

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION NO.32416 OF 2012

ORDER

(*Per Hon'ble Sri Justice Sanjay Kumar*)

The writ petitioner is the unsuccessful second applicant in O.A.No.3190 of 2009 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), which was dismissed along with other similar O.A.s by common order dated 24.04.2012. The prayer of the writ petitioner in the said O.A. was to declare the action of the authorities in prescribing the upper age limit of 33 years in the Notification dated 07.02.2009, in violation of G.O.Ms.No.115 dated 29.02.2008, as illegal and to consequently direct the authorities to consider her application by taking the maximum age limit as 34 years. By the common order under challenge, the Tribunal held that recruitment to the post of Agricultural Extension Officer Grade II should be in terms of G.O.Ms.No.311 dated 25.07.2005, as amended by G.O.Ms.No.25 dated 29.01.2009, and thereunder, the maximum age limit prescribed was 33 years as on 1st of July of the year in which the Notification was issued. As the subject Notification was issued on 07.02.2009 prescribing the age limit as 33 years, the Tribunal concluded that the petitioner could not claim concession under a G.O. which was meant for specific recruitments by the Andhra Pradesh Public Service Commission for posts notified under the Andhra Pradesh Ministerial Service Rules, 1998 (*for brevity*, 'the Rules of 1998'). On these grounds, the Tribunal held against the petitioner and dismissed the O.A.

The petitioner was born on 15.07.1975. She was therefore just short of attaining the age of 34 years as on 01.07.2009. As she possessed the requisite B.Sc. degree in agricultural science, she applied for the post of

Agricultural Extension Officer Grade II pursuant to the Notification dated 07.02.2009, though the maximum age prescribed therein was 33 years as on 01.07.2009. She approached the Tribunal along with the first applicant in O.A.No.3190 of 2009 claiming that she was otherwise eligible to be considered for appointment to the said post but for the prescription of the upper age limit of 33 years. She stated that as she did not fulfil the age requirement, being older than 33 years as on 01.07.2009, her application was not being entertained. She claimed that in the light of various Government Orders, the prescription of the maximum age of 33 years as on 01.07.2009 was unsustainable. Some other O.A.s were also filed, wherein the applicants prayed that the upper age limit should be extended to 39 years in view of G.O.Ms.No.709 dated 25.11.2008. All the O.A.s were clubbed together by the Tribunal for common disposal.

It may be noted that, by virtue of the interim order dated 19.02.2009 passed by the Tribunal in O.A.No.3190 of 2009, the petitioner's application was directed to be received, if she was otherwise eligible, and she was allowed to participate in the selection process for the post of Agricultural Officer Grade II. The Tribunal however directed that her result should be withheld. Thereafter, by order dated 05.06.2009 passed in M.A.No.1700 of 2009 in O.A.No.3190 of 2009, the Tribunal directed the authorities to declare the result of the petitioner. She secured 73.26 % and stood within the zone of consideration for appointment to the subject post against Roster point No.261, reserved for OC (women).

It would be appropriate at this stage to consider the various Government Orders on the subject. The Andhra Pradesh Agricultural Subordinate Service Rules, 1997 (for brevity, 'the APASS Rules'), were notified under G.O.Ms.No.167, Agriculture & Co-operation (Agri.IV)

Department, dated 17.04.1997. The post of Agricultural Extension Officer Grade II finds mention in Category (2) under Class-A in Rule 2 thereof, which deals with the constitution of the service. Rule 3 prescribed that the method of appointment to this post was only by way of promotion of Agricultural Extension Officers Grade III. These Rules were however amended, in exercise of power conferred by the *proviso* to Article 309 of the Constitution, *vide* G.O.Ms.No.311, Agriculture & Co-operation (Agri.IV) Department, dated 25.07.2005, whereby the method of appointment to the post of Agricultural Extension Officer Grade II was enlarged to not only include promotion from the category of Agricultural Extension Officers Grade III but also by direct recruitment, after exhaustion of the promotional feeder category. This G.O. prescribed that no person would be eligible for appointment by direct recruitment as an Agricultural Extension Officer Grade II if he completed 33 years of age as on 1st of July of the year in which the notification for selection of candidates was issued. The Government of Andhra Pradesh then issued G.O.Ms.No.25, Agriculture & Co-operation (Agri.IV) Department, dated 29.01.2009, making further amendments to the APASS Rules, whereunder, in exercise of power conferred by the *proviso* to Article 309 of the Constitution, the Government provided for direct recruitment as a separate mode for appointing Agricultural Extension Officers Grade II. No stipulation was however made as regards the age criterion.

