and 07.02.2006 and later on, the Government have issued G.O.Ms.No.14, P & AR (P) Department, dated 07.02.2006, lifting the ban of filling up the posts by direct recruitment, issued in G.O.Ms.No.212, P & AR (P) Department, dated 29.11.2001. The petitioners have contended that there was no recruitment for 14 years. In W.P.No.24341 of 2015, the petitioner has contended that between 29.11.2001 and 07.02.2006, he could not appear for any posts in State services. Through he has contended that from 2001, until he attained the age of 35 years, in 2015, there was no recruitment at Para 18 of the supporting affidavit, the petitioner himself has admitted that Group I examination recruitment was notified on 01.08.2007, which means that in 2007, when he was aged 29 years, there was a recruitment, to the posts falling in Group I of the State Services and that he had an opportunity to participate in the said recruitment. Even from his own averments as on 01.08.2007, he was aged 29 years. The petitioner had not availed the opportunity to appear for Group I examination notified as on 01.08.2007, when he was well within the age limit, prescribed for the post notified.

24. Quite contra to the pleadings, during the course of hearing, it is the submission of the learned counsel for the petitioners that there was no recruitment for Group I posts in the State Services till 2013, which this Court is not inclined to accept, because, it is the candid admission of the petitioners that in 2007, there was a recruitment for Group I posts in the State service, which was notified by the Tamil Nadu Public Service Commission. The age of the petitioners, as on 01.08.2007, is tabulated hereunder:

Sl. No.	W.P.No.	Name of the petitioner	Date of Birth	As on 01.08.2007
1.	24341/2015	R.Renganathan	29.05.1978	29 years 2 months 3 days
2.	24342/2015	N.M.Saravana Kumar	21.02.1980	27 years 5 months 11 days
3.	24343/2015	R.Vasanthi	20.06.1979	28 years 1 month 12 days
4.	24344/2015	MD.Anees	09.03.1973	34 years 4 months 23 days

25. The petitioners have not availed the opportunity to take part in the competitive examination for Group I posts in the State Service, in 2007. G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, has been issued for incorporating Rule 54B in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987) and that the amendment to the Rule, shall be deemed to have come into force on 17th July 2006, in the year, in which the ban was lifted by the Government. As stated supra, the intention of the Government, to extend the benefits of the relaxation of upper age limit, is only to those who could not participate in the competitive examinations during the abovesaid period between 29.11.2001 and 07.02.2006. Upper age limit was to be reckoned to the maximum period of 5 years, on and from 17th July 2006 ending with 16th July 2011, for computing the age for appointment. Government have not issued the said Government Order, extending the age concession for all the persons, to take part in the competitive examinations, as and when the Notifications are issued. It is also to be noted, that on the facts of the present Writ Petitions, with reference to the date of birth of the petitioners, as extracted supra, the petitioners were very much eligible to apply for Group I examinations notified in the year 2007. Without taking part in the said competitive examination, now, an attempt has been made, to question G.O.Ms.No.114, P & AR (S) Department, dated 11.08.2010, issued in the year 2010, extending the upper age limit, to a maximum period of 5 years reckoned on and from 17th July 2006, and ending with 16th July 2011.

26. Amendments have been made in the General Rules only to facilitate the unemployed youth, and those in service, during the ban period, and affected by the ban order, on recruitment. Even as per the case of the petitioners and the Government Orders, extracted supra, there was no ban from 2006. Even as per the averments, two notifications have been issued in 2007 and 2013 respectively. Concessions granted to the unemployed youth affected by the ban order on recruitment and to those who were in service, and could not take part in the competitive examinations, as there was no recruitment by the Tamil Nadu Public Service Commission, Chennai, due to overage,

during the ban of aforesaid period, cannot be extended endlessly, and from the Government Orders issued, we are of the considered view that was not the intention of the Government.

27. Concession granted to the abovesaid specific categories both unemployed youth and those in Government service, during the said period of ban, between 29.11.2001 and 07.02.2006, cannot be claimed as a matter of right stating that the Government should relax the upper age limit of 5 years, to everybody, and more particularly, to those who had the opportunity to participate in the subsequent selection recruitment process in 2007 and 2013 respectively. Concession and relaxation cannot be claimed, as a matter of right. Depending upon the number of vacancies, need for recruitment and such other factors, the Government notifies the vacancies, through the Tamil Nadu Public Service Commission, Chennai, respondent No.2, the agency, for conducting the competitive examinations. Right to employment is not a constitutional or statutory right, to be enforced against the Government. Nevertheless, it is the duty of the Government to fill up the posts, as and when there is a need.

