

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR  
AND  
THE HONOURABLE Mr. JUSTICE G. CHOCKALINGAM

W.P.No. 27956 of 2015  
M.P. No. 1 of 2015

K. Madivanane

... Petitioner

Vs.

1. The Special Secretary (Revenue)  
Department of Revenue and Disaster Management  
Revenue Complex, Saram,  
Puducherry.
2. The Government of Puducherry  
rep. by the Lieutenant Governor  
of Revenue Department  
Puducherry.
3. The Registrar  
The Central Administrative Tribunal  
Madras Bench  
Chennai-104.

... Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records on the file of the 3<sup>rd</sup> respondent in O.A. No. 1488 of 2010 dated 05.09.2014 and quash the same and unjust, illegal and incompetent as the post of Deputy Tahsildar is a Group "B" post only as per DoPT order dated 17.04.2009 and not a Group "C" post as construed by the respondents and consequently direct the 1<sup>st</sup> respondent to refrain from the insistence on such qualification contrary to the notification dated 28.06.2010 seeking recruitment to the post of Deputy Tahsildar and pass further orders.

For Petitioners : Dr. P.S. Vijayakumar

For Respondents : Mr.Syed Mustafa,  
1 and 2 Additional Government Pleader  
(Pondicherry)

R3- Tribunal

O R D E R

( Order of the Court is made by Hon'ble Justice S.MANIKUMAR )

Challenge in this Writ Petition is to the order of the Central Administrative Tribunal, Madras Bench in O.A. No. 1488 of 2010 dated 05.09.2014, by which, the prayer to quash, serial No.6 of G.O.Ms. No.44/2002 Revenue Department dated 29.10.2002 stipulating the condition, service in the "same line or allied cadre" for considering the case of a Government servant for relaxation of age, has been negatived. Further prayer in the said O.A. No. 1488 of 2010, for a direction to the Union of India represented by the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry, Respondent No.1 therein, not to insist on such qualification contrary to the notification dated 29.03.2010 for recruitment to the post of Deputy Tahsildar, has also been rejected.

2. Facts leading to the present Writ Petition, are as follows :-

The Government of Puducherry have issued a Notification in G.O. Ms. No. 44/2002 Revenue Department dated 29.10.2002, stating that,

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, read with the Notification No.F.5/4/65-GP, dated 11<sup>th</sup> January 1965 of the Government of India, Ministry of Home Affairs, New Delhi, and in supersession of the Government of Pondicherry, Revenue Department's notification issued in G.O.Ms.No.74, dated 29<sup>th</sup> September 1982, published in the Supplement to the Gazette No.41, dated 12<sup>th</sup> October, 1982, save as respects, things done or omitted to be done before such supersession, the Lieutenant-Governor, Pondicherry, hereby makes the following rules regulating the method of recruitment

to the Group "C" Post of Deputy Tahsildar in the Revenue Department, Government of Pondicherry, namely :--

1. Short title - (1) These rules may be called as "Government of Pondicherry, Revenue Department, Group 'C' post of Deputy Tahsildar Recruitment Rules, 2002 "

Schedule to the Rules, deals with the cadre strength, Classification, Scale of Pay, Age Limit for Direct Recruits and Educational and other qualifications required for direct recruits. In the Schedule Sl.Nos.6 and 8 are as follows:-

SCHEDULE

RECRUITMENT RULES FOR THE POST OF DEPUTY TAHSILDAR

|    |                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6  | Age limit for direct recruits                                      | Between 18 and 32 years (Relaxable for Government servants upto 40 years in accordance with the orders or instructions issued by the Government provided such Government servants are working for not less than 3 years in posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made). |
| 8. | Educational and other qualifications required for direct recruits. | Essential:<br>A Degree in any subject of a recognised University or its equivalent.<br><br>Desirable:<br>A Degree in Law of a recognised University                                                                                                                                                                                                                                                                                                                      |

Subsequently, the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi has issued an order dated 09.04.2009, revising the Classification of posts, on the basis of the Grade Pay.

| Sl.No . | Description of Posts                                                                                                                                 | Classification of posts |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 2.      | Central Civil post carrying the following grade pays:- Rs.5400, Rs. 4800, Rs. 4600 and Rs. 4200 in the scale of pay of Rs.9300 - 34800 in Pay Band-2 | Group B                 |

3. Be that as it may, the Government of Puducherry, Department of Revenue and Disaster Management, have issued a Notification dated 28.06.2010, for filling up the posts of Deputy Tahsildar under direct recruitment. As per the notification, the post of Deputy Tahsildar carried a pay band of Rs.9300-34800, with a grade pay of Rs.4200/-. Clauses 2 and 3 of the notification, deal with the educational/technical qualifications and age limit. They are extracted hereunder :

NOTIFICATION

2. EDUCATIONAL / TECHNICAL QUALIFICATIONS MINIMUM REQUIRED :

- i. Essential : A degree in any subject of a recognised University or its equivalent.
- ii. Desirable : A degree in Law of a recognised University.

3. AGE LIMIT : Between 18 and 32 years as on 31.07.2010 (Relaxable for OBC, MBC, SC, BT, XSM and MSP candidates in accordance with the instructions issued by the Government of India from time to time).

