

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12943 of 2008

R.Shivakumar

..Petitioner

Versus

1. The Secretary to Government of TamilNadu
Housing and Urban Development Department,
Fort St'George, Chennai-9.
 2. The Director,
Town and Country Planning Department,
Anna Salai, Chennai-2.
 3. The Secretary,
Tamilnadu Public Service Commission,
Government Estate, Chennai-2.
- ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus or any other appropriate writ or direction in the nature of writ by calling for the proceedings of the 3rd respondent in Memorandum No.2961/APD-F2/AD(TCP) 2008 dated 09.05.2008 (received by the petitioner on 21.05.2008) and quash the same and consequently direct the respondents to conduct an examination for the post of Assistant Director of Town and Country Planning for the petitioner.

For Petitioner : Mr.N.Balamurali Krishnan

For Respondents : Mr. C.N.G.Niraimathi [for R3]

Mr.N.Inbanathan

Additional Government Pleader [for R1&R2]

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O R D E R

The petitioner has filed the above writ petition challenging the proceedings of the 3rd respondent in Memorandum No.2961/APD-F2/AD(TCP) 2008 dated 09.05.2008 (received by the petitioner on 21.05.2008) and to quash the same and consequently, to direct the respondents to conduct an examination for the post of Assistant Director of Town and Country Planning for the petitioner.

2. The 3rd respondent had called for applications for Direct recruitment to fill up the vacancies for the year 2006-07 to the posts of Assistant Director of Town and Country Planning and Draughtsman Grade II, Town and Country Planning Department on 09.02.2008 in Advertisement No.153.

3. The petitioner, who holds a certificate from the Institute of Town Planners, India, Pune, had applied for the post of Assistant Director of Town and Country Planning, wherein 15 vacancies were available at the time of advertisement. The qualification for the officers for direct recruitment to the post of Assistant Director of Town and Country Planning was as here under:-

" 6. Qualification:-

(A) AGE (as on 01.07.2008):

(1) MAXIMUM AGE LIMIT - Should not have completed 30 years (Common for both the Posts for General Turn Candidates)

(a) For the post of Assistant Director of Town and Country Planning:

No maximum age limit for SCs, STs, MBCs/DCs, BCs (Other than BCCs & BCMs), BCCs, BCMs and Destitute Widows of all castes and persons appointed from the category of Town Planning Officers of Municipal Councils or other local bodies in the State.

(B) EDUCATIONAL QUALIFICATION:

Candidates should possess the following or its equivalent qualification on the date of this Notification, viz. 09.02.2008.

(i) Assistant Director of Town & Country Planning:

1. Must possess the degree of Master of Town Planning of any University or Institution recognized by the UGC and must have experience in Town Planning work in the making and designing of Town Planning Schemes for a period of not less than two years after obtaining the said degree

or

2. Must be an Associate Member of the Institute of Town Planners India or possess a degree or diploma recognized for eligibility to the Associate-ship of the Institute of Town Planners India.

Or

3. Must be an Associate of the Indian Institute of Architects or possess the B.Arch.Degree or possess degree or diploma recognized as equivalent to the National Diploma in Architecture and must have experience in Town Planning Work for not less than three years in any Municipality or for a period of not

less than two years in a Town Planning Department of State Government or in the State Housing Board or City Improvement Trust.

Or

4. Must possess the B.E (Civil) with experience in Town Planning work for a period of not less than three years in any Municipality or for a period of not less than two years in Town Planning Department of Government or the State Housing Board or in City Improvement Trust;

or

5. Must have passed Section A & B of the AMIE (India) Examination in the Civil Engineering Group with experience in Town Planning work for a period of not less than three years in any Municipality or for a period of not less than two years in Town Planning Department of the Government or in the State Housing Board or in City Improvement Trust;

or

6. Must possess the L.C.E., Diploma awarded by the Madras Government Technical Education Board and should have rendered service as Town Planning Officer in any Municipality or a Local Body of the State or in the State Housing Board or in City Improvement Trust for a period of not less than 10 years;

or

7. Must possess the Post Licentiate Diploma in Town and Country Planning awarded by the Board of Technical Education of the State of Tamil Nadu and Experience in the making and designing of Town Planning Schemes for a period of not less than 7 years after obtaining the Post Diploma in Town and Country Planning."

4. The petitioner was working as a Planning Assistant Grade IV in Chennai Metropolitan Development Authority [CMDA]. The petitioner made an application for direct recruitment to the post of Assistant Director of Town and Country Planning. The Petitioner had received the impugned letter on 21.05.2008 rejecting the application of the petitioner on the ground that he exceeds the prescribed age limit as on 01.07.2008. However, the advertisement prescribes the age qualification only for General Turn candidates that they should not have exceeded 30 years as on 01.07.2008 and no maximum age limit was prescribed for SCs, STs, MBCs/DCs, Bcs (other than BCCs and BCMs), BCCs, BCMs and Destitute widows of all castes and persons appointed from the category of Town Planning Officers of Municipal Councils or other local bodies in the State.