28. Merely because, Group I examination was not conducted, as expected by the petitioner and others, relaxation of upper age cannot be claimed, as a matter of right. Government have not issued any promise for relaxation of upper age limit by 5 years, to all the unemployed youth and in service candidates, for all times to come. Government Orders have been made only to cover those, who could not participate in the selection process for the period between 29.11.2001 and 07.02.2006. Yet another factor to be considered by this Court is that when notification was issued in 2007, there was no objection to the same, when the Government have fixed the age limit. Again in 2013, there was no challenge. The petitioners had an opportunity to participate in the selection process. Now, when notification dated 10.07.2015, is issued in 2015, fixing the upper age limit, the petitioners have alleged violation of Article 14 and contended that there is a violation of the principles of promissory estoppel and doctrine of legitimate expectation.

29. Government have never made any promise that the upper age limit would be relaxed, for all times. That would be against the statutory rules, wherein upper age limit is prescribed, for the posts. There was no specific promise by the Government, that in all future recruitments to the posts in Group I Services, in Government, upper age would be relaxed, by five years. Government have issued orders only to those, affected by the ban period between 29.11.2001 and 07.02.2006. Therefore, it would not be appropriate on the part of the petitioners to contend that the doctrine of promissory estoppel has to be applied. Therefore, the question of applying Doctrine of Promissory Estoppel does not arise.

30. Petitioners, who had the opportunity to take part in the recruitment process in 2007, and failed to avail the opportunity,

cannot expect that the Government would extend the concession of age relaxation for all the future recruitment, also. Expectation of the petitioners is not legitimate. Doctrine of legitimate expectation, cannot be pressed into service, when the Government have issued the aforesaid Government Orders, only to those affected during the ban ordered and not to all. Though the petitioners have contended that there is a legitimate expectation by the petitioners, that relaxation of upper age limit, should be given to all, from the material on record, there is nothing in the Government Orders to indicate that the Government had intended to extend the upper age limit endlessly, and therefore, the doctrine of legitimate expectation would not support to the case of the petitioners. It is worthwhile to consider few case on the Doctrine of Legitimate Expectation.

(i) In The Delhi Cloth & General Mills Ltd., Vs. Union of India reported in AIR 1984 SC 2414, when considering the doctrine of the promissory estoppel, the Supreme Court has observed as follows:-

"It is true that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered 'detriment' or 'prejudice'. It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more".

12. At page 2420 again the Supreme Court quoted with approval the dictum laid down by Lord Denning in Central Newbury Car Auctions Ltd., Vs. Unity Finance Ltd reported in 1956-3 All.E.R., 905 and referred to the decision reported in 1979-2 SCR 641 in Motilal Padampat Sugar Mills Co., Ltd., Vs. State of U.P. Wherein Bhagwati, J observed as follows:

"We do not think in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if

by detriment we mean injurious to the promises which could result, if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise"

(ii) In *Union of India v. Godfrey Philips India Ltd.*, reported in (1985) 4 SCC 369, the Hon'ble Supreme Court held as follows:

"9. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties".

(iii) In *Bakul Cashew Co., v. Sales Tax Officer* reported in 1986 (2) SCC 365, the Hon'ble Supreme Court, at Paragraph 5, held as follows:

"The allegations made in the petition do not establish (i) that there was a definite representation by the Government to the effect that the Government will not levy the tax; (ii) that the appellants in fact altered their position by acting upon such representation, and (iii) that they had suffered some prejudice sufficient to constitute an estoppel. Hence the whole case of promissory estoppel lacks the necessary factual foundation."

(iv) In *Union of India Vs. India Tobacco Co., Ltd.*, reported in AIR 1986 SC 806, the Hon'ble Supreme Court held that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and though commonly named promissory. The relevant paragraph of the judgment is extracted hereunder:

"Estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always true to its form, stepped into mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was in his celebrated judgment in *Central London Property*

Trust Ltd., Vs.High Trees House Ltd., reported in 1956-I All.E.R.256. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise of representation which is intended to create legal relations or affect a legal relationship to arise in the future knowing or intending that it would be acted upon by the other party to whom the Promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action; it can only be a shield and not a sword, but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Sugar Mills Vs. State of Uttar Pradesh reported in 1979 (2)SCR 641, it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills Case (Supra) contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision".