4. The petitioner, a Field Supervisor in the Department of Economics and rendered service for 8 years, has sent a letter to the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry, to consider the cadre of Department of Economics Statistics, as an allied department and technical employees working in the Department of Economics and Statistics may also be considered for the post of Deputy Tahsildar in Revenue Department. He has also submitted an application, dated 14.07.2010 for the post of Deputy Tahsildar, Revenue Department. His date of birth as on 31.07.2010, as per column 5 of the Application is, 22.12.1974. By then, he was already aged 35 years and 7 months. As per the notification the age limit of 32 is relaxable for Government servants upto 40 years in accordance with the orders or instructions issued by the Government provided such Government servants are working for not less than 3 years in posts which are in the same line or

allied cadres and where a relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made. The date of notification is 28.06.2010. Age as on 31.07.2010 is taken into consideration for deciding the eligibility. After considering the application dated 14.07.2010, (A. No. 11109), by order dated 12.11.2010, the Special Officer, Department of Revenue and Disaster Management, Government of Puducherry has rejected the application, stating that the petitioner was over aged.

5. Thereafter, the petitioner along with another person M. Baskaran, Upper Division Clerk in the Office of the Deputy Collector (Revenue) South, Villianur have filed W.P. No. 18475 of 2010 for a Writ of Certiorari to quash the G.O.Ms. No.44/2002 Revenue Department dated 29.10.2002, as illegal and without jurisdiction, in so far as, it restricts participation of a Government servant, by imposing a condition for the purpose of age relaxation, i.e. "same line or allied cadres", for selection to the post of Deputy Tahsildar by direct recruitment. Arguments have been advanced before the Writ Court that restriction on the powers to grant relaxation of age and considering the services rendered by Government servants only "in allied or same line" as that of the Revenue Department, would be violative of Article 43 of the Constitution of India. Maintainability of the Writ Petition was the primary objection by the Government. After considering the rival submissions of the learned counsel for the parties, by the order dated 19.11.2010, W.P. No. 18475 of 2010, has been disposed of, as hereunder :

"5. Taking into consideration the fact that the examinations for selection and appointment to the post of Deputy Tahsildar is scheduled on 21.11.2010 and also the undertaking given by the learned counsel for the petitioners that they will not stake any right for appointment to the post of Deputy Tahsildar if they are permitted to write the examination and that the petitioners are prepared to approach the Tribunal to ventilate their grievance, the respondents are directed to permit the petitioners to write the examination scheduled to take place on Sunday the 21<sup>st</sup> November 2010 and keep answer sheet separately. The right of the petitioners or their eligibility to participate in the selection process itself will be decided by the Central

Administrative Tribunal. The permission given to the petitioners to write the examination on 21.11.2010 is only as an interim measure and it will not confer any right to them to claim appointment to the post of Deputy Tahsildar. It is also made very clear that such a permission to write the examination is given taking into consideration the peculiar facts and circumstances of the case and to safeguard the interest of the petitioners, therefore, it need not be cited as a precedent. The petitioners are also directed to file appropriate application before the Central Administrative Tribunal on 22.11.2010.

6. With the above direction to the petitioners to approach the Central Administrative Tribunal, the writ petitioners is disposed of. No costs. Connected Miscellaneous petition is closed."

Thereafter, the writ petitioner and Mr. M. Baskaran, have filed O.A. No. 1488 of 2010 before the Central Administrative Tribunal, Madras Bench for the following relief:

(a) To call for the records on the file of the 2<sup>nd</sup> respondent in so far as Serial No.6 of G.O. 44 of 2002 dated 29.10.2002 demanding "same line or allied cadre" for considering the case of the government servant for relaxation.

(b) Direct the respondent No.1 not to insist on such qualification contrary to the notification dated 29.03.2010 seeking recruitment to the post of Deputy Tahsildar.

(c) To pass such further or other orders and render justice.

6. The respondents therein, namely, Union of India represented by the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry and another, have filed a detailed counter affidavit, setting out the qualifications, required for the post of Deputy Tahsildar, Revenue Department. They have also referred to the nature of duties and responsibilities attached to the post of Deputy Tahsildar. Paragraph Nos. 3 & 4 of the counter affidavit filed in O.A. No. 1488 of 2010, are extracted,

"3. The respondents submit that this Department has notified 20 vacancies (clear and anticipated vacancies) in the grade of Deputy Tahsildar to be filled up under direct recruitment, vide reference No. 5882/Rev.Estt/A2/2010 dated 28.06.2010 and this

Notification has been advertised in the Newspapers calling for applications for the said post. The educational qualifications required for the post of Deputy Tahsildar is as follows :-

- i. Essential : A degree in any subject of a recognised University or its equivalent.
- ii. Desirable : A degree in Law of a recognised University.

According to the existing Recruitment Rules for the post of Deputy Tahsildar published in the Supplement to the Gazette No.49 of the 4<sup>th</sup> December 2007, the age limit for direct recruits is between 18 and 32 years (Relaxable for Government servants upto 40 years in accordance with the orders or instructions issued by the Government provided such Government servants are working for not less than 3 years in posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made.)

