



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR****W.P. (MD) .No.8129 of 2017**

Aji Kumar

... Petitioner

Vs.

1. The State of Tamilnadu,  
Rep. by its Principal Secretary to Government  
Home Department,  
Secretariat, Fort St. George,  
Chennai- 600 009.
2. The Director General of Police,  
Mylapore,  
Chennai- 600 004.
3. The Director,  
Tamil Nadu Uniformed Service Recruitment Board,  
Egmore,  
Chennai-600 008.
4. The Superintendent of Police,  
Kanyakumari District,  
Kanyakumari.

... Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 4 to consider the petitioner's application bearing application No.CR104834 without insisting of upper age limit and permit the petitioner to undergo the selection process as per advertisement No.117 issued by the 3<sup>rd</sup> respondent dated 23.01.2017.

For Petitioner : Mr.R.Manimaran  
For Respondents : Mr.B.Pugalendhi  
Additional Advocate General  
for Mr.A.K.Baskara Pandian  
Additional Government Pleader

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**O R D E R**

This Writ petition has been filed by the petitioner, directing the respondents 1 to 4 to consider the petitioner's application bearing application No.CR104834 without insisting upper age limit and permit the petitioner to undergo the selection



process as per advertisement No.117 issued by the 3<sup>rd</sup> respondent dated 23.01.2017.

2. The petitioner is indirectly challenging the Common Recruitment notification, 2017 for the Posts of Grade II Police Constables/ Grade II Jail Wardens and Firemen dated 23.01.2017 where in the maximum age limit was fixed as 26 for persons belonging to Backward Community. The petitioner has crossed the age limit and now seeks age relaxation which is not permissible as per the recruitment notification. Several writ petitions filed before this Court by similarly placed persons have been dismissed by this Court earlier.

3.As per the orders passed by this Court in a similar writ petition in W.P.(MD)Nos.2982 and 2081 of 2017, dated 25.04.2017, this Writ Petition is also liable to be dismissed on merits. The relevant portion of the order passed in the above writ petition reads as under:

"14.The law is well settled as regards the scope of judicial review in the matter of administrative orders of Executive authorities especially with regard to the eligibility criteria and norms fixed for recruitment. The Hon'ble 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."*

15.It has been repeatedly held by the Hon'ble 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 Hon'ble 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 1 st 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."

16. In the case of ***Shankar k. Mandal and others v. State of Bihar and others*** reported in (2003) 9 SCC 519, the Hon'ble 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."

17. In another judgment of the Hon'ble 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 1<sup>st</sup> 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 Hon'ble 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.

18. In the case of **Mohd. Sartaj v. State of U.P.** reported in **AIR 2006 SC 3492** it has been held that eligibility/minimum qualification should be fulfilled on the date of recruitment. In the case before the Hon'ble Supreme Court no other date was fixed or prescribed by the Rules.

19. In the case of **State of Rajasthan v. Hitendra Kumar Bhatt** reported in **AIR 1998 SC 91** the Hon'ble 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."*

20. In view of the principles of law reiterated by the Hon'ble Supreme Court and the Rule 14(1) and Annexure II of Tamil Nadu Police Subordinate Service Rules, this Court is not inclined to accept the case of the petitioners. As pointed out by the Hon'ble Supreme Court and this Court earlier, it is a policy decision of the Government and the Executive to fix the cut-off date having regard to the various considerations and the Court is expected to observe judicial restraint and cannot interfere casually merely because some inconvenience is caused to individuals.

21. For all the above reasons, I do not find any merits in the Writ Petitions and hence, both the Writ Petitions are dismissed. No costs. Consequently, connected W.M.P.(MD) Nos.2400 & 2401 and 1734 of 2017 are closed."

4. Following the same, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

**To:**

1. The Principal Secretary to Government  
Home Department,  
Secretariat, Fort St. George,  
Chennai- 600 009.

2. The Director General of Police,  
Mylapore,  
Chennai- 600 004.

3. The Director,  
Tamil Nadu Uniformed Service Recruitment Board,  
Egmore,  
Chennai-600 008.

4. The Superintendent of Police,  
Kanyakumari District,  
Kanyakumari.

TA/SM

PSM/KP/SAR4/30.05.2017/7P/5C

ORDER MADE IN  
W.P. (MD) .No.8129 of 2017  
27.04.2017