

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2018

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THE HON'BLE MR.JUSTICE M.VENUGOPAL

&

THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.2788 of 2018

and W.M.P.No.3437 of 2018

S.Ganesan

... Petitioner

Vs.

1.The Tamil Nadu State Legal Services Authority
Rep. by its Secretary
North Fort Road
Chennai.

2.The District Legal Services Authority
Rep. by its Chairman
Cuddalore.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the notification No.2 of 2017 dated 01.11.2017 of District Legal Services Authority, Cuddalore, the second respondent herein, and to quash the same and to direct the second respondent to conduct the selection process afresh implementing the age relaxation concession as per the Government Rules/Government Orders.

For Petitioner : Mr.P.Raja

For Respondents : Mr.Sricharan Rangarajan,
Additional Government Pleader

O R D E R

(Order of the Court was made by M.VENUGOPAL, J.)

The Petitioner has filed the present Writ of Certiorarified Mandamus, seeking to call for the records pertaining to the Notification No.2 of 2017, dated 01.11.2017 of the Second Respondent/District Legal Services Authority, Cuddalore, and to quash the same. Further the Petitioner has sought for passing of an order of this Court in directing the Second Respondent/District Legal Services Authority, Cuddalore, to

conduct the selection process afresh implementing the age relaxation concession as per the Government Rules/Government Orders.

2. Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader for Respondents 1 and 2.

3. According to the Petitioner, he came to know that the First Respondent/Tamil Nadu State Legal Services Authority, through his letter in Ref.No.TNSLA 6743/E/2017, dated 23.10.2017, had directed the Second Respondent/District Legal Services Authority, Cuddalore to fill up the existing vacancies as well as newly sanctioned posts of Junior Administrative Assistants, Junior Administrative Assistants (Computer Operator) and Office Assistants and accordingly the Second Respondent had issued a notification dated 01.11.2017 in Notification No.2 of 2017, calling for applications in respect of the above posts.

4. The Learned Counsel for the Petitioner submits that the Notification No.2 of 2017, dated 01.11.2017 mentioned that the number of vacancies for the post of Junior Administrative Assistant - 4 posts (1-SC, 1-MBC, 1-GT, 1-BC) and Junior Administrative Assistant (Computer Operator) - 1 Post (1-GT) and Office Assistant - 1 Post (1-MBC) and the educational qualification of the applicants for the post of Office Assistant, the minimum educational qualification prescribed was a pass in VIII Standard and preference will be given to the persons possessing valid LMV driving licence. Further, for the post of Junior Administrative Assistant, the minimum educational qualification was pass in 10+2/HSC and for the Computer Operator post along with 10+2/HSC, a certificate course in Computer on Office Automation/Diploma in Computer Application was prescribed.

5. The Learned Counsel for the Petitioner contends that the Notification dated 01.11.2017 mentioned that the minimum age for all categories was completion of 18 years, as on 01.07.2017, and the maximum age limit for Scheduled Caste and Scheduled Tribes was 35, for Most Backward Classes and Backward Classes were 32 and for open category was 30, as on 01.07.2017. The last date for submission of filled in application was on or before 15.11.2017 at 5.30 p.m.

6. The Learned Counsel for the Petitioner brings it to the notice of this Court that the First Respondent/Tamil Nadu State Legal Services Authority, Chennai had directed the Districts Legal Services Authorities to fill up the vacancies in their respective Districts following the regular procedure and accordingly, all the Districts had called for applications in the respective areas and in all other Districts, the notification had mentioned that the age relaxation concession

would be made with reference to the existing all Government/Government Orders in their notification and some how the notification issued by the Second Respondent/District Legal Services Authority, Cuddalore, does not specify the said age relaxation concession. As a matter of fact, the Petitioner was under the bona fide impression that there must be an error or omission in the notification.

7. That apart, it is represented that the petitioner had applied for the post of Junior Administrative Assistant (vide application No.27 under the 'MBC' category). He completed B.Sc., Mathematics Course and since the requisite qualification for the post was only 10+2/HSC and he has more qualification than that of prescribed one, he is entitled for 'Age Relaxation Concession' under Rule 12(d) of the Tamil Nadu Subordinate Service Rules.

8. The Learned Counsel for the Petitioner comes out with a plea that the Second Respondent/District Legal Services Authority, Cuddalore had rejected his application on the basis of 'Age Bar' and the same was communicated to him on 22.01.2018.