4. The respondent submit that as per the Central Civil Services and Civil Posts (Upper Age - Limit for Direct Recruitment) Rules 1998 (Annexure - I) the departmental candidates with 3 years continuous service for appointment to Groups 'C' and 'D' by direct recruitment which are in the same line or allied cadres shall be given age up to 40 years of age (45 for SC/ST). The Recruitment Rules specifically mention in the Schedule 6 that "Between 18 & 32 years (Relaxable for Government servants upto 40 years in accordance with the orders or instructions issued by the Government provided such Government servants are working for not less than 3 years in posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made)". As per the above specific mention about age relaxation made in the Recruitment Rules for the post of Deputy Tahsildar, the departmental candidates with 3 years of service and not in the same line or allied departmental candidates with 3 years of service and not in the same line or allied cadres are not eligible for age relaxation.

The nature of duties and responsibilities attached to the post of Deputy Tahsildar, are as follows:-

- (1) Representing the minor unit of Revenue Administration in charge of a particular Taluk
- (2) Supervision of the maintenance of Revenue records by Village Administrative Officer.
- (3) Verification of preparation of Adangal/ Land Tax Rolls
- (4) Preparation of Demand Roll for Land Tax
- (5) Supervision of collection of Land revenue
- (6) Identification of sites being attached by court of law.
- (7) Tendering witness in the courts of law as to land disputes between private parties, Governmental bodies and private parties etc.
- (8) Deciding easementary rights of individuals over Government lands as per Cr.P.C in the capacity of Executive Magistrate.
- (9) Issuance of certificates to farmers for various loans for Government, Banks, Cooperative societies etc.
- (10) Revenue collection, in recovery of dues & loans pertinent to from the Government, Bank, Co-operative Societies etc. including distaining and confiscation of movable and immovable properties in co-ordination with the higher authorities in the proceedings.
- (11) Coordinating with the Tahsildar, in protecting the rights of the tenants and in sorting out the disputes over them.
- (12) Being vigilant over the land distributed under Land Reform and payment of fair wages to Agricultural labourers.
- (13) Check and regulate the encroachment of Government lands including public premises by way of eviction or otherwise.
- (14) Up keeping of Revenue Accounts and ensuring public amenities intact by way of reporting the same to higher Authorities liaising with Civic Authorities.
- (15) Co-ordinating with the Tahsildar to ensure explosives/ Petroleum products are stocked and maintained properly as per relevant Acts.
- (16) Recovering dues under Central Revenue Recovery Act and remitting the same to state accounts.

- (17) Being alert during rainy season to watch the inhabitation of low lying areas getting the public premises like schools and community halls ready for shifting flood victims thereto in contingencies.
- (18) Making arrangements for provision of food and clothes to the victims, shifting of affected persons from low lying areas.
- (19) Reporting situation to the higher authorities arising out of natural calamities such as Cyclone, Fire accidents, Tsunami etc.
- (20) Arranging and supervision of Law & Order, defacement works during the elections.
- (21) Gathering information about the sensitive moods of the regions under polling and informing the same to the higher authorities
- (22) Keeping vigil to avoid Law & Order problems in respective Taluk
- (23) Inspection to the spot where in Law & Order problems is imminent
- (24) Reporting the situation to the higher authorities and counselling with the parties concerned to keep peace.
- (25) Arrange for peace committees meetings to restore social order.
- (26) Sub-ordination to the Sub Divisional Magistrate in Law & Order problems.
- (27) To give information about the illegal sand mining and to assist the officers during periodical and repeated check to curb such activities.
- (28) Issuing of various certificates such as Nationality, Nativity, Caste or Community Certificate etc.
- (29) Conducting inquest and submit the report to the Sub Divisional Magistrate. The Deputy Tahsildar will also function as Executive Magistrate.

It may kindly be observed from the above nature of duties and responsibilities attached to the post of Deputy Tahsildar that the departmental candidates not in the same line or allied cadres could not establish any relationship that the services rendered by them will be useful for efficient discharge of duties of the post of Deputy Tahsildar.

7. Union of India represented by the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry, the 1<sup>st</sup> respondent therein, in his counter affidavit to O.A. No. 1488 of 2010 has further stated that the post of Deputy Tahsildar, is a Non-gazetted post. As regards the nature of the work and age of the petitioner and that of Mr. Baskaran, Union of India represented by the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry in his counter affidavit has further stated that at the time of submission of the application for the post of Deputy Tahsildar, Revenue Department, the petitioner was working as a Field Supervisor (Statistics) in Agriculture Department, Puducherry and his age, as on 31.07.2010, was 35 years and 7 months. In so far as Mr. Baskaran is concerned, he was working as Upper Division Clerk in the Office of the Deputy Collector (Revenue) South, Villianur, Puducherry and that as on 31.07.2010, he was aged about 38 years and 1 month. Thus, in his counter affidavit, he has submitted that both the applicants were over aged as on 31.07.2010.