(v) In Navjyoti Coop.Group Housing Society Vs. Union of India reported in (1992) 4 SCC 477, the Supreme Court held as follows:

"15..... In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at 151 of Vol.1(1) of Halsbury's Laws of England, 4th Edn(re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions Vs.Minister for Civil Service reported in 1985 AC 374. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected

to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline".

(vi) In Food Corporation of India v. M/s.Kamdhenu Cattle Feed Industries reported in 1993 (1) SCC 71, the Hon'ble Supreme Court, at Paragraph 8, held as follows:

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

(vii) In Union of India v. Hindustan Development Corporation reported in 1993 (3) SCC 499, the Hon'ble Supreme Court, at Paragraphs 33 to 35, held as follows:

"33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair

hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affect such legitimate expectation is taken has resulted in failure of 'justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

34. We find in Attorney General for New South Wales v. Quin [(1990) 64 Aust LJR 327] that the entire case law on the doctrine of legitimate expectation has been considered. We also find that on an elaborate and erudite discussion it is held that the courts' jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of 'legitimate expectation'. In Public Law and Politics edited by Carol Harlow, we find an article by Gabriele Ganz in which the learned author after examining the views expressed in the

cases decided by eminent judges to whom we have referred to above, concluded thus:

"The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel., but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it that it is very difficult to predict how the hybrid will develop in future. This could be regarded as giving the concept a healthy flexibility, for the intention behind it is being it has been fashioned to protect the individual against administrative action which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting interpretations in the same decision."

However, it is generally accepted and also clear that legitimate expectation beings less than right operate in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.

35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largest by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so. a decision denying a legitimate expectation based on such (,rounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply and objective standard which

leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision can not be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in *Attornry General for New South Wales* case "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory unfair or based, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim biased on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the ground to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which

shuts the court out of review on the merits," particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales v. Quin [(1990) 64 Aust LJR 327] the courts should restrain themselves and restrict such claims duty to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc., can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

(viii) In Kasinka Trading and another v. Union of India reported in 1995 (1) SCC 274, the Hon'ble Supreme Court, at paragraphs 12 and 13 has explained the "principle of promissory estoppel", as follows:

"12. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealing, which have taken place or are intended to take between the parties.

(ix) In P.T.R. Exports (Madras) Pvt. Ltd., v. Union of India reported in 1996 (5) SCC 268, the Apex Court, held as follows:

"The doctrine of legitimate expectations again requires to be angulated thus: whether it was revised by a policy in the public interest or the decision is based upon any abuse of the power? The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by malafide exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its

full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives the large leeway to the executive and the legislature."

(x) In Dr.Ashok Kumar Maheshwari v. State of U.P., reported in 1998 (2) SCC 502, the Supreme Court held as follows:

"Doctrine of "Promissory Estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice.

"Estoppel" in Black's Law Dictionary, is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. Section 115 of the Indian Evidence Act is also, more or less, couched in a language which conveys the same expression.

"Promissory Estoppel" is defined as in Black's Law Dictionary as "an estoppel which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise."

These definitions in Black's Law Dictionary which are based on decided cases, indicate that before that Rule of "Promissory Estoppel" can be invoked, it has to be shown that there was a declaration or promise made which induced the party to whom the promise was made to alter its position to its disadvantage.

In this backdrop, let us travel a little distance into the past to understand the evolution of the Doctrine of "Promissory Estoppel."

Dixon, J., an Australian Jurist, in Grundt v. The Great Boulder Pty. Gold Mines Ltd. (1938) 59 CLR 641, laid down as under :-

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to misunderstanding, it does not bring out clearly the basal purpose to the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it."

The principle, set out above, was reiterated by Lord Denning in *Central London Properties Ltd. v. High Trees House Ltd.* 1947 KB 130, when he stated as under :-

"A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding...."