9. The Learned Counsel for the Petitioner strenuously contends that the Petitioner had already completed 42 years of age and still hopes to secure a Government job and with a fond hope, he had applied for the post of Junior Administrative Assistant and although he has much higher qualification than the prescribed one for the post, he was rejected to the shock and surprise and also submitted a representation dated 29.01.2018 before the Second Respondent. However, the Second Respondent without considering the representation dated 29.01.2018, conducted the written examination and interview on 30.01.2018. Hence, the Petitioner has challenged the Notification No.2 of 2017 published in the Second Respondent's official website.

10. The Learned Counsel for the Petitioner submits that as per Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, speaks of the maximum age limit prescribed in the special rules shall not apply and in fact Section 20(8) of the said Act reads as under:

"Section 20(8) The maximum age limit prescribed in the special rules shall not apply-

(i) to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Class or Denotified Communities or of destitute widows of all castes to a post included in a service for which the

special rules prescribe a qualification lower than a degree of any University recognized by the University Grants Commission, if such candidate possesses a general educational qualification which is higher than that referred to in sub-section (1) and he is otherwise qualified for appointment; or

(ii) to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes and Denotified Communities or of destitute widows of all castes who holds a degree of any University recognized by the University Grants Commission, if the degree he holds is not lower than the degree prescribed in the special rules for appointment to such post and if he is otherwise qualified for appointment.

Provided that, for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by five years in respect of candidates belonging to Scheduled Castes or Scheduled Tribes or in respect of destitute widows of all castes, who do not possess a general educational qualification, which is higher than the minimum educational qualification;

Provided further that for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by two years in respect of candidates belonging to Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified Communities, who do not possess a general educational qualification, which is higher than the minimum general educational qualification."

11. In this connection, the Learned Counsel for the Petitioner points out that Rule 12(d) of the Tamil Nadu Subordinate Service Rules is now replaced by Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as referred to supra. In view of the ingredients of Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the age relaxation for the candidates

possessing higher qualification than that of the prescribed educational qualification ought to have been considered by the Second Respondent and if that was taken into account, then the Petitioner gets qualification to obtain the concession under the said Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. In short, the stand of the petitioner is that he should have been allowed to participate in the selection process by virtue of the age concession as per Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

12. The Learned Counsel for the Petitioner adverts to Rules 17 (c) and 17(d) of the Tamil Nadu Judicial Ministerial Services Rules under the caption Qualification, which reads as under:

"17. Qualifications:-

(c) The age limit prescribed in these rules shall not apply-

(i) to the appointment of a candidate who is a member of the Scheduled Castes, Scheduled Tribes or Backward Classes to a post for which these rules prescribe a qualification lower than the degree of B.A. or B.Sc., of a University, recognised by the Central University Grants Commission, if such candidates possess a general educational qualification which is higher than the minimum general educational qualification and he is otherwise qualified for appointment; or

(ii) to the appointment to a post of a candidate who is a member of the Scheduled Castes, Scheduled Tribes or Backward Classes who holds a degree of a University recognised by the Central University Grants Commission or any other degree recognised as being equivalent to such a degree--

(1) by the Commission in cases where the appointment has to be made in consultation with it; and

(2) by the State government or by the appointing authority with the approval of the State Government in other cases, if the degree he holds is not lower than the degree, if any, prescribed in these rules for appointment to such post and if he is otherwise qualified for appointment; or

(iii) to the appointment in special circumstances to be recorded in writing of a person

selected for appointment to a class or category to another class or category or of a person selected from another service to this service, if the qualification prescribed for either service, class or category, as the case may be, are identical, or

(iv) to the appointment to the post of Court Clerk in the office of the Administrator-General and Official Trustee, or registered Advocates' Clerks and Estate Clerks.

(d)(i) In the case of a candidate who has rendered war service the period of his war service shall be excluded in computing his age for appointment.

(ii) A candidate who is appointed temporarily under clause (i) of sub-rule (a) of rule 16 and takes up for military duty shall, on discharge from such military duty, be entitled to deduct the period of his military duty for the purpose of computing his age for appointment.

13. It is represented on behalf of the Petitioner that since the Second Respondent had not considered the representation of the Petitioner dated 29.01.2018 and also that of others' representations, and further that the Second Respondent had proceeded to conduct the written examination and interview, the same were illegal, but also perverse and they are liable to be quashed.

14. In sum and substance, the prayer of the petitioner is that the impugned selection process is an illegal, arbitrary and unsustainable one, which is liable to be set aside in the interest of justice.