8. After considering the rival submissions, and going through the recruitment rules, by order dated 10.09.2012 in O.A. No. 1488 of 2010 the Central Administrative Tribunal, Madras Bench, at paragraph No.4, has ordered as follows :

"4. The applicants have not proved that the respondents have violated any of the provisions of recruitment rules. In such view of the matter we are of the opinion that we cannot grant the relief which is claimed in this OA. The applicants have been granted the eligible age relaxation as per law. But however on the cut off date they are over aged. In that view of the matter and in the absence of any violation of any provision of recruitment rules we do not find any ground to grant the relief. OA is dismissed."

9. Being aggrieved by the order made in O.A. No. 1488 of 2010, dated 10.09.2012, by the Central Administrative Tribunal, Madras Bench, W.P. No. 8137 of 2014 has been filed by one of the applicants therein, namely, K.Madivanane before this Court. Accepting the contentions of the learned counsel for the petitioner therein, that the Tribunal had misdirected itself and failed to consider the validity of Serial No. 6 of the Government Order passed in G.O. Ms. No.44 dated 29.10.2002, by order dated 28.04.2014 in W.P. No. 8137 of 2014, a Hon'ble Division Bench, has set aside the order of the Central

Administrative Tribunal, Madras Bench dated 10.09.2012 and consequently issued a direction to the Tribunal to consider the validity of Serial No. 6 in G.O. Ms. No.44 dated 29.10.2002 and pass orders within three months from the date of receipt of a copy of the said order.

10. Pursuant to the directions, the Central Administrative Tribunal, Madras Bench tested the validity of Serial No. 6 in G.O. Ms. No.44 dated 29.10.2002 and at paragraph Nos.8 to 12 of the order made in O.A. No.1488 of 2010 dated 05.09.2014, the Central Administrative Tribunal, Madras Bench, has ordered as follows :-

"8. We have carefully considered the rival contentions and perused the material on record. The Recruitment Rules for the post of Deputy Tahsildar were framed in the year 2002 and notified through GO.Ms. NO. 44 dated 29.10.2002. It is seen that the Clause 6 contained in the said Recruitment Rules is entirely in accordance with the Central Civil Services and Civil Posts (Upper Age - Limit for Direct Recruitment) Rules, 1998. Rule 5 deals with Interpretation and 5.1 of the above rules prescribes the following criteria for the departmental candidates insofar as relaxation of the upper age limit is concerned. Sub clause (xi) is relevant in the instant case which reads as under :

| Category of persons to whom age concession is admissible<br>(1) | Categories of posts to which the Age concession is admissible<br>(2)                                     | Extent of age concessions<br>(3)           |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------------|
| xi) Departmental candidates with 3 years' continuous service    | For appointment to Groups 'C' and 'D' by direct recruitment which are in the same line or allied cadres. | Upto 40 years of age (45 years for SC/ST * |

\*Requires revision consequent to the increasing of the age limit by two years for general category.

"Rule 5.6 dealing with Upper age relaxation to Government employees for direct recruitment to Group 'A' and 'B' posts reads as under :

1. The following decisions have been taken in consultation with the Union Public Service

Commission :-

- i. Government servants may not be allowed any relaxation of age of recruitment to Group 'A' and Group 'B' posts on the basis of competitive examinations held by the Commission, except in cases where it has been specifically provided for in the scheme of the examinations approved in consultation with the Commission.
- ii. Government servants may be allowed, on a uniform basis, relaxation of a maximum of 5 years in the upper age limit for recruitment to other Group 'A' and Group 'B' posts by advertisements through the commission. The age relaxation will be admissible to such of the Government servants as are working in the posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of the post (s) recruitment to which has been advertised. Decision in this regard will rest with the Commission."

9. Consequent to the implementation of 6<sup>th</sup> Pay Commission, the post of Deputy Tahsildar is classified as Group B post. As per the Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules 1998, it is clear that the age relaxation for the departmental candidates is circumscribed with a proviso that the government servant should be in the same line or allied cadre (emphasis supplied). It is seen that Clause (6) of Recruitment Rules for the post of Deputy Tahsildar is in accordance with the above rules notified by the DOPT and the same has been issued in consultation with the UPSC. It is also to be noted that Puducherry being a Union Territory, Recruitment Rules for different categories of posts are finalized and notified only with the concurrence of Ministry of Home Affairs, Government of India in consultation with UPSC.

10. It is seen from the written submission filed on behalf of the respondents that the Recruitment Rules published vide G.O.Ms. No. 44 dated 29.10.2002 was superseded and amended vide G.O Ms. No.111/2007 dated 30.11.2007. We have gone through the G.O.Ms.

No. 111/2007 wherein also the disputed Col.6 remains same and no amendment has been incorporated in the said column. Further it is trite that the employer has got right to prescribe the required qualification for a post and Recruitment Rules have been formulated in exercise of power under Art.309 of the Constitution of India.

11. In view of the position reiterated above, the general instructions regarding the relaxation of age in the UPSC notification, referred to by the applicants are not relevant to the facts of the present case. The clause 6 of the Recruitment Rules for Deputy Tahsildar contains the proviso that such government servants are working for not less than 3 years in posts which are in the same line or allied cadres and where as relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made.

