

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.4957 of 2011
& M.P.No.1 of 2011

K.Manoharan

..Petitioner

Vs.

1. The Chief Engineer (General),
Now as Director General (Highways),
Construction & Maintenance
Highways Department,
Chepauk, Chennai 600 005.

2. The Divisional Engineer
Highways
Construction & Maintenance Division
District Collectorate Office
'B'- Block, 2nd floor, Sathuvachari
Vellore-9.

....Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first and second respondents herein to confer the post of Road Inspector Grade-II to the petitioner forthwith by applying 12(d) of the General Rules for Tamil Nadu State and Subordinates Service to give in respect of maximum age limit for the post.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.B.Anand, Government Advocate

ORDER

The petitioner has come forward with this Writ Petition, seeking direction to the respondents 1 and 2 to confer the post of Road Inspector Grade-II to the petitioner forthwith, by applying 12(d) of the General Rules for the Tamil Nadu State and Subordinates Service Rules.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the materials available on record.

3. The learned counsel appearing for the petitioner would argue that the petitioner was a prospective candidate for the post of Road Inspector Grade-II as he passed the Higher secondary Examination and completed the Vocational Training in Draftsman for Civil in February 1988 and also undergone Apprentice Training at the Town and Country Planning, Vellore. The learned counsel would further state that the petitioner was sponsored for the post of Road Inspector Grade-II by the District Employment Exchange Officer, Vellore and he also attended interview on 23.02.2011, however, his candidature was rejected only on the ground that he was overaged by applying the amended Rule 12(d) of the General Rules of the Tamil Nadu State and Subordinate Services Rules.

4. The learned Government Advocate, by relying upon the counter filed by the second respondent would state that as per the letter of the Chief Engineer, Highways, Chennai, dated 23.09.2010, list of candidates were called for from the District Employment Exchange, Vellore to fill up the vacancies for the post of Road Inspector Grade-II. The list of 112 candidates were received from the District Employment Office and interview was conducted by the Divisional Engineers (H) (C&M), Vellore and Vaniyambadi and the Assistant Divisional Engineers (H) (C&M), Vellore, Arcot and Vaniyambadi on 23.02.2011 and out of 112 candidates, only 92 appeared for the interview. The petitioner was not selected during the interview as he was not up to the mark. Finally, 24 candidates were short listed and selected for the post of Road Inspector Grade-II, according to the communal rotation.

5. The learned Government Advocate would also argue that when the Special Rule prescribes age limit, the petitioner cannot rely on the General Rule seeking age relaxation. The learned Government Advocate relying on the decision of this Court reported in Indiankanoon.org/doc/1415137, in a batch of Writ Petitions in W.P.(MD).No.9911 of 2010, etc. batch of cases, order dated 24.09.2010, wherein, my brother Hon'ble Mr. Justice K.Chandru, after considering the orders passed in the similar Writ Petition in W.P.No.3950 of 2008, dated 17.11.2008, has dismissed the Writ Petitions. The relevant portion of the said order reads as follows:

"15.Subsequently, there was a challenge to the application of maximum age by similarly placed persons. K.K.Sasidharan, J. dealt with the same in

W.P.No.3950 of 2008, dated 17.11.2008 in M.Kuppannan and others Vs. The State of Tamil Nadu and others. In paragraphs 6 to 8, it was held as follows: ""6.It is found from the Government Order in G.O.Ms.No.41 dated 21.3.2007 as well as the letter dated 11.5.2007 of the first respondent that the Government have examined the Special Rules of the Tamil Nadu Panchayat Development Engineering Subordinate Service and Rule 12(d) of the General Rules of the State and Subordinate Services Rules and amended Rule 4(a) of the Special Rules of the Tamil Nadu Panchayat Development Engineering Subordinate Service Rules and as per the amended Special Rules, Rule 12(d) of the General Rules was not applicable for direct recruitment for the posts of Overseers, Junior Draughting Officers and Road Inspectors Grade II in the Rural Development and Panchayat Raj Department and persons who have not completed 35 years of age as on First day of July of the year in which the appointment was made for the said posts were eligible for appointment subject to fulfilment of other qualifications prescribed for the posts in the said categories.