15. Conversely, It is the submission of Learned Additional Government Pleader for Respondents 1 and 2 that the Petitioner obviously claims the relief in the present Writ Petition based on Rule 12(d) of the Tamil Nadu Subordinate Service Rules and in fact the said Rule has no application relating to the Officers/staff members of State/High Court/District/Taluk Legal Services Authorities/Committees.

16. The Learned Additional Government Pleader for Respondents 1 and 2 by referring to Section 9(5) of the Legal Services Authorities Act, 1987 to the effect that "The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the

efficient discharge of its functions", submits that the Honourable Chief Justice of Madras High Court is the Patron-in-Chief of the First Respondent/Tamil Nadu State Legal Services Authority as defined in Section 6(2)(a) of the Legal Services Authorities Act, 1987. Further, the Learned Additional Government Pleader for Respondents 1 and 2 projects to point out that in regard to the recruitment of the staff members by the Second Respondent/District Legal Services Authority, Cuddalore, a specific note was submitted by the Member Secretary of the Tamil Nadu State Legal Services Authority and the same was approved by the Honourable the Chief Justice/Patron-in-Chief of the Legal Services Authority by exercising the powers conferred under Section 9(5) of Legal Services Authorities Act, 1987.

17. The Learned Additional Government Pleader for Respondents 1 and 2 proceeds to take a plea that with a view to recruit an efficient and energetic employees to discharge the functions of Legal Services Authority, the age of the candidates was determined as per the orders of the Honourable Executive Chairman and approval of the Honourable The Chief Justice/patron-in-Chief of the Tamil Nadu State Legal Services Authority. Further as per Section 25 of the Legal Services Authorities Act, 1987, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

18. The Learned Additional Government Pleader appearing for Respondents 1 and 2 draws the attention of this Court to the Rule 13(2) of the Tamil Nadu State Legal Services Authority Rules, 1997, wherein in it was mentioned that the Officers and other employees of the State Legal Services Authorities shall be governed by the Rules and Regulations as are applicable to the persons holding equivalent posts in the Judicial Department of Government of Tamil Nadu. Indeed, the staff members of Judicial Department of Government of Tamil Nadu are governed by the Tamil Nadu Judicial Ministerial Service Rules and they do not come under the Tamil Nadu Subordinate Service Rules. As such, the claim of the petitioner by placing reliance of Tamil Nadu Subordinate Service Rules is not valid one.

19. The Learned Additional Government Pleader comes out with a plea that even assuming without admitting for a moment that the right of the Petitioner was infringed in view of the rejection of his application, yet he has to go only by the Tamil Nadu Judicial Ministerial Service Rules, because of the reason that the staff members of the Tamil Nadu State Legal Services Authority are governed by the said Rules viz., Rules 13(2) of the Tamil Nadu State Legal Services Authority Rules, 1997. Besides these, Rule 18 of the Tamil Nadu Judicial Ministerial

Service Rules provide the 'age qualification' of candidates for appointment by direct recruitment, as 35 years for the candidates from Scheduled Castes/Scheduled Tribes and for others 30 years. There is no exemption or relaxation provided in the Tamil Nadu Judicial Ministerial Service Rules. As such, the relief sought for by the petitioner is absolutely unsustainable one.

20. Yet another argument put forward by the Learned Additional Government Pleader for Respondents 1 and 2 is that the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 provides redressal mechanism in respect of grievance under Section 66 of the Act and even then the petitioner has to approach the committee as per Sections 66 and 67 of the Act. Section 68 of the said Act 2016, emphasise that if there is any conflict between the Act and the Special Rules, then the Special Rules shall prevail.

21. The Learned Additional Government Pleader for Respondents 1 and 2 contends that the Tamil Nadu Judicial Ministerial Service Rules are made applicable to the staff members of the First Respondent/Tamil Nadu State Legal Services Authority which provides that the maximum age limit for a person belonging to MBC category is 32 years. In fact, Section 68 of the Tamil Nadu Government Servants [conditions of service] Act, 2016 'Overriding effect of Special Rules' point out that 'if any provision of this Act is inconsistent with any provision of the Special Rules applicable to any particular service, the Special rules shall, in respect of that service, prevail over the provisions of this Act'. Hence, it is the plea of the respondents that in terms of Section 68 of the Tamil Nadu Government Servants [conditions of service] Act, 2016, the Special Rules i.e., Tamil Nadu Judicial Ministerial Service Rules alone applies to the present facts of the case.

22. It is to be relevantly pointed out that the impugned Notification No.2/2017 dated 01.11.2017 of the 2nd respondent serial Nos.V to VIII reads as under:

"V.AGE

i) The Minimum age for all categories is completion of 18 years as on 01.07.2017.

ii) The Maximum age limit for Schedule Caste and Schedule Tribe is 35, for Most Backward Classes and Backward Classes is 32, and for Open Category is 30 as on 01.07.2017.