12. We conclude that the Clause 6 of the RR indicated by the respondents is fully in accordance with the Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules 1998. The proviso in the Clause 6 also makes sense considering that the relaxation granted for such government servants is intended to reach out to all the qualified departmental candidates whose experience in the same or allied cadre would be useful for the efficient discharging of the duties of the post for which selection is made. Accordingly, it is held that Clause 6 in the RR for the Deputy Tahsildar is valid.

"

Being aggrieved by the same, the present Writ Petition has been filed.

11. Assailing the correctness of the order impugned in this Writ Petition, Mr. Dr. P.S. Vijayakumar, learned counsel mainly urged that the Central Administrative Tribunal, Madras Bench, has failed to consider that the post of Deputy Tahsildar ought to have been classified under Group "B", and that appropriate Notification should have been issued by the Government. In this regard, he relied on the notification, dated 09.04.2009, issued by the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi. Referring to the Office Memorandum dated 17.04.2009,

learned counsel further contended that Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi, have clarified that in some of the Ministries/ Departments, posts may exist, which are not classified as per the norms laid down by the Department of Personnel and Training, and that the Government of Puducherry ought to have sent a specific proposal, giving full justification in support of the proposal within three months from the date of the Office Memorandum dated 17.04.2009. But, so far, the Revenue Department, Government of Pondicherry, has not sent any proposal to the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi and still retained the post of Deputy Tahsildar in Class "C", despite the recommendations of the 6<sup>th</sup> Pay Commission Report regarding Pay Band and Grade Pay.

12. Learned counsel for the petitioner further submitted that the language employed in G.O. Ms. No. 44/2002 dated 29.10.2002 pertaining to relaxation of age limit, is bad in law, as it imposes a condition that age relaxation would be granted only to the Government servant servicing in the same line or allied cadre. According to him, the condition imposed on the premise that the post of Deputy Tahsildar falls within Group "C", is erroneous, for the reason that, by virtue of revision of pay band/ grade pay, the post of Deputy Tahsildar ought to have been moved on to Group "B". But the Government of Puducherry, have not issued any notification, re-classifying the same, but, continued to advertise the post of Deputy Tahsildar only under Group "C", in the notification dated 28.06.2010.

13. It is the further case of the learned counsel for the writ petitioner that the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi, have issued guidelines for preparing the Schedule and Notification, for the classification of posts and relaxation for departmental candidates and as per Classification 3.4, a Central Civil post carrying the following grade pays:- Rs.5400, Rs. 4800, Rs. 4600 and Rs. 4200 in the scale of pay of Rs.9300 - 34800 in Pay Band-2, is classified as Group "B" posts. Attention of this Court was also invited to Classification 3.7.2, wherein the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi have further stated that in the matter of relaxation for departmental candidates, a provision may be made in the rules for relaxation of the upper age limit for departmental candidates upto 40 years

for appointment by direct recruitment to Group "C" posts. Instructions further read that provision on age relaxation in favour of Government servants for appointment by direct recruitment to Groups A and B posts may be made by inserting the following note :-

"Relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government ".

14. Thus, on the basis of the guidelines stated supra, issued by the Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi, in the matter of Classification, relaxation of age limit, Mr.Dr.P.S.Vijayakumar, learned counsel for the petitioner further submitted that, the Central Administrative Tribunal, Madras Bench has failed to consider the guidelines in proper perspective, and was merely carried away the expression, "same or allied" services, for the purpose of granting age relaxation.

15. Responding to the above and referring to the written submission, extracted in paragraph 10 of the impugned judgment, Mr.Syed Mustafa, learned Additional Government Pleader, Puducherry, for the respondents 1 and 2 submitted that the Recruitment Rules published in G.O. Ms. No. 44 dated 29.10.2002, have already been superseded and amended vide G.O. Ms. No. 111 of 2007 dated 30.11.2007. He also invited the attention of this Court, to paragraph 10 of the impugned Judgment and further submitted, after perusing G.O. Ms. No. 111 of 2007 the Tribunal has observed that column 6 pertaining to age, remains the same and that there was no amendment. Learned Additional Government Pleader further submitted that framing of Recruitment Rules, in exercise of powers conferred on the Government, under Section 309 of the Constitution of India, cannot be questioned, unless and until it is shown to be violative of Constitution of India. According to him, after taking note of the fact that Recruitment Rules for the post of Deputy Tahsildar, Revenue Department, Government of Puducherry, have been framed in accordance with Rule 5(1) of the Central Civil Services and Civil Post (Upper Age limit for Direct Recruitment) Rules, 1998, the Central Administrative Tribunal, Madras Bench had passed a well considered order, holding that the condition that upper age limit is relaxable for Government servants upto 40 years, in accordance with the orders or instructions issued by the Government provided that such Government servants, should work for not less than three years in the posts which are "in the

same line or allied cadre" and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of the posts recruitment to which has been advertised, does not require any revision. For the above said reasons, he prayed for dismissal of the Writ Petition.