Lord Denning approved the decision of Dixon, J. (supra) in *Central Newbury Car Auctions Ltd. v. Unity Finance Ltd.* (1956) 3 ALL ER 905. Apart from propounding the above principle on judicial side, Lord Denning wrote out an article, a classic in legal literature, on "Recent Developments in the Doctrine of Consideration", *Modern Law Review*, Vol. 15, in which he expressed as under :-

"A man should keep his word. All the more so when the promise is not a bare promise but is made with the intention that the other party should act upon it. Just a contract is different from tort and from estoppel, so also in the sphere now under discussion promises may give rise to a different equity from other conduct.

The difference may lie in the necessity of showing "detriment".

Where one party deliberately promises to waive, modify or discharge his strict legal rights, intending the other party to act on the faith of promise, and the other party actually does act on it, then it is contrary, not only to equity but also to good faith, to allow the promisor to go back on his promise. It should not be necessary for the other party to show that he acted to his detriment in reliance on the promise. It should be sufficient that he acted on it."

So far as this Court is concerned, it invoked the doctrine in *Union of India v. Indo-Afghan Agencies & Ors.*, AIR 1968 SC 718 = (1968) 2 SCR 366, in which it was, inter alia, laid down that even though the case would not fail within the terms of Section 115 of the Evidence Act which enacts the Rule of Estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. To the same effect are the decisions in *Century Spinning Co. v. Ulhasnagar Municipal Council*, AIR 1971 SC 1021 and *Radhakrishna v. State of Bihar*, AIR 1977 SC 1496.

In Motilal Padampat Sugar Mills Co. Ltd., v. State of U.P., (1979) 2 SCR 641 = 1979 (2) SCC 409 = AIR 1979 SC 621, while reiterating the above principles and quoting with approval the passage of Dixon, J., extracted above, it was observed as under :-

"We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which could result if the promisor were to recede from his promise then detriment would certainly come in as a necessary ingredient, The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisees, if the promisor were allowed to go back on the promise."

Thereafter, in successive cases, as for example, Union of India v. Godfrey Philips India Ltd., (1985) 4 SCC 369 = 1985 Supp (3) SCR 123 = AIR 1986 SC 806; Delhi Cloth & General Mills Ltd., v. Union of India & Ors. (1995) 1 SCC 274; Darshan Oil (P) Ltd., v. Union of India & Ors., (1995) 1 SCC 245; Shabi Construction Co. Ltd., v. City & Industrial Development Corporation & Anr. (1995) 4 SCC 301; Shrijee Sales Corporation v. UOI (1997) 3 SCC 398; Pawan Alloys & Castings (P) Ltd., v. U.P. State Electricity Board (1997) 7 SCC 251. the Rule of "Promissory Estoppel" was discussed, explained and elaborated.

There are many aspects of "Promissory Estoppel", but in the instant case we are concerned only with one aspect which is to the effect that if any "promise" has been made contrary to law, can it still be enforced by invoking this rule.

The basic principle is that the plea of estoppel cannot be raised to defeat the provisions of a Statute. (See: G.H.C. Ariff v. Jadunath Majumdar Bahadur, AIR 1931 PC 70; M/s.Mathra Parshad & Sons v. State of Punjab, AIR 1962 SC 745; Rishabh Kumar v. State of U.P., AIR 1987 SC 1576 = 1987 (Supp.) SCC 306).

This principle was reiterated in Union of India v. R.C. D'Souza AIR 1987 SC 1172 = (1987) 2 SCC 211, where a retired army officer was recruited as Assistant Commandant on temporary basis and was called upon to exercise his option for regularisation contrary to the statutory rules. It was held that it would not amount to estoppel against the Department.

Whether a Promissory Estoppel, which is based on a 'promise' contrary to law can be invoked has already been considered by this Court in *Kasinka Trading & Anr., v. Union of India & Ors.*, (1995) 1 SCC 274 as also in *Shabi Construction Co. Ltd., v. City & Industrial Development Corporation v. & Anr.*, (1995) 4 SCC 301, wherein it is laid down that the Rule of "Promissory Estoppel" a 'declaration' which is contrary to law or outside the authority or power of the Government or the person making that promise.

