

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.36194, 36261 AND 37730 OF 2018

COMMON ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Ramakrishna, Ms.Lakshmi Prameela & Ms.Neeraja Reddy for petitioners and Mr.J.Anil Kumar & Mr.Swaroop Oorilla, learned standing counsel for respondent in W.P. No.36194 of 2018 and 1st respondent in W.P. No.36261 of 2018.

The petitioners in the writ petitions are Advocates practising in the States of Andhra Pradesh and Telangana. The respondent issued Notification No.141/2018-RC dated 15.09.2018 for selection and appointment of Civil Judges in the States of Andhra Pradesh and Telangana.

The notification stipulated the upper age limit for candidates and IV of Notification reads thus:

“i) An applicant applying under **Direct Recruitment** shall be a person who has not completed the age of 35 years as on first day of the month in which the notification inviting applications for such appointment is published in the newspapers i.e. 01-09-2018.

Provided that the upper age limit of 35 (thirty five) years is relaxable by five years in respect of the persons belonging to Scheduled Castes, Scheduled Tribes and Backward Classes.

Provided further that the upper age limit of 35 years is relaxable by 10 years in respect of Physically Handicapped persons (Orthopaedically Handicapped) {Lower portion of the body} as per the Telangana Judicial (Service & Cadre) Rules, 2017 and the Andhra Pradesh State Judicial (Service & Cadre) Rules, 2007.

Provided further that in the case of an applicant who served in the defence services of Indian Union and who is otherwise qualified and suitable, the period of service rendered by him in the defence service, shall be excluded in computing the age, for appointment by direct recruitment.

ii) **An applicant for recruitment by transfer** shall be a person who has not completed the age of 48 years as on the first day of the month in which the notification inviting applications for such appointment is published in the newspapers i.e. **01-09-2018.**”

The case of petitioners is that the respondent through notification No.141/2018-Rc dated 07.04.2018 has notified the vacancies in the cadre of Civil Judge (Junior Division) and thereafter issued the notification No.141/2018-RC dated 15.09.2018 whereunder the upper age limit of 35 years is stipulated with reference to cut off date as 01.09.2018. According to petitioners, the respondent in the previous recruitments issued notification of vacancies and also issued notification for selection stipulating the cut off date as first of February of the year in which the notification was issued. For the first time in the notification dated 15.09.2018, the cut off date is prescribed as 01.09.2018 and on account of the cut off date 01.09.2018, the petitioners have become over aged, hence either in open category or otherwise are deprived of participation in the recruitment process under Notification No.141 dated 15.09.2018. The petitioners among other grounds contend that the prescription of cut off date as 01.09.2018 is inconsistent or contrary to the cut off date prescribed by the respondent in the previous recruitment notifications and that 01.02.2018 ought to be

cut off date for notification dated 15.09.2018. It is also contended that the notification of vacancies since was issued on 07.04.2018, the notification dated 15.09.2018 ought to have prescribed the cut off date for upper age limit as 01.02.2018. The notification impugned in W.Ps is arbitrary and unconstitutional. The petitioners pray for passing appropriate orders.

The learned standing counsel oppose the writ prayers in all fours. According to them, the Notification No.141 dated 15.09.2018 is issued as per Rule 6 of Andhra Pradesh State Judicial Service Rules, 2007 or Telangana State Judicial (Service & Cadre) Rules, 2017. The vacancies though were notified in February, it is submitted that the respondent could not issue notification on account of a few administrative measures initiated to use technology/conduct online examination for the recruitment of Civil Judges (Junior Division). Rule 6 reads as follows:

“2.Civil Judges:

a) By Direct Recruitment: A person to be appointed to the category of Civil Judges shall be:

- i) One who has been practicing for not less than 3 years as an Advocate as on the date of publication of the advertisement in the news papers:
- ii) A person who has not completed thirty five years of age as on the first day of the month in which the notification inviting applications for such appointment is published in the newspapers.

Provided that the upper age limit of thirty five years is relaxable by five years in respect of the persons belonging to Scheduled Castes, Scheduled Tribes and backward Classes.

Provided further that in the case of a candidate who served in the defense services of the Indian Union and

who is otherwise qualified and suitable, the period of service rendered by him in the defense service, shall be excluded in computing the age for appointment by direct recruitment.”

Therefore, it is contended that the argument of petitioners, if accepted the cut off date will be contrary to the mandate of applicable Rule.

We have noted the submissions and perused the record.

The circumstances leading to the filing of the writ petitions are not in dispute. On the one hand, the petitioners insist on stipulation of 01.02.2018 as cut off date for reckoning the upper age limit under the notification. The basis for the submission is that the respondent in previous recruitment has prescribed 01-02 of that year as cut off date and on account of failure to issue a notification in February extending cut off date from February to September is arbitrary and illegal. The respondent submits that the High Court is following the schedule accepted by the Apex Court in *Malik Mazhar Sultan v. U.P. Public Service Commission*¹ and for the subject recruitment a decision has been taken to use technology by conducting online examination for the aspirants. These administrative measures or deliberations have taken some time in issuing the notification. Therefore, without further delay notification was issued on 15.09.2018. Though the delay on account of deliberations on administrative side is admitted, the contention urged for respondent is that the notification must conform to the prescription of Rule 6. Rule 6, excerpted above stipulates the age limit and also the cut off

¹ (2008) 17 SCC 703

date by reference to which the age limit is determined. The emphasis in the Rule is on the words “a person who has not completed the age of 35 years as on first day of the month in which the notification inviting applications for such appointment is published in the newspapers” (emphasis added), the cut of date therefore, is dependent on the month in which the notification inviting applications for appointment is published in the newspapers. We are satisfied that the writ prayer, if is considered, would be against the statutory Rule.

For the above reasons, the writ petitions fail and are accordingly dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:30.10.2018
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