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

16. The main contention of the learned counsel for the petitioner, is on the basis of the classification of the posts. According to him, the post of Deputy Tahsildar, Revenue Department, Government of Puducherry no longer falls under Group "C" posts, consequent to the revision of pay band and grade pay. As extracted supra, when Government of Puducherry, have framed the Rules called Government of Pondicherry, Revenue Department, Group "C" Post of Deputy Tahsildar Recruitment Rules, 2002, classification prescribed for the post among other things, to the age limit for direct recruits is "between 18 - 32" and relaxation to Government servants upto 40 years, is provided in accordance with the orders issued by the Government, provided such Government servants are working for not less than three years in the posts, which are in the same line or allied cadre and where a relationship is established that the services already rendered in a particular post will be useful for the efficient discharge of the duties, for which this selection is made. There is no dispute that the petitioner is a Graduate. As per the guidelines issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, extracted supra, to the extent required, shows that as per 3.7.2, a provision may be made in the rules for relaxation of the upper age limit for departmental candidates upto 40 years for appointment by direct recruitment to Group "C" posts. Provision on age relaxation in favour of Government servants for appointment by direct recruitment to Groups A and B posts, may be made by adopting the note, i.e. Relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Central Government. Thus, even going by the guidelines issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, it can be deduced that not withstanding the classification for the posts in Group A, B or C, age relaxation for government servants can be provided subject to the instructions or orders issued by the Central Government. According to the petitioner, the post of

Deputy Tahsildar, Revenue Department, Government of Puducherry, is deliberately retained in Group "C" only, so as to enable the persons in class C, to avail the benefit of age relaxation.

17. Rule 5 of the Central Civil Services and Civil Posts (Upper Age-limit for Direct Recruitment) Rules, 1998, deals with interpretation. Recruitment Rules prescribe the following criteria for the departmental candidates, insofar as relaxation of the upper age limit is concerned. Sub-Clause (6) of the said Rules, is extracted hereunder:

| Category of Persons to whom age concession is admissible      | Categories of Posts to which the Age concession is admissible                                            | Extent of age concessions                   |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|---------------------------------------------|
| xi) Departmental candidates with 3 years' continuous service. | For appointment to Groups 'C' and 'D' by direct recruitment which are in the same line or allied cadres. | Upto 40 years of age (45 years for SC/ST) * |

\* Requires revision consequent to the increasing of the age limit by two years for general category.

18. Knowing fully well that the post of Deputy Tahsildar, was notified under Group 'C' and not satisfying the eligibility criteria, prescribed for availing age relaxation, the petitioner has addressed a letter to the Special Secretary (Revenue), Department of Revenue and Disaster Management, Puducherry, to consider the cadre of Department of Economics and Statistics, as an allied Department, so that, the employees working in the Department of Economics and Statistics, may also be considered for the post of Deputy Tahsildar. Thus, he is very much outside similar or allied cadre and the services rendered by him in the other department is not on the same line or allied.

19. The question of extending age relaxation, is with reference to the duties and responsibilities of the post, for which, recruitment is made, with a condition that relaxation is permissible, if the services rendered are not less than 3 years in posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the department will be useful for efficient discharge of duties in the post for which selection is made). The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi, have already

issued guidelines for Classification of posts, and for relaxation of age for departmental candidates.

20. The issue to be addressed is that, whether the petitioner and others, working in Government of Pondicherry for not less than three years in the posts which are not in the same line or allied cadres and where the relationship could be established that the service already rendered by them in a particular post, will be useful for the efficient discharge of the duties for the post of Deputy Tahsildar in the Revenue Department, Government of Puducherry can also seek for age relaxation, upto 40 years, for selection or it is violative of Article 14 of the Constitution of India. We have already extracted the nature of duties and responsibilities attached to the post of Deputy Tahsildar, in the foregoing paragraphs. The classification among the government servants is, (1) who has rendered service in the same or allied cadre, and the other, (2) who do not fall within the above parameter. Broadly, both are government servants. But among the governments, age relaxation is given to one class of government servants, who had rendered service in the same line or allied cadres, and where the relationship could be established that the services rendered will be useful for the effective discharge of the duties for the post of Deputy Tahsildar.

21. Indisputedly, as on the date of submission of the application, the petitioner, was working as a Field Supervisor (Statistics), Agriculture Department, Puducherry and even now continues to work in the same department. As on 31.07.2010, he was aged 35 years and 7 months. Rule 5(6) dealing with upper age relaxation to Government employees for direct recruitment to Group "A" and "B" posts, is hereunder extracted :-

"Rule 5.6 dealing with Upper age relaxation to Government employees for direct recruitment to Group 'A' and 'B' posts reads as under :

1. The following decisions have been taken in consultation with the Union Public Service Commission :-

iii. Government servants may not be allowed any relaxation of age of recruitment to Group 'A' and Group 'B' posts on the basis of competitive examinations held by the Commission, except in cases where it has been specifically provided for in the scheme of the examinations approved in consultation with the Commission.

iv. Government servants may be allowed, on a uniform basis, relaxation of a maximum of 5 years in the upper age limit for recruitment to other Group 'A' and Group 'B' posts by advertisements through the commission. The age relaxation will be admissible to such of the Government servants as are working in the posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of the post (s) recruitment to which has been advertised. Decision in this regard will rest with the Commission."