(xi) In *National Buildings Construction Corporation v. S.Raghunathan* reported in 1998 (7) SCC 66, the Supreme Court, at Paragraphs 19 and 20, held as follows:

"The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is making to violation of natural justice. It was in this context that the doctrine of "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

20. Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* reported in (1985) AC 374 laid down that doctrine of "legitimate Expectation" can be invoked if the decision which is challenged in the Court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he had received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

(xii) In *Madras Cements Ltd., v. State of Tamil Nadu* reported in 1999 (II) CTC 108, this Court has held as follows:

"36.To succeed in a plea of promissory estoppel it is indispensable to prove that the promisee has altered his position in reliance on an assurance which he has received. Such a promise should have been made which is intended to create legal relation sand which to the knowledge of the person making the promise was going to be acted on a person to whom it was made and which was in fact so acted on. Here, the promise is 'acted on'. Such action, in law as in physics, must necessarily result in an alternation of position. But it is difficult for this Court to imagine such a case which would qualify in all promissory estoppel cases. The abovesaid qualifications to get a benefit out of the said promissory estoppel have to established on the basis of the facts available to the petitioners".

(xiii) In State of Punjab v. Nestle India Ltd., reported in (2004) 6 SCC 465, the Supreme Court has held as follows:

"28.This Court rejected all the three pleas of the Government. It reiterated the well-known preconditions for the operation of the doctrine:

(1) a clear and unequivocal promise knowing and intending that it would be acted upon by the promisee;

(2) such acting upon the promise by the promisee so that it would be inequitable to allow the promisor to go back on the promise.

29.As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made — contractual, administrative or statutory. To put it in the words of the Court:

"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a

formal contract as required by Article 299 of the Constitution.

[Equity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute.

Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it."

(xiv) In *Jitendra Kumar v. State of Haryana*, reported in (2008) 2 SCC 161, the Supreme Court in its judgment has explained the principle of doctrine of legitimate expectation as a right distinct from an anticipation. The paragraphs 58 and 59 are extracted hereunder:

"A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See *Chanchal Goyal (Dr.) v. State of Rajasthan* [(2003) 3 SCC 485] and *Union of India v. Hindustan Development Corpn* [(1993) 3 SCC 499]]. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters.

59. In *Kuldeep Singh v. Govt. of NCT of Delhi* [(2006) 5 SCC 702], this Court held:

"25. It is, however, difficult for us to accept the contention of the learned Senior Counsel Mr Soli J. Sorabjee that the doctrine of 'legitimate expectation' is attracted in the instant case. Indisputably, the said doctrine is a source of procedural or substantive right. (*R. v. North and East Devon Health Authority, ex p Coughlan*) But, however, the relevance of application of the said doctrine is as to whether the expectation was legitimate. Such legitimate expectation was also required to be determined keeping in view the larger public interest. Claimants' perceptions would not be relevant therefor. The State actions indisputably must be fair and

reasonable. Non-arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the State yet again cannot be exercised whimsically or capriciously. But where a change in the policy decision is valid in law, any action taken pursuant thereto or in furtherance thereof, cannot be invalidated."

(xv) In *Shree Sidhballi Steels Limited v. State of Uttar Pradesh*, reported in (2011) 3 SCC 193, the Hon'ble Apex Court held that,

"32. The doctrine of promissory estoppel is by now well recognised and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise".

(xvi) In *State of Haryana v. Mahabir Vegetable Oils Private Limited*, reported in (2011) 3 SCC 778, the Apex Court has held as follows:

"25. The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard-and-fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties i.e. both the promisor and the promisee.

31. On the aspect of fixing a cut off date, in the impugned notification, dated 10.07.2015, issued by the Tamil Nadu Public Service Commission, Chennai, in fixing upper age limit for SC's, SC (A)'s, ST, MBC's/DC's, BC's, BCM's and DW's, i.e., as on 01.07.2015

in Clause 4A, this Court is of the view that it is the provocative right of the Government, being the appointing authority, for the Group I post to fix the upper age, for applying to the post of Government Services. Fixing of eligibility criteria such as Age, Educational Qualification, etc., is the exclusive domain of the Government, and this Court cannot issue any directions to alter the age or qualifications. Reference can be made to a decision made in P.U.Joshi v. Accountant General reported in 2003 (2) SCC 632, wherein, the Hon'ble Supreme Court, at Paragraph 10, held as follows:

"10. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

32. Contention of the learned counsel for the petitioners that there is a violation of Articles 14 and 16 of the Constitution of

India, and that quite contrary to the earlier G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006 and G.O.Ms.No.152, P & AR (S) Department, dated 18.09.2006, rule 54-B has been incorporated in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987), also cannot be countenanced, for the reason that the abovesaid Government Orders have been issued only to those, who could not participate in the competitive examination between the period 2001 and 2006. Reference to G.O.Ms.No.98, P & AR (S) Department, dated 17.07.2006, would not support the case of the petitioners. Rule 54-B has been incorporated in Part II of the Tamil Nadu State and Subordinate Service Rules (Vol.I of the Tamil Nadu Service Manual 1987), in exercise of the powers under Article 309 of the Constitution of India.

