

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.06.2018

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.12253 of 2018
and WMP.Nos.14311 & 14312 of 2018

K.Saravanan Petitioner

versus

- 1.The Secretary
State of Tamil Nadu
Law Department,
Fort St. George,
Chennai 600 009.
 - 2.The Tamil Nadu Public Service Commission,
rep. by its Secretary,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai 600 003.
 3. The Commissionerate for the
Welfare of the differently abled,
rep. by its State Commissioner,
No.5, Kamarajar salai,
Lady Wellington College Campus,
Chennai 600 005.
 - 4.The Registrar General,
Madras High Court,
High Court Campaus,
Madras 600 104.
- Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the impugned notification issued by the 1st respondent in Notification No.08/2018, dated 09.04.2018 and quash the same consequently direct the second respondent and the governing rules framed by the 1st respondent with regard to the age limit and quash the same only in respect to it and consequently direct the second respondent to allow the petitioner to participate in the recruitment process.

For Petitioner : Mr.K.Chandrasekaran
For R-1 : Mr.V.Kadhirvelu
Special Government Pleader

For R-2 : Mrs.C.N.G.Niraimathi,
Standing Counsel for TNPSC

For R-4 : Mr.B.Vijay

ORDER

Order of the Court was made by V.BHARATHIDASAN, J.

The challenge in this writ petition is with regard to the prescribed qualification fixing minimum and maximum age limit for practising Advocates/Pleaders and Assistant Public Prosecutors and fresh law graduates or the essential qualifications prescribed for practising Advocates / Pleaders and Assistant Public Prosecutor and the fresh law graduates in the Notification No.08/2018 dated 09.04.2018 issued by the Tamil Nadu Public Service Commission inviting on-line application for direct recruitment to the post of Civil Judge in the Tamil Nadu State Judicial Service as per the provisions prescribed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules 2007 as amended.

2. Petitioner is a differently abled person and claims to be a practising Advocate. He got enrolled himself as an Advocate with the Bar Council in the year 2015. It is the further case of the petitioner that since the impugned notification of the second respondent does not prescribe the prevailing rules governing the differently abled person with regard to age concession to physically handicapped persons in public services, the petitioner has lost his opportunity to apply for the said post. If the same would have been done, he would have had the opportunity of participating in the same and hence, the notification insofar as age concession to differently abled person is liable to be quashed as arbitrary.

3.The learned counsel appearing for the petitioner contended that the vide G.O.Ms.No.52, Welfare of Differently Abled Persons (DAP3.2) Department, dated 28.12.2017, amendments have been made in respect of Civil Judge/District Judge (entry level) in the Tamil Nadu State Judicial Service creating suitable post for the differently abled persons and the same has not been taken into account by the second respondent while issuing the impugned notification. Apart from that, there is no rationale behind the fixation of age limit for fresh law

graduate as 27 years. The rules framed by the Bar Council of India does not prescribe any age limit for admission to the Law Degree programme. When there is no age restriction for joining law degree courses, the respondents ought not to have fixed the maximum age limit which is contrary to the Rules framed by the Bar Council of India.

4. This Court, earlier had already dealt with the aforesaid issue at length and decided the same in W.P.Nos.11770 of 2018 & etc., batch. In this regard, paragraphs 25, 27, 37 & 39 of the aforesaid batch of writ petitions is extracted hereunder for easy reference:

"25. It has been consistently 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. As rightly pointed out by the learned senior counsel for the High Court, cut off date cannot be fixed in such a manner to avoid hardship to some persons. It is natural when a cut off date is fixed, some may get affected and that cannot make the cut of date per se arbitrary. The learned standing counsel, the respondent Commission has come out with a justifiable explanation that the cut off date has been fixed as per the Tamil Nadu Government Servants' (Condition of Service) Act 2016 which prescribe the cut off date as 1st July of the year in which the vacancy is notified. Section 20(4)(iii) of the Act reads as follows:-

"20. Qualifications:-

(4) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the Commission in cases where the appointment has to be made in consultation with it or the appointing authority, in other cases;

....
(iii) that such a person satisfies the age prescribed in the special rules on the first July of the year in which the vacancy is notified; and."

Hence, it is clear that the cut off date has been fixed as per the Act which is applicable to the present recruitment process.

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Therefore, merely because the cut off date fixed by the respondent Commission caused inconvenience or hardship to few of the candidates, fixation of the cut off date cannot be held as arbitrary, irrational or capricious. Therefore, we are of the considered view that fixation of the cut off date as 01.07.2018 for both categories is not arbitrary and it in no way violates Article 14 of the Constitution of India. Therefore, the arguments of the learned counsel for the respective petitioners in this regard cannot be countenanced both in law and on facts.

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37. The petitioners in W.P.Nos.11149 and 11250 of 2018 claimed to be differently abled persons. According to them, the G.O.Ms.No.704, dated 15.04.1964 issued by the State Government provides ten years of age relaxation for differently abled person and The Rights of Persons with Disabilities Act, 2016 also provides for relaxation in the matter of upper age limit. But, in the present notification no such age relaxation has been provided for the differently abled persons. In absence of age relaxation being provided in the Notification, the said plea of the petitioners merit no consideration.

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39. Apart from that it is also submitted that after the Rights of Persons with Disabilities Act, 2016 came into force, the rule 10 of the Rules was suitably amended providing reservation to various categories of differently abled persons. As per rule 5 (9)(2) of the Rules, the provisions contained in clause (ii) of sub-section (8) of Section 20, Section 63 and Section 64 of Tamil Nadu Government Servants' (Condition of Service) Act, 2016 (T.N. Act 14 of 2016) shall not apply to the present recruitment. Section 64 of the Act provides for age concession up to ten years for differently abled persons over and above the age limit prescribed for appointment to the post of Civil Judges. Since the provisions of Section 64 of the Act

is not made applicable to the recruitment to the post of Civil Judges pursuant to the provision contained under Rule 5(9) (2) of the Rules, the petitioners cannot claim any age relaxation on the ground that they are differently abled persons."

5. In view of the fact that the issue involved in this writ petition had already been decided, we do not find any merits in the writ petition and hence, the same deserves to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To,

1. The Secretary
State of Tamil Nadu
Law Department,
Fort St. George, Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai 600 003.
3. The State Commissioner, Commissionerate for the
Welfare of the differently abled,
No.5, Kamarajar salai,
Lady Wellington College Campus,
Chennai 600 005.
4. The Registrar General,
Madras High Court,
High Court Campaus, Madras 600 104.

W.P. No.12253 of 2018

(CS-VII)
EU(09/07/2018)