22. Even taking it for granted that the post of Deputy Tahsildar, ought to have been classified as Group "B" post and age relaxation, as provided in the Recruitment Rules, as well as in the notification issued by Government of Puducherry, ought to have been given, here again, the question to be considered is whether age relaxation can be claimed as a matter of right by all the government servants working in various departments, when the service rendered by them, has no connection or characteristic or relationship that could be established and that the service, rendered by them, in the concerned department, would be useful for their efficient discharge of duties in the post of Deputy Tahsildar, Revenue Department, Government of Puducherry.

23. In Union of India v. Dr. (Mrs.) S.B. Kohli reported in AIR 1973 SC 811, classification as between F.R.C.S. in general surgery and F.R.C.S. in Orthopaedics was upheld in relation to appointment to the post of a Professor of Orthopaedics on the ground that the classification made on the basis of requirement of a post graduate degree in particular speciality was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The following observations made in State of Mysore v. P. Narasing Rao [1968 (1) SCR 407], would be useful:-

"it is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. Where any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained

if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be sonic rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 15 form part of the same constitutional code of guarantees and supplement each other. In other words, Art. 16 is only an instance of the application of the general rule of equality laid down in Art. 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Articles 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection."

24. In *The State of Jammu & Kashmir v. Shri Trilocki Nath Khosa & Ors.*, reported in AIR 1974 SC 19, it is held as follows :

"In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to, say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis.... On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.

In the same judgment, the Supreme Court, at Paragraphs 36 and 39, held as follows:

"Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another. (Para 36)

The classification of Assistant Engineers into Degree-holders and Diploma-holders could not be held to rest on any unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment. (Para 39)"

25. In *M.A.Rashid v. State of Kerala* reported in AIR 1974 SC 2249, the Supreme Court held that the opinion of the State Government cannot be said to be based on any matter extraneous to the scope and purpose of the relevant provisions of the Statute. The materials supporting the subjective satisfaction indicate that there are reasonable grounds for believing that the prescribed state of affairs exists.

26. In *State of Kerala v. M.K.Krishnan Nair* reported in AIR 1978 SC 747 the Hon'ble Supreme Court held as follows:

".....in other words, neither Article 14 nor Article 16 was attracted to the facts of the case at all inasmuch as the Officers belonging to the two wings never were nor are similarly situated or identically circumstanced.

.....it is well settled that a question of denial of equal treatment or opportunity can arise only as between members of the same class. In other words, Art. 14 or Art. 16 will not be attracted at all unless persons who are favourably treated form part of the same class as those who receive unfavourable treatment."

27. In *Om Prakash v. State of J & K.*, reported in AIR 1981 SC 1001, the Supreme Court, at Paragraph 8, held as follows:

"8. "Equality before the Law" or "equal protection of the laws" within the meaning of Article 14 of the Constitution of India means absence of any arbitrary discrimination by the law or in their administration. No undue favour to one or hostile discrimination to another should be shown. A classification is reasonable when it is not an arbitrary selection but rests on differences pertinent to the subject in respect of which the classification is made. The classification permissible must be based on some real and substantial distinction, a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.. .....(See *State of West Bengal v. Anwar Ali* (AIR 1952 SC 75)). The classification must not be arbitrary but be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out. Those qualities or characteristics must have a reasonable relation to the object of the law. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them."

28. In *Madhya Pradesh Ration Vikreta Sangh Society v State of Madhya Pradesh* reported in AIR 1981 SC 2001, the Hon'ble Supreme Court observed that, "The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal treatment based on an intelligible differentia having a rational relation to the objects sought to be achieved."

29. In *D.S.Nakara v Union of India* reported in 1983 (1) SCC 305 = AIR 1983 SC 130, the Supreme Court, held as follows:

"The basic principle which informs both Articles 14

and 16 in equality and inhibition against discrimination. Articles 14 strikes at arbitrariness because any action that is arbitrary must necessarily involve negation of equality. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons, or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

30. In Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others reported in AIR 1984 SC 1543, the Hon'ble Supreme Court, at Paragraphs 14 and 16, held as follows:

".....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ....

.....The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act...."

31. In Dhan Singh v. State of Haryana reported in AIR 1991 SC 1047, the Hon'ble Supreme Court, at Paragraph 10, held that when a rule is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or in-equality of protection

does not per se amount to discrimination within the inhibition of equal protection clause under Article 14. To attract the attention of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis having regard to the object which the Legislature has in view.

32. In T.R.Kothandaraman v. Tamil Nadu Water Supply & Drainage BD and others reported in 1994 (6) SCC 282, the Supreme Court, at Paragraph 13, held as follows:

"It is apparent that while judging the validity of the classification, the court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post."

33. In K.Revathy v. The High Court of Judicature at Madras reported in 1994 (2) MLJ 120, a Hon'ble Division Bench of this Court, at Paragraph 13, held as follows:

"Article 14 of the Constitution is infringed when a difference is created by a rule where there is none and also when a difference is created when there is no difference. The rule of equality means that equals have to be treated as equals. The present is not one involving equals."

34. In Food Corporation of India v. Bhanu Lodh reported in 2005 (3) SCC 618, the Supreme Court held as follows:

"Even assuming that there is a power of relaxation under the Regulations, we think that the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an 'open Sesame' for all and sundry."

