

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4627 of 2016

and

WMP.Nos.3980 and 3981 of 2016

C.Senthilkumar

... Petitioner

Vs

1.The Government of Tamilnadu,
Represented by its Secretary to the Government,
Personnel and Administrative Reforms(K) Department,
Secretariat, Chennai- 600 009.

2.The Director,
Office of the Director of Public Health and Preventive
Medicine,
Anna Salai, chennai-600 006.

3.The Deputy Director,
Office of the Deputy Director of Health Services,
147, Puluvaipatti, Neruperichal Road,
Tirupur-641 602.

... Respondents

PRAYER : Petitions filed under Article 226 of the Constitution of India to issue of Writs of Mandamus, directing the 2nd respondent to give five years upper age relaxation to the petitioner in pursuant of G.O.Ms.No.98 of Personnel and Administrative Reforms(F) Department dated 17.07.2006, while recruiting drivers in Government Primary Health Centre in Tiruppur District in pursuant to the proceedings dated 27.01.2016 by 3rd respondent.

For Petitioner : Mr.P.Saravanan

For Respondents : Mr.D.Raghu
Government Advocate

O R D E R

The relief sought for in this writ petition is for a direction to direct the second respondent to give five years of upper age relaxation to the petitioner in pursuant of

G.O.Ms.No.98 of personnel and Administrative Reforms (F) Department dated 17.07.2006, while recruiting drivers in Government Primary Health Centre in Tiruppur District in pursuant to the proceedings dated 27.01.2016 by third Respondent.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner is in possession of heavy vehicle driving license and registered his name in the District Employment Exchange on 5.12.2008. The petitioner is renewing the Employment registration periodically. Under these circumstances he was appointed by an Out Sourcing Agency namely Shiva Industrial Security Agency (GUJ) PVT, Limited, in the office of the third respondent on 26.11.2004. The third respondent has issued appointment order vide proceedings dated 30.11.2004. Based on the said order, the writ petitioner joined the post as casual driver and working as such. The learned counsel for the petitioner states that the writ petitioner has been appointed on temporary basis as casual driver and his services ought to have been regularized on completion of 10 years of service. In view of the fact that the regularisation of service of the writ petitioner has not been done, the writ petitioner is constrained to move the present writ petition. However, the relief sought for in this writ petition is for the relaxation of upper age limit in accordance with G.O.Ms.No.98 of personnel and Administrative Reforms (F) Department dated 17.07.2006, enabling the writ petitioner to participate in the recruitment process.

3.The main grounds raised by the writ petitioner is that the upper age relaxation should be granted to the writ petitioner. The question arises whether such age relaxation can be granted in a writ proceedings under Article 226 of the constitution of India. Prescription of conditions relating to the qualification and age are prerogative of the Competent authorities, namely the Appointing Authority and the Court Cannot interfere in respect of this stipulation of conditions to be imposed for the purpose of recruiting employees for Public Posts. Relaxation of upper age limit and educational qualification cannot be granted by the Court and it is for the authorities to consider if there is any gross injustice for a group of people or otherwise. The conditions stipulated in the recruitment notifications ought to be followed scrupulously, by the authorities, while undertaking the process of recruitment.

4.Permanent absorption and regulation of appointment can never be claimed as a matter of right in a routine manner. Regularisation or permanent absorption ought to have been granted only in accordance with the rules in force. The writ petitioner was appointed as a Casual Driver through an Out