33. Article 309 of the Constitution of India is extracted hereunder:

"309. Recruitment and conditions of service of persons serving the Union or a State.—

Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

34. Power of the Government in framing rules to Tamil Nadu State and Subordinate Services, cannot be questioned when the Government is empowered to frame rules, in exercise of the powers under Article 309 of the Constitution of India, and when the said rule has been framed taking note of, the ban period during 2001-2006, by extending the concession only to those mentioned supra and to all, and thus, for the reasons stated supra, we are of the view that there is no violation of Articles 14 and 16 of the Constitution of India.

35. There is nothing on record to indicate that the petitioners were misled by the Government. Principle of Promissory Estoppel applies only when a lawful promise is made. There is no extension of

relaxation. It cannot be said that the petitioners are in any way prejudiced, when the ban was lifted in 2006 and consequently, a notification was also issued in 2007. Promissory Estoppel cannot be invoked preventing the Government from discharging its functions under the statute.

36. Claim of the petitioner is that there should be continuation of relaxation. That expectation cannot be said to be legitimate. Expectation must satisfy the test of Wednesbury Principles of Law. Relaxation granted in G.O., has lapsed. The decision to apply the age prescription in the impugned notification cannot be said to be irrational.

37. Legitimate Expectation of the petitioners relate only to their prospects, to appear in the examinations, with relaxation of age. Relaxation is left to the discretion of the Government, depending upon facts and circumstances of each case or a class of persons. Relaxation is not to prevail forever. Court cannot bind the Government with their earlier policy by invoking the Doctrine of Promissory Estoppel or Legitimate Expectation. The claim of the petitioner would be unfair, inequitable and contrary to the statutory prescription of upper age for the posts notified. Not every expectation would fall within the definition of Legitimate Expectation. One should not expect that the statutory rules prescribing upper age to a post should be given a go-by endlessly.

38. Concept of equal treatment presupposes existence of similar legal foothold. Petitioners who had the opportunity to take part in the subsequent recruitment process, cannot claim any parity, with those who have been deprived of, during the ban period. Article 14 of the Constitution of India, can be invoked, only in the circumstances, which continue to exist. If the petitioners are overaged, it may cause hardship to them, but on the ground of hardship, statute prescribing upper age, cannot be relaxed forever.

39. Relaxation given in the circumstances, stated supra, can be relaxation only for the affected persons, during that period and which has lapsed, with reference to the date mentioned in Rule 54-B of the Tami Nadu State and Subordinate Service Rules. Relaxation cannot be a rule, forever. Merely because on the earlier occasions, candidates were given age relaxation for the reason, stated supra, that would not confer any right on the petitioners to claim the same, contending violation of Article 14 of the Constitution of India.

40. For the reasons stated supra, we are not inclined to issue of any Writ of Certiorarified Mandamus and hence, the Writ petitions have to be dismissed. Contention of the learned counsel that candidates have been permitted to take up the examination, and therefore, withdrawal of the present Writ Petitions, be permitted

cannot be accepted, for the reason that when the validity of Rule 54-B of of the Tamil Nadu State and Subordinate Service Rules, is tested, the same has to be considered.

Accordingly, all the Writ Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mps/skm

To

1.The Secretary,
Government of Tamil Nadu,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai-600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town,
Chennai-600 003.

+1 cc to M/s.P.K.Rajesh Praveen Kumar, Advocate, sr.41105
+1 cc to The Goverjment Pleader, sr.41252

gr co
kra 25/09

सत्यमेव जयते

WP Nos.24341to24344 of 2015
&M.P.Nos.1 to 1 of 2015,
M.P.Nos.2 to 2 of 2015
&M.P.Nos.3 to 3 of 2015

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