35. In Union of India v. Alok Kumar reported in 2010 (4) SCALE 92, the Supreme Court held as follows:

"The Court would normally adopt an interpretation which is in line with the purpose of such regulations. The rule of contextual interpretation can be purposefully applied to the language..."

36. Age relaxation cannot be claimed as a matter of right, unless and until the applicant satisfies the eligibility criteria, in the recruitment rules framed for the post of Deputy Tahsildars, Revenue Department, Government of Puducherry. During the course of arguments, Dr.P.S.Vijayakumar, learned counsel for the petitioner fairly admitted that the duties of Field Supervisor in the Department of Economics and Statistics, in which the petitioner is currently employed are not in the same line or allied to the post of Deputy Tahsildar. Thus, it is not the case of the petitioner that he has rendered service in the same lines or in the allied cadre. Imposition of the abovesaid condition for relaxation of age upto 40 years, has a reason and nexus to the object sought to be achieved, that those who had rendered service for not less than 3 years in the posts which are in the same line or allied cadres and where a relationship can be established that the services rendered by them in the department would be useful for efficient discharge of duties in the post for which selection is made.

37. The condition imposed for relaxation of age limit, upto 40 years, only reflects the intention of the Government of Puducherry that if a Government servant had rendered service for three years, in the same line or allied cadre, then the knowledge, experience gained by such government servant, in the same or allied field can be utilised, by the department, in which recruitment is made and in such circumstances, relaxation of age upto 40 years, can be given. Whether the post of Deputy Tahsildar remains in Class 'C' or 'B', is immaterial, insofar as the eligibility criteria, prescribed in the recruitment rules, for availing age relaxation. Even taking it for granted that there should have been a re-classification of the post of Deputy Tahsildar in the Revenue Department, as Class 'B' post, the eligibility criteria for grant of relaxation of age remains the same. In that context, classification of posts has no relevance to the qualifications and eligibility criteria for relaxation of age, for the post. Had the petitioner rendered service in the same or allied cadres, he would also be eligible to seek for relaxation of age. Merely because the services rendered by him in different department, is not considered for the purpose of granting age relaxation, it is not open to him to contend that that the condition imposed is ultravires of the Constitution of India or for that matter, it has no nexus with the object sought to be achieved.

38. Age relaxation is extended to government servants, who had rendered service in the same or allied posts, and that the same would be useful for the efficient discharge of the duties of Deputy Tahsildar. Grant of relaxation of age depends upon the prescribed period of service rendered in the same or allied service. The nature of service, duties and responsibilities, being the same or allied, etc., are taken into consideration by the Government, while framing the rules and extending the benefit of age relaxation to a class of government servants.

39. In the light of the decisions and discussion, we hardly see any irrationality, arbitrariness or unreasonableness, behind the above stipulation in the rules, as a pre-condition for claiming age relaxation. According to us, there is basis for classification, reasonableness and clear nexus, between the classification and the object sought to be achieved. Legislature or the Government has a wide discretion in making the classification and the impugned G.O., does not reflect hostile discrimination against a class of persons. Serial No.6 of G.O.Ms. No.44/2002 Revenue Department dated 29.10.2002, or for that matter, the amended G.O., imposing the above condition is not hit by Articles 14 or 16 of the Constitution of India.

40. Such a condition cannot be said to be irrational to the object of recruiting persons with experience and service in the same line or allied cadres. What is impugned in O.A. No. 1488 of 2010 is Sl.No.6 in G.O. Ms. No.44 of 2002 dated 29.10.2002. Contention of Mr. Syed Mustafa, learned Additional Government Pleader of Puducherry that G.O.Ms.No.44 of 2002 has already been superseded and amended by G.O.Ms.No.111 of 2007, with column 6, regarding age relaxation, remaining unamended has not been disputed. G.O. Ms. No.44 is no longer in existence. While that be the case, challenge to Sl.No.6 in the said G.O.Ms.No.44, dated 29.10.2002 is misconceived. Recruitment Rules for Deputy Tahsildars have been framed in accordance with Article 309 of the Constitution of India and the Central Civil Services and Civil Posts (Upper Age Limit for Direct Recruitment) Rules, 1988. It is in conformity with the Government of India's policy decision.

41. Going through the material on record, we do not find that the petitioner has made out a case for interference, with the order impugned in this writ petition. Therefore, the order made in O.A. No. 1488 of 2010 dated 05.09.2014 by the Central

Administrative Tribunal, Madras Bench is sustained. The Writ Petition is dismissed. Consequently, the connected M.P is closed. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

avr/skm

To

1. The Special Secretary (Revenue)  
Department of Revenue and Disaster Management  
Revenue Complex, Saram,  
Puducherry.
2. The Lieutenant Governor of Revenue Department,  
Government of Puducherry, Puducherry.
3. The Registrar,  
The Central Administrative Tribunal,  
Madras Bench, Chennai-104.

+2cc'S to Dr.P.S.VijayaKumar, Advocate, S.R.No.50683  
+1cc to the Senior Government Pleader cum Senior Public  
Prosecutor for Puducherry, S.R.No.51101

W.P.No.27956 of 2015

KK(CO)  
CA(20/10/2015)

सत्यमेव जयते

WEB COPY