VI.CERTIFICATES (Self Attested Photocopies) TO BE ENCLOSED for:

a)	Proof of Date of Birth and Age	Birth Certificate/VIII/S.S.L.C/HSC
b)	Proof of Community	Community Certificate issued by Competent Authority
c)	Proof of Educational Qualification	VIII/S.S.L.C/HSC/Degree/Diploma Certificate
d)	Proof of Technical Skills	Certificates issued by the Institutes/Driving Licence
e)	Proof of Employment Registration number and date	Copy of Employment Registration card
f)	Proof of Permanent address	Ration Card/Voter ID/Aadhar Card/Passport

VII. The Rule of Reservation (Statewide) will be followed for the total post of every category. The Member Secretary of this Authority may transfer any of the Staff members of this Authority across the State on Administrative exigency.

VIII. The duly filled in Applications should reach the office of the Principal District Judge/Chairman, District Legal Services Authority of the concerned District on or before 15.11.2017 @ 5.30 P.M."

23. On a careful consideration of respective contentions and also this Court, by taking note of the divergent view taken by the respective parties, comes to an inescapable conclusion that the Second Respondent/District Legal Services Authority, Cuddalore had acted in terms of the Honourable Executive Chairman of the Tamil Nadu State Legal Service Authority and the approval of the Honourable the Chief Justice/Patron-in-Chief of the First Respondent/Legal Services Authority and resultantly, issued the impugned Notification No.2 of 2017, dated 01.11.2017, calling for the application for the posts of Junior Administrative Assistants, Junior Administrative Assistants (Computer Operator) and Office Assistant.

24. Even though the argument is advanced on behalf of the petitioner that earlier Rule 12(d) of the Tamil Nadu Subordinate Service Rules and later 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 shall apply to the case of the petitioner, yet this Court is of the considered view

that the staff members of the Judicial Department of the State Government are governed by the Tamil Nadu Judicial Ministerial Service Rules and the said Rule will come into operative play or the same can be pressed into service only after their entry/appointment into the Tamil Nadu Judicial Ministerial Services.

25. Added further, that this Court on going through Rule 17 (c) 'Qualifications' of the Tamil Nadu Judicial Ministerial Service Rules (which came into effect on and from 01.01.1955) is of the earnest opinion that, the same cannot be pressed into service by the Petitioner because of the reason that Rule 16 deals with 'Temporary Appointments' and that the said appointments can be made where it is necessary in the 'public interest' owing to an 'Emergency' which has arisen to fill immediately a vacancy in a post borne on the cadre of the service and there would be undue delay in making such appointment in accordance with these rules, only in that event the appointing authority may temporarily appoint a person, otherwise than in accordance with these rules.

26. In the present case, the impugned Notification No.2 of 2017 dated 01.11.2017 of the Second Respondent/District Legal Service Authority, Cuddalore is in respect of the filling up of existing vacancies as well as the newly sanctioned posts of Junior Administrative Assistants, Junior Administrative Assistants (Computer Operator) and Office Assistant. As such, the petitioner falling back upon the ingredients of Rules 16 and 17 of the Tamil Nadu Judicial Ministerial Service Rules are of no avail to him. Further, it must be borne in mind that Rule 13 of the Tamil Nadu State Legal Services Authority Rules, 1997, speaks of 'Conditions of service, the salary and allowance of the officers and other employees of the State Authority'.

27. In view of the qualitative and quantitative discussions and also this Court considering the surrounding facts and circumstances of the instant case, in a holistic manner comes to a consequent conclusion that the Second Respondent/District Legal Services Authority, Cuddalore had issued the impugned Notification No.2 of 2017, dated 01.11.2017 by scrupulously following the instructions in true letter and spirit and finally informed the petitioner through his communication in D.No.70 of 2018, dated 22.01.2018 to the effect that his application for the post of 'Junior Administrative Assistant' was rejected based on the reason 'Age Barred' and the same does not suffer from any material irregularities or patent illegalities in the eye of law. Consequently, the writ petition fails.

28. In fine, this Writ Petition is dismissed leaving the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CO)

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Sub Assistant Registrar

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To

1.The Secretary,
The Tamil Nadu State Legal Services Authority
North Fort Road, Chennai.

2.The Charmian
District Legal Services Authority
Cuddalore.

W.P.No.2788 of 2018

RRK(20/04/2018)



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