It appears that even prior to amendment of the APASS Rules, the Government of Andhra Pradesh issued G.O.Rt.No.134, Agriculture & Co-operation (Agri.IV) Department, dated 10.02.2005 promulgating an *ad hoc* rule to the effect that the maximum age limit for appointment by direct recruitment to the posts of Agricultural Extension Officers shall be 39 years. This *ad hoc* rule, however, was limited in its application to the notification of

the posts of Agricultural Extension Officers sanctioned *vide* G.O.Rt.No.1355, Agriculture & Co-operation (Agri.IV) Department, dated 16.12.2004.

Thereafter, by way of G.O.Ms.No.759, General Administration (Ser-D) Department, dated 06.10.2007, the Government amended the Andhra Pradesh State and Subordinate Services Rules, 1996 (*for brevity*, 'the Rules of 1996'), whereby Rule 12 therein was amended substituting the phrase '34 years of age' in the place of '33 years of age' as the prescribed maximum age. In the year 2008, the Government of Andhra Pradesh also amended the Rules of 1998 *vide* G.O.Ms.No.115, General Administration (Ser.B) Department, dated 29.02.2008, and the phrase '33 years of age' was substituted with the phrase '34 years of age' in Rule 7 thereof.

Further, G.O.Ms.No.709, General Administration (Services-A) Department, dated 25.11.2008 was issued by the Government of Andhra Pradesh promulgating an *ad hoc* rule, in exercise of power conferred by the *proviso* to Article 309 of the Constitution, whereby the Government stipulated that notwithstanding anything contained in the Rules of 1996 or the Special Rules or *Ad hoc* Rules, the maximum age limit prescribed for appointment by direct recruitment to posts in the State and Subordinate Services to be made by the Andhra Pradesh Public Service Commission in respect of the vacancies notified by the Government in the Finance Department, shall be raised by 5 years, i.e., from 34 years to 39 years, except posts in uniformed services.

Significantly, G.O.Rt.No.828, Agriculture & Co-operation (Agri.IV) Department, dated 07.07.2009 was then issued by the Government of Andhra Pradesh enhancing the upper age limit to 39 years for direct recruitment to the posts of Agricultural Extension Officers Grade II in relation to the Notifications to be issued in the year 2009-2010. Thereunder, the

Government, in exercise of power conferred by the *proviso* to Article 309 of the Constitution, framed an *ad hoc* rule to the effect that notwithstanding anything contained in the Rules of 1996 or the Special Rules or the *Ad hoc* Rules, the maximum age limit for appointment by direct recruitment to the posts of Agricultural Extension Officers Grade II shall be 39 years for the Notifications to be issued in the year 2009-2010. Notification dated 30.09.2009 issued by the District Collector, SPSR Nellore District, notifying 27 posts of Agricultural Extension Officers Grade II followed this mandate and indicated that the maximum age of candidates as on 01.07.2009 should not exceed 39 years.

Similarly, by way of G.O.Rt.No.202, Agriculture & Co-operation (Agri.IV) Department, dated 28.02.2011, the Government exercised power under the *proviso* to Article 309 of the Constitution and made an *ad hoc* rule that the maximum age limit for appointment by direct recruitment to the posts of Agricultural Extension Officers Grade II shall be 39 years for Notifications to be issued in the year 2010-2011. Following this *ad hoc* rule, Notification dated 14.06.2011 was issued by the District Collector-cum-Chairman, Selection Committee, Kadapa, notifying 18 posts of Agricultural Extension Officers Grade II stipulating the maximum age of 39 years as on 01.07.2010. Thereafter, Notification issued in March, 2012 by the District Collector, Ananthapur, notifying 74 posts of Agricultural Extension Officers Grade II stipulated that the age of the candidates should be between 18 and 35 years as on 01.07.2012 for direct recruitment. Be it noted, this notification was not issued in 2010-2011 but the maximum age criterion of 33 years was not followed.

It is manifest from an overview of the aforestated Government Orders that though the APASS Rules, after their amendment under G.O.Ms.No.311

dated 25.07.2005, prescribed the maximum age limit of 33 years as on 1st of July of the year in which the Notification is issued, the said rule was followed more in breach. The various G.O.s referred to *supra* indicate clearly that the maximum age was relaxed and extended commencing from the financial year 2009-2010 and even earlier. It was the misfortune of the petitioner that her Notification was dated 07.02.2009, while G.O.Rt.No.828 dated 07.07.2009 brought in an *ad hoc* rule extending the maximum age up to 39 years for recruitment as Agricultural Extension Officers Grade II in respect of Notifications issued in the year 2009-2010. Further, the later G.O.s also demonstrate that similar extensions/relaxations were given in relation to subsequent Notifications also.