Sourcing Agency, Shiva industrial Security Agency (GUJ) PVT, Limited,. Therefore, the petitioner was not appointed in accordance with the service rules in force. Thus, the initial appointment of the writ petitioner was irregular and not in accordance with the recruitment rules. If at all the petitioner wants to secure a public employment, it is left open to participate in the open competitive process and secure public employment. This Court cannot grant age relaxation are otherwise in favour of the writ petitioner. G.O.Ms.No.98 dated 27.01.2006, was issued on account of the fact that the Government imposed ban for recruitment for five years, in view of the fact that eligible candidates were unable to participate in the recruitment process during the ban period a concession was granted by the government for enabling those affected persons to participate in the recruitment process. However the age relaxation granted in the year 2006 came to an end in the year 2011. Such age relaxation can never be granted for years together without any purpose. However the writ petitioner is of an opinion that the age relaxation granted in G.O.Ms.No.98 to be extended to the petitioner also. The very claim is untenable in view of the fact that for every recruitment the competent authority/appointing authority is fixing the educational qualification and age relaxation of the upper age limit as per the recruitment rules. The Court cannot intervene on such conditions unless such conditions are arbitrary or unconstitutional or in violation of statutory rules in force. Interference in such conditions are to be exercised sparingly and an exceptional circumstances.

5.Under these circumstances age relaxation, as such, sought for by the writ petitioner, cannot be granted and it is left open to the writ petitioner to participate in the open competitive process, as per the terms and conditions, if any, imposed by the Competent Authority and at the time of issuing a notice.

6.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

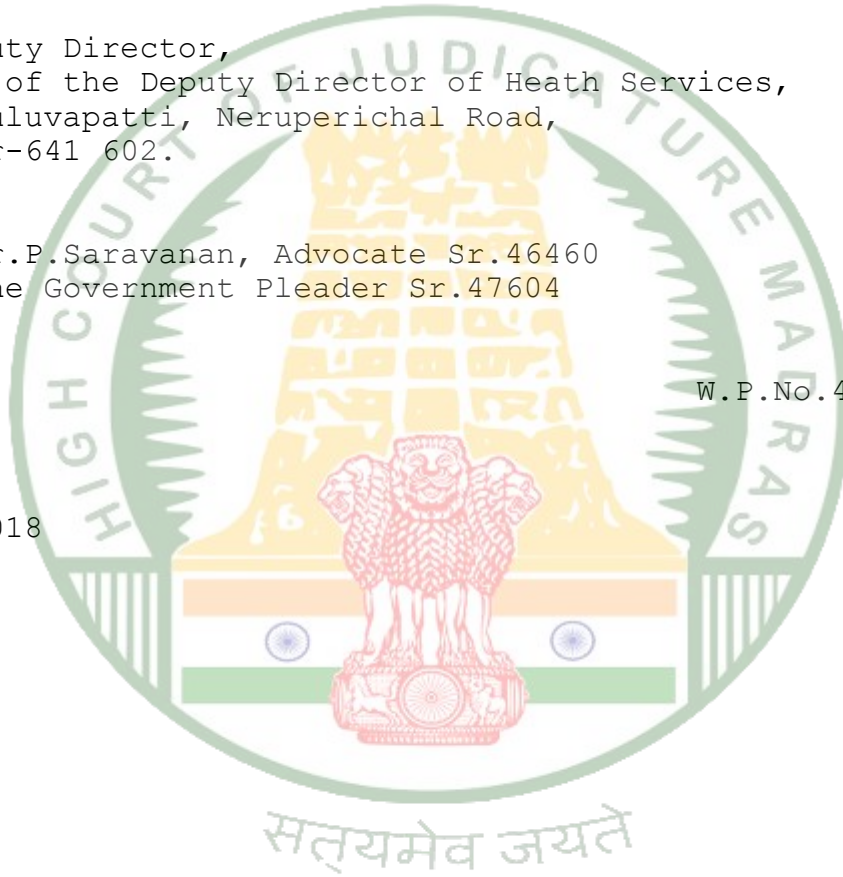
To

- 1.The Secretary to the Government
The Government of Tamilnadu,
Personnel and Administrative Reforms(K) Department,
Secretariat, Chennai- 600 009.
- 2.The Director,
Office of the Director of Public Health and Preventive
Medicine,
Anna Salai, chennai-600 006.
- 3.The Deputy Director,
Office of the Deputy Director of Heath Services,
147, Puluvaipatti, Neruperichal Road,
Tirupur-641 602.

+1cc to Mr.P.Saravanan, Advocate Sr.46460
+1cc to the Government Pleader Sr.47604

W.P.No.4627 of 2016

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srg 7/8/2018



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