



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.11923 of 2017

and

W.M.P.(MD) Nos.9186 and 9187 of 2017

R.Venkatesan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by Secretary to Government,
Tamizh Development and Culture and
Hindu Religious and Charitable Endowments,
Fort St.George, Chennai-600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungampakkam, Chennai-600 034.
- 3.Tamil Nadu Public Service Commission,
Represented by its Secretary,
Omanthurar Government Estate,
Anna Salai, Chennai - 600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorari, to call for the records pertaining to the Impugned Notification No.14 of 2017 dated 01.06.2017 issued by the third respondent and to quash the portion of the Impugned Notification insofar as maximum age limit is prescribed in Para No.6 of the Impugned Notification.

For Petitioner	:Mr.A.Jayaramachandran
For R1 and R2	:Mr.J.Gunaseelan Muthiah, Government Advocate
For R3	:Mr.D.Sivaraman,

O R D E R

This Writ Petition is filed challenging the Recruitment Notification No.14 of 2017 dated 01.06.2017, issued by the third respondent namely, Tamil Nadu Public Service Commission, insofar as the maximum age limit prescribed in Para No.6 of the notification.

2.By the impugned recruitment notification, the Tamil Nadu Public Service Commission invited applications from eligible



candidates for direct recruitment to the post of Assistant Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowment Department (Group-I B Service). In para 6 of the said notification, age limit is prescribed for different category of applicants. The maximum age limit prescribed for candidates not belonging to SCs, SC(A)s, STs, MBCs/DCs and BCs (OBCM) is 32 years. The maximum age limit for SCs, SC(A)s, STs, MBCs/DCs, BCs (OBCM) and DWs of all castes is 37 years. However in the said notification, it is also stated that the maximum age limit prescribed for the post of Assistant Commissioner, would not apply to the applicants in regular service who are holding the post of Executive Officer, Grade-I or Grade-II or Grade-III or Grade-IV or Inspector or Head clerk or Manager or Superintendent in the Tamil Nadu Hindu Religious and Charitable Endowment Department.

3. It is submitted by the learned counsel for the petitioner that the petitioner is an advocate and he enrolled himself in the year 2000. The petitioner claims himself as a practising advocate, both in Civil as well as Criminal side, before the various Courts in Madurai District.

4. The petitioner challenges para 6 of the impugned Recruitment Notification prescribing the maximum age limit as 37 years for candidates belonging to SC(A), ST, MBC/DC, BC(MBC) and DW and 32 years for others. He further contended that since the petitioner is 47 years old, he is not entitled to participate in the selection process. Alleging that the third respondent has given exemption for age limit to the applicants who are in regular service holding post of Executive Officer, Grade-I or Grade-II or Grade-III or Grade-IV or Inspector or Head clerk or Manager or Superintendent, in the Tamil Nadu Hindu Religious and Charitable Endowment Department, the petitioner seeks similar age relaxation, so that he can also submit his application to participate in the preliminary examination and the selection process. The grounds on which the petitioner seeks such relief are as follows:

(a) The impugned notification is a clear case of discrimination between the applicants who are law graduates and the applicants who are in regular service in Tamil Nadu Hindu Religious and Charitable Endowment Department. Hence, the impugned notification is violation Article 14 of the Constitution of India.

(b) Earlier the Executive Officers working in Tamil Nadu Hindu Religious and Charitable Endowment Department, filed a Writ Petition, challenging the recruitment notification which was issued in the year 2007 and sought for amendment in the notification. In the Writ Petition filed by them in W.P.(MD) No.28891 of 2007, an order was passed on 22.10.2007 directing the State to take into consideration all the factors and to amend the Rules in such way that the Executive Officer having experience of



not less than six years can also participate in the examination for the post of Assistant Commissioner by direct recruitment without get notification.

(c) Similar request was made by the petitioner. However, the petitioner's request was not considered and the impugned notification has been issued.

5. The learned counsel for the petitioner further contended that the arbitrary fixation of upper age limit for practising Advocate, denies reasonable opportunities to several persons for being appointed as Assistant Commissioner in Tamil Nadu Hindu Religious Charitable Endowment Department.

6. None of the contentions of the learned counsel for the petitioner appear to be reasonable to this Court. First of all the petitioner is not entitled to claim equality. The alleged discrimination by comparing him with Executive Officers of various Grades who are in service in the Tamil Nadu Hindu Religious and Charitable Endowment Department cannot be accepted. By the impugned notification equals are not differently treated. The Executive Officers and other persons who are in service in Tamil Nadu Hindu Religious and Charitable Endowment Department are given age relaxation, considering their experience and other factors. They form a separate class. The petitioner who is not equally placed cannot challenge the impugned Recruitment Notification on the ground of violation of Article 14 of Constitution of India.

7. Law is settled that there cannot be equality among unequals and the petitioner cannot claim the benefit of age relaxation which was given to Executive Officers who have considerable experience being in service in the Tamil Nadu Hindu Religious and Charitable Endowment Department.