The stand of the authorities in their counter before the Tribunal was that the age stipulation under G.O.Ms.No.311 dated 25.07.2005 was sacrosanct and that the extension given to those aspiring for the Ministerial Services would not apply. However, no clear explanation was forthcoming from the said counter as to why relaxation was given in relation to the Notifications issued in the financial year 2009-2010 and later. On similar lines, the counter filed before this Court remains equivocal on the issue. Again, reference was made therein to G.O.Ms.No.311 dated 25.07.2005 and it was asserted that extensions given in relation to the Ministerial Services and the State and Subordinate Services could not be taken advantage of by the petitioner. The counter again remained studiously silent as to relaxation of the age criterion commencing from the year 2009-2010.

It may also be noted that the Joint Director of Agriculture, SPSR Nellore District, addressed letter dated 12.04.2017 to the Director of Agriculture, Andhra Pradesh, in the context of the petitioner's case. Therein, he recommended that her case should be considered on humanitarian

grounds and she should be appointed as an Agricultural Extension Officer Grade II. He adverted to the fact that she had worked as a Field Consultant from 2006 to 2011 at Kaluvoya Mandal, SPSR Nellore District, and was thereafter selected as a Block Technology Manager on contract basis in ATMA, Nellore, and that she was working as such on contract basis at Gudur Block from October 2011 onwards, performing her duties to the utmost satisfaction of the higher authorities. He recorded the fact that she had been serving the Agriculture Department for the last six years and requested that her case may be considered.

However, the Commissioner and Director of Agriculture, Andhra Pradesh, *vide* Memo dated 18.04.2018, rejected this request of the Joint Director of Agriculture. Therein, he referred to the fact that she had crossed the age of 33 years as on 01.07.2009 and that the issue was still pending consideration before this Court in the present writ petition. He ultimately opined that her request for appointment as an Agricultural Extension Officer Grade II could not be considered. It may be noted that this was an internal communication between the Joint Director of Agriculture, SPSR Nellore District, and the Director of Agriculture, Andhra Pradesh, which was not even marked to the petitioner and would therefore not give rise to a fresh cause of action requiring her to again start from scratch before the Tribunal.

The common order under challenge reflects that the Tribunal clubbed several O.A.s together though the prayers therein were on different lines. The petitioner never asked for extension of the maximum age upto 39 years as did the applicants in the other O.As. Her only contention was that the maximum age limit should be taken to be 34 years, whereby she would be eligible. The Tribunal however concentrated upon the issue as to whether relaxation of five years, as per G.O.Ms.No.709 dated 23.11.2008, would be

applicable to the Notifications which were the subject matter of the O.As. This issue was not pertinent to the petitioner at all. Significantly, the Tribunal did not even advert to or deal with G.O.Rt.No.828 dated 07.07.2009, whereby the age limit for direct recruitment to the post of Agricultural Extension Officer Grade II was enhanced to 39 years as on 01.07.2009 for Notifications issued in 2009-2010. The mere happenstance that the Notification in response to which the petitioner applied was dated 07.02.2009 had the fatal effect of making her ineligible though she would have been well within the age limit had she applied in response to the later Notification dated 30.09.2009. When the authorities were never consistent in implementing the age limit, as originally prescribed in G.O.Ms.No.311 dated 25.07.2005, it would be wholly unjust to exclude the petitioner from the zone of consideration on the ground that she is ineligible as per the Notification dated 07.02.2009, though she would have been eligible as per the later Notification dated 30.09.2009. There is neither logic nor rationale in adopting such an approach. All the more so, when the material on record categorically demonstrates that the maximum age limit of 33 years was followed more in breach all through. The common order passed by the Tribunal failed to note the features individual to the case of the petitioner and she was denied relief owing to the Tribunal clubbing dissimilar O.A.s.

On the above analysis, this Court finds in favour of the petitioner. The writ petition is accordingly allowed setting aside the common order dated 24.04.2012 passed by the Tribunal in so far as it pertained to the petitioner, the second applicant in O.A.No.3190 of 2009. The respondents are directed to give effect to the selection of the petitioner pursuant to the Notification dated 07.02.2009 and appoint her to the post of Agricultural Extension Officer Grade II forthwith.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

1st MAY, 2018

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