

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.09.2018

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THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.23033 of 2018 and
W.M.P.No.26925 of 2018

Dr.P.Naveen Chand

....Petitioner

Vs

1. ESIC Medical College & PGIMSR &
ESIC Model Hospital,
Represented by the Dean
KK Nagar, Ashok Pillar Road,
Chennai 600 078
 2. The Dean,
ESIC Medical College & PGIMSR &
ESIC Model Hospital,
KK Nagar, Ashok Pillar Road,
Chennai 600 078
 3. The Union of India,
Represented by its Secretary,
Department of Personnel and Training,
North Block, New Delhi - 110 001
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first and second respondents to consider the petitioner's representation dated 30.08.2018 and to conduct an interview for the petitioner as per the notification published in the daily news paper viz English Hindu dated 19th August 2018 for the post of Junior Resident-Non Clinical (Tutor) in the Pathology Department (unreserved) and consider the petitioner for the post on merits.

For Petitioner : Mr.K.Sudalai Kannu

For Respondents : Mr.K.Prabakar for RR1 & 2

ORDER

It appears that the 1st respondent came out with an advertisement in Hindu English Newspaper for filling up the post of Junior Resident Non Clinical (Tutor) in Pathology Department amongst other discipline on contractual basis by conducting walk in interview fixing the date 28.08.2018. Accordingly, the petitioner being an OBC category candidate applied for the same. But in the discipline of Pathology, there was one post which was for open category. The petitioner was denied to participate in the walk in interview inasmuch as he had crossed the upper age limit of 30 years fixed. The petitioner therefore came to challenge the same in this writ petition on the ground that he being OBC candidate,

three years relaxation is available to him and he being well within the age limit denial of such opportunity was illegal and improper and therefore seeking writ of mandamus directing the respondents to allow the petitioner to participate in the interview.

2. Counter affidavit has been filed indicating that the post being for open category, person applying for the same must be well within the criteria of open category. Since the petitioner has crossed the age limit for open category, he was not allowed to participate. Therefore, this writ petition filed is devoid of merits.

3. This writ petition is taken up for disposal at this stage of admission. As it appears, in the advertisement it having been clearly stated that SC, ST and OBC candidates are entitled to which relaxation as per the rules, therefore giving the aforesaid specification, the respondent could not have denied the petitioner to participate in the selection process on the aforesaid ground. He in this regard submits that three years of age relaxation is available to OBC candidates. Therefore the petitioner being well within the age limit, the averment made to deny the participation in the recruitment was illegal, arbitrary and contrary to rules, more particularly the condition of advertisement and as such the respondents be directed to allow him to participate in the recruitment and thereafter publish the result. The learned counsel however appearing for the respondents No.1 and 2 drawing notice of this Court to circular issued by the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training dated 01.07.1998, which was subsequently clarified by letter 04.04.2018, submits that no doubt in the advertisement it was stated that they are entitled to age relaxation as per the norms. But the recruitment is being guided by the office memorandum, wherein it has been specifically mentioned in the letter dated 01.07.1998 in paragraph 3 that SC, ST, OBC candidate who are selected on the same standard as applied to general candidate shall not be adjusted against reserved vacancies. In other words, when relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. The aforesaid being the rule, which is also been reiterated in the office memorandum, the petitioner cannot be allowed to participate with the relaxed standard against the general vacancy and as such the writ petition filed by the petitioner is devoid of merits. Therefore, the condition of the advertisement made, wherein many post from the reserved category was also made, the aforesaid stipulation being provided the same cannot come to the rescue of the petitioner to be called for interview irrespective of post is for general

category candidate on the aforesaid ground. Hence, the writ petition filed by the petitioner is liable to be dismissed.

4. To appreciate the contention made by the learned counsel for the parties, it would be apposite to mention here that vide the office memorandum dated 25.01.1995, the Government decided that the upper age limit prescribed for direct recruitment shall be relaxed by three years in respect of the candidates belonging to other backward classes. However, subsequently vide office memorandum dated 01.07.1998, the Government stated that the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against the reserved vacancies, but in paragraph 3 it has been clarified that only such SC/ST/OBC candidates who are selected on same standard as applied to general category shall not be adjusted against the reserved vacancies. In other words, when relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. The aforesaid has been reiterated again in the office memorandum dated 04.04.2018. Admittedly in this case, the vacancy against which the petitioner had applied belongs to general category. The petitioner therefore having crossed the upper age limit prescribed for general category candidate, could not avail the relaxed age limit for OBC candidate which he avails of only in respect of reserved vacancy. Hence, he cannot claim right to be considered for such relaxation against general vacancy.

5. In view of the aforesaid office memorandum, which applicable to the second respondent, which is a statutory authority under the Government of India, therefore this Court is of the view that the petitioner appears to have no case and the writ petition is devoid of merits. Accordingly, the writ petition filed by the petitioner challenging the action of the respondents not to allow him to participate with relaxed standard applicable to the OBC candidates, stands dismissed. Subsequently interim order already granted by this Court is vacated and the respondents are at liberty to proceed with the recruitment. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Dean,
ESIC Medical College & PGIMSR &
ESIC Model Hospital,
KK Nagar, Ashok Pillar Road,
Chennai 600 078

2. The Dean,
ESIC Medical College & PGIMSR &
ESIC Model Hospital,
KK Nagar, Ashok Pillar Road,
Chennai 600 078

3. The Secretary,
Union of India,
Department of Personnel and Training,
North Block, New Delhi - 110 001

+1cc to Mr.K.Prabakar, Advocate SR.NO.65279

RK(co)
sm:20.11.2018

W.P.No.23033 of 2018



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