5. The learned counsel for the 3rd respondent has also filed a counter wherein they have raised other objections regarding the petitioners' eligibility for being considered as per the aforesaid advertisement on the ground that as a Planning Assistant Grade IV in CMDA, the petitioner was not qualified.

6. The learned counsel for the 3rd respondent has also relied upon the letter issued by the Town and Country Planning Department dated 27.09.2018 wherein it is stated here under:-

"It is informed that in TNPSC Letter No.2550/APD-F2/2008, dated 24.04.2008 clarification has been sought regarding Assistant Director of Town and Country Planning "whether qualification and experience possessed by the candidates can be considered as equivalent to the qualification and experience as announced in the para 6B(i)(ii) of notification". In the category "for the post of Assistance Director of Town and Country Planning in serial no.6 Planning Assistant CMDA" has been mentioned.

As the post mentioned in the above TNPSC letter dated 24.04.2008, was Planning Assistant (CMDA) in general, it was clarified accordingly that it shall be considered. Subsequently in TNPSC Lr.No.2550/APD-F2/2008 dated 17.07.2008 it has been requested "to kindly clarify whether the category of Planning Assistant Grade IV in CMDA could be considered as equivalent to the category of Town Planning Officer referred in the Commissions notifications". It was clarified in CTCP letter No.18820/2006/K1, dated 21.07.2008 that the scale of pay of Planning Assistant Grade IV in CMDA is Rs.3200-85-4900 (ordinary grade) and as such Planning Assistant Grade IV in CMDA could not be considered as equivalent category to the post of Town Planning Officer in Municipal Service. As in the clarification sought for in TNPSC letter dated 17.07.2008 it was specifically mentioned that the post in question is Planning Assistant Grade IV of CMDA it was clarified accordingly. CMDA has five categories of Planning Assistant as per the service rules of CMDA issued in G.O.Ms.No.210 H & UD Department dated 26.02.1980.

Moreover, as per the hierarchy of planners in CMDA, Planning Assistant Grade IV is one of the lower most post in CMDA with an educational qualification of ITI Course. As per the hierarchy of Town Planning section in Municipal Service, Town Planning Officer is the top most post of Town Planning Section in various grades of local bodies."

7. It is noticed that the impugned order dated 09.05.2008 does not talk about the educational qualification of the petitioner. It merely states that the petitioner had exceeded the age of 30. Therefore, the aforesaid defence taken as against the writ petitioner in the counter cannot be accepted.

8. The learned Counsel for the petitioner filed an additional typed set of documents including G.O.Ms.No.2234 (Rural Development and Local Administration Department), dated 01.11.1968. The said G.O.Ms. prescribes the Rules for permanent post in Class VI of the Madras General Service. It states that it shall apply to the holders of the temporary post of Junior Town Planner, re-designated as Assistant Director of Town and Country Planning. Rule 5 reads as under:-

"AGE:- No person shall be eligible for appointment to the post by direct recruitment, if he has completed or will complete the age of 30 years on the first day of July of the year in which the selection for appointment is made;

Provided that the age limit of 30 years prescribed for appointment to this post shall not apply to persons appointed from the category of Town Planning Officers of Municipal Councils or other local bodies in the State."

9. Thus, the above Rule clearly shows the age limit of 30 years for appointment does not apply to persons appointed from the category of Town Planning Officers of Municipal Councils or other local bodies in the State. The CMDA has been now admitted to be a local body and therefore, the petitioner is entitled to be considered for appointment. However, as mentioned above the age limit is not applicable.

10. The learned counsel for the petitioner has also filed an application under RTI and obtained the status of appointment made by the 3rd respondent as memo dated 14.02.2012 bearing Reference Memo No.646/RID-1/2009 which gives the names of persons who have been appointed for the Post of Assistant Directors at Serial No.2,6,24,25,29,34 who have been promoted from departments who are not eligible or from the similar departments. As per the letter dated 29.04.2008 bearing ROC.No.18820/2006 K1 persons from the Planning Assistant (CMDA), Highways and Agricultural Departments are not to be considered for appointment but have been appointed. Further, it appears that 12 appointments have been made whose promotion is subject to outcome of the present writ petition.

11. The petitioner has been denied the opportunity to write the exam, even though he was qualified like others as the age restriction criteria did not apply to him.

12. Under these circumstances, the 3rd respondent is directed to permit the petitioner to participate in the ensuring exams. Subject to the result in the exam, the 1st and 2nd respondents are directed to promote the petitioner with retrospective effect from the year 2007-2008 by protecting his seniority, pay and allowances, had been allowed to write exam in 2008.

13. Accordingly, this Writ petition is Allowed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of TamilNadu
Housing and Urban Development Department,
Fort St'George, Chennai-9.
2. The Director,
Town and Country Planning Department,
Annasalai, Chennai - 2
3. The Secretary,
Tamilnadu Public Service Commission,
Government Estate, Chennai-2.

+1cc to M/s.V.Vijay Shankar, Advocate, S.R.No.72656.

+1cc to M/s.C.N.G.Niraimathi, Advocate, S.R.No.72103.

+1cc to the Government Pleader, S.R.No.72414.

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MR(CO)
SSM(07/01/2019)

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