8. The Writ Petition challenging the recruitment notification prescribing the particular age limit for different categories of applicants is not maintainable.

9. The law is well settled as regards the scope of judicial review in the matter of administrative orders of Executive authorities with regard to the eligibility criteria and norms fixed for recruitment. The Honourable Supreme Court in the case of **Government of Andhra Pradesh v. N. Subbarayadu** reported in **(2008) 14 SCC 702** has held as follows:

"7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations.



The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection".

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10. It has been repeatedly held by the Honourable Supreme Court that fixing a cut-off date for determining the maximum or minimum age is the discretion of the employer and judicial review is not permissible unless the fixation of cut-off date is so capricious or whimsical. The Honourable Supreme Court in the case of **Dr. Ami Lal Bhat v. State of Rajasthan and others** reported in (1997) 6 SCC 614 has held as follows:

"5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed by this Court in Union of India v. Parameswaran Match Works and has been reiterated in subsequent cases. In the case of A.P. Public Service Commission v. B. Sarat Chandra the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the process of selection and said,

"when such are the different steps in the process of selection the minimum or maximum age of suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to



attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for the recruiting agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age is linked to the process of selection which may take uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date. Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of *Union of India and Anr. v. Sudhir Kumar Jaiswal* (1994 4 SCC 212) the date for determining the age of eligibility was fixed at 1st of August of the year in which the examination was to be held. At the time when this cut off date was fixed, there used to be only one examination for recruitment. Later on, a preliminary examination was also introduced. Yet the cut off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut off date had become arbitrary. Negating this view of the Tribunal and allowing the appeal. This Court Cited with approval the decision of this Court in *Parmeshwar Match Works case* (supra) and said that fixing of the cut off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the court would be reluctant to strike down such a cut off date.?

11. In the case of ***Shankar k. Mandal and others v. State of Bihar and others*** reported in (2003) 9 SCC 519, the Honourable Supreme Court has made the position clear after taking support from earlier judgment in the following lines:

"What happens when a cut off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non-prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court (See *Ashok Kumar Sharma and Ors. v. Chander Shekhar and Anr.* (1997 (4) SCC 18, *Bhupinderpal Singh v. State of Punjab* (2000 (5) SCC 262 and *Jasbir Rani and ors. v. State of*



Punjab and Anr. (2002 (1) SCC 124) are as follows:

(1) The cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules;

(2) If there is no cut off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications; and

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority".

12. In another judgment of the Honourable Supreme Court in the case of **A.P. Public Service Commission, Hyderabad and another v. B. Sarat Chandra and others** reported in (1990) 2 SCC 669 similar issue arose for consideration. Recruitment to the post of Deputy Superintendent of Police in the State of Andhra Pradesh where Rule 5 of Andhra Pradesh Police Service Rules which is similar to the Rule in Tamil Nadu as regards qualifications. A candidate who was not qualified as on the date of 1st July of the year of recruitment claimed that the relevant date ought to be the date of preparation of list of selected candidates. Though the Tribunal accepted the contention of the candidates, the Honourable Supreme Court allowed the Civil Appeal and held as follows:

"The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to



scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the Rule making authority".

Though the above case is relating to the minimum age, the principles of law laid down in the above judgment is applicable to the present case.

13. In the case of **State of Rajasthan v. Hitendra Kumar Bhatt** reported in **AIR 1998 SC 91** the Honourable Supreme Court has held as follows:

"A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others".

14. It is the policy decision of the State Government and the Executive to fix age limit for different categories of candidates. Since, fixation of age norms is with the exclusive domain of the respondents, the petitioner cannot challenge the reason behind such fixation especially when no *mala fide* is alleged against the respondents. Whenever the age limit or cut off date is fixed under the recruitment Rules, inconvenience or hardship may be caused to individuals, which cannot be avoided. Merely because the petitioner is affected, he cannot challenge the age limit on the ground of violation of Article 14 of Constitution of India.

15. This Court is of the firm opinion that the age limit prescribed for the different categories of applicants is neither irrational nor whimsical, so as to treat the issue amenable to the jurisdiction of this Court under Article of 226 constitution of India.

16. Hence, I find no merits in the Writ Petition and the Writ Petition is dismissed accordingly. Consequently the connected W.M.P. (MD) Nos. 9186 and 9187 of 2017 are closed. No Costs.

Sd/-

Assistant Registrar (CS-I)

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To

1.The Secretary to Government,
State of Tamil Nadu,
Tamil Development and Culture and
Hindu Religious and Charitable Endowments,
Fort St.George, Chennai-600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungampakkam, Chennai-600 034.

3.The Secretary,
Tamil Nadu Public Service Commission,
Omanthurar Government Estate,
Anna Salai, Chennai - 600 002.

+1cc to M/s.D.Sivaraman,Advocate,SR. 62597

+1cc to M/S.Special Government Pleader,SR. 62714

W.P. (MD) No.11923 of 2017
28.06.2017

CMR/GSP

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