7.The petitioners are aggrieved by the stipulation as contained in Rule 4(a) prescribing the age limit of 35 years and thereby taking away the benefit of Rule 12(d) of the General Rules for appointment to the post of Overseers and Road Inspectors by direct recruitment. It is trite that the employer is at liberty to fix up the qualification as well as age limit for the purpose of recruitment and merely because such prescription causes prejudice to an individual, the same cannot be a reason to set aside the recruitment rule and more particularly the age restriction. The petitioners have no case that the relevant recruitment rules have not been followed in the matter of appointment to the service and in fact the affidavit proceeds as if in all the recruitments, the relevant rules have been followed by the Government. In fact in the earlier selection referred to in the affidavit filed in support of the writ petition there is a clear admission that, only those who have not crossed the age limit were appointed for different posts in the department. Therefore it cannot be said that the impugned rule as well as the subsequent letter is in violation of any of the provisions of the constitution or the relevant statute.

8.When there is a specific Rule prescribing the

method of recruitment to the post of Overseers and Road Inspectors, the petitioners cannot be heard to say that the Government was not entitled to amend the Rule and to resort to recruitment on the basis of such amended rules. It was within the domain of the Government to amend the Rules to suit the need and in the interest of administration. The Special Rules for Tamil Nadu Panchayat Development Engineering Subordinate Service was framed under Article 309 of the Constitution of India. Power to frame rules also includes the power to amend or vary the rules and as such the Government was justified in amending the rules."

16. In the light of the above orders, the contentions raised by the petitioners cannot be entertained and the writ petitions are liable to be rejected. After several decisions of the Principal Bench, the petitioners in the Madurai Bench have once again raised similar contentions which did not find favour with the learned Judge of this court.

17. However in one such case when an appeal was filed in W.A.(MD)No.481 of 2010, dated 31.08.2010 in V.Selvakumar Vs. The Secretary to Government, Rural Development and Panchayat Department, Fort St. George, Chennai and others, the same was disposed of by the division bench. The division bench in paragraph 9 upheld the validity of the said order which is as follows: "9. According to the appellant, the respondent cannot refuse to sponsor his candidature on the ground that he had crossed 40 years of age in view of Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules. Further, this Court has already decided the said issue in the order dated 31.03.2009, in W.P.(MD)Nos.1753, 1503, 753 and 756 of 2009, wherein this Court held that the petitioners therein have crossed the maximum age provided for direct recruitment to the post of Overseer/Junior Drafting Officer and therefore they are not eligible to seek for any direction to sponsor their name for consideration for the post of Overseer. As per G.O.Ms.No.96, Rural Development and Panchayat Raj (E3) Department, dated 06.06.2008, the maximum age prescribed for the post of Overseer in the Public Works Department is 40 years. The fourth respondent has rightly informed the appellant that relaxation of the age is a policy decision of the Government and the same would be determined by the employer depending upon the Statutory Rules applicable to the post. That apart, the appellant

cannot claim the age relaxation as a matter of right and it is the discretion of the Government/employer. Therefore, the learned single Judge has rightly dismissed the writ petition."

6. In the instant case, though the petitioner contended that he was not selected on the ground of overage, but it is evident from the records that in the interview, the panel found out the petitioner was not up to the mark. He was not selected on the ground of merits, but not on the ground of overage. Further, the petitioner seeks relief based on Rule 12(d) of the General rules of the Tamil Nadu State and Subordinate Service Rules and admittedly the Special Rule prescribes age limit of 40 in the case of Backward community. But, the petitioner crossed the age limit and he was 44 at the time of interview. Hence, I find no merit in this Writ Petition. The Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rst / pvs

To

1. The Chief Engineer (General),
Now as Director General (Highways),
Construction & Maintenance
Highways Department,
Chepauk, Chennai 600 005.

2. The Divisional Engineer
Highways
Construction & Maintenance Division
District Collectorate Office
'B'- Block, 2nd floor, Sathuvachari
Vellore-9.

+1cc to the Government Pleader, S.R.No.70137

WP.No.4957 of 2011
& M.P.No.1 of 2011

NMI (CO)
GSP(29/11/2018)