

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.12.2018

Pronounced on: 05.04.2019

CORAM :

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 13309 of 2013

R.Gopalakrishnan

... Petitioner

vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George, Chennai - 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai - 600 003.
3. The Controller of Examination,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai - 600 003.... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Mandamus, directing the respondents herein to consider the petitioner for appointment as Steno-Typist based on his marks in the written examination held on 07.07.2012 and his 113th position in the tentative rank list by relaxing the age criteria in the peculiar facts and circumstances of the case.

For Petitioner : Mr. A.R.Suresh

For Respondents: Mrs. CNG.Niraimathi,
Standing Counsellor for TNPSC
for R2 & R3
Mr.B.Anand,
Govt. Advocate for R1

O R D E R

The relief sought for in the present writ petition is to direct the respondents herein to consider the petitioner for appointment as Steno-Typist based on his marks in the written examination held on 07.07.2012 and his 113th position in the tentative rank list by relaxing the age criteria in the peculiar

facts and circumstances of the case.

2. The petitioner passed the higher secondary examination in September 1994. He passed Type writing English senior grade in April 1994 and Tamil Senior Grade in April 1995. He graduated in Economics. He thereafter, acquired qualification of Shorthand and passed English and Tamil senior grade in November 2000. The Government of Tamil Nadu imposed a ban of recruitment from November 2001 and there was no recruitment for five years.

3. The ban was revoked in 2006. The Government of Tamil Nadu issued G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, wherein, the upper age limit for entering into Government service was relaxed by five years, to enable the unemployed youth affected by the ban order on recruitment, to apply for Government jobs.

4. The Government of Tamil Nadu issued notification No.14/2012 for appointment for the post of Executive Officer, Grade-IV which is included in Group-VIII services. On the very same date under very same notification. Tamil Nadu Public Service Commission also invited applications for various posts namely, Junior Assistant (Non-Security), Junior Assistant (Security), Bill Collector Grade-I, Typist, Steno-Typist, Field Surveyor and Draftsman. All these posts are included in Group-IV service.

5. For the Group-VIII service, the age limit for candidates not belonging to SC's, SC(A)'s, ST's, MBC's/DC's, BC's and BCM's was fixed as 35 years as on 01.07.2012. The petitioner date of birth was 28.07.1977, as on 01.07.2012. He had not completed 35 years. He was therefore eligible for applying for the said post. For the Group-IV service in the said notification, the age limit was prescribed as 30 years as on 01.07.2012, for candidates who was belonging to SC's, SC(A)'s, ST's, MBC's / DC's, BC's and BCM's. The notification did not specify that age will be relaxed for any of the categories. सत्यमेव जयते

6. The petitioner contends that there was a common application form for appointment to Group-IV and Group-VIII services. The last date for submitting application was on 28.05.2012 and last date for payment of fee was on 30.05.2012. The gateway for application as stated by the petitioner was common, for both Group-VIII and Group-IV services. The examination date for both the posts was fixed as on 07.07.2012. The petitioner took examination on the said date. The petitioner hall ticket specifically stated, "Memorandum of Admission (Hall Ticket) for the Competitive Examination to the posts included in Group-IV and Group-VIII services".

7. The petitioner states that, in view of the G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, giving relaxation of age for 5 years to enable the unemployed youth affected by the ban order on recruitment, to apply for Government jobs, he was also eligible for Group-IV posts also and that the hall ticket was mainly for permitting the petitioner to write examination for posts in Group-IV and Group-VIII. The results were announced. The petitioner secured 113th rank in the Group-IV service and was asked to appear for certificate verification. However, he did not receive any counseling letter for the post in Group-VIII.

8. The petitioner states that, he went for certificate verification and counseling on 19.11.2012. He attended the counseling but, in the counseling he was told that he cannot be considered, because he had crossed age of 30 years. The petitioner states that applying G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, to these notifications, the upper age limit for Group-IV posts had to be raised and petitioner was therefore eligible for appointment. The petitioner would that the vacancies for the year 2007-2008 to 2012-2013 were included in the posts in Group-IV, he was said that if the G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, is applied to the vacancies arising in these years, then the petitioner had to be considered for appointment to these vacancies and that therefore G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, would be applicable and the petitioner cannot be considered as over aged for vacancies arising in 2007-2008.

9. The Tamil Nadu Public Service Commission has not filed counter.

10. Heard Mr.A.R.Suresh, learned counsel for petitioner and Mrs.CNG.Niraimathi, Standing Counsel for TNPSC and Mr.B.Anand for respondents.

11. The learned counsel for the petitioner strongly relies on the judgment of the Rajasthan High Court in the case of Prakash Chand & others Vs. State of Rajasthan, reported in (1990) 2 WLN 317, wherein the High Court observed as under:-

"21. We find that in the Rajasthan State and Subordinate Service (Direct Recruitment by Combined Competetive Examinations) Rules, 1962 there is a special provision regarding the age. The candidates who are eligible in a particular year, but are rendered ineligible in the subsequent years, they are treated as eligible to appear in the examination irrespective of age requirement in case no examination is held in the

particular year in which they were eligible. It would be appropriate to quote Proviso (9) to Rule 11(B) of these Rules:

"11B. Age, notwithstanding anything contained regarding age limit in any of the Service Rules governing direct recruitment through the agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by Combined Competitive Examinations Conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of applications:

Provided:

(1) to (8) xxxxxxxxx

(9) If a candidate would have been entitled in respect of his age to appear at the examination in any year in which no such examination was held, he shall be deemed to be entitled in respect of his age to appear at the next following examination."

We also notice that in the Rajasthan Judicial Service Rules, 1955 also similar provision is contained in Proviso (1) to Rule 10. This proviso is also reproduced for ready reference.

10. Age: A candidate for recruitment to the service may not have attained the age of 35 years on the first day of January next following the date of commencement of the examination by the Commission for recruitment to the Service. Provided:

(i) That barring the first examination to be held under the provisions of these Rules, if a candidate would have been entitled in respect of his age to appear at any examination in any year in which no such examination was held, he shall be deemed to be entitled in respect of his age to appear at the next following examination."

22. Thus under the Rules of 1962, for the posts included in the Rajasthan Administrative Service, Rajasthan Police Service, Rajasthan Accounts Service, Rajasthan Co-Operative Service, Rajasthan Employment Exchange Service, Rajasthan State Insurance Service, Rajasthan Commercial Taxes Service, Rajasthan Subordinate Devasthan Service, Rajasthan Subordinate Co-Operative Service, R.T.S. Service, Rajasthan Commercial Taxes Subordinate Service, Rajasthan Food and Civil Supplies Subordinate Service and the various posts under the Rajasthan Food and Civil Supplies

Subordinate Service and the various posts under the Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 as well as under the Rajasthan Judicial Service Rules, 1955, a candidate is not denied consideration for direct recruitment on the ground of age limitation if he was within the age limit in a year in which the examination was not held. These provisions contained in the rules of 1962 as well as the rules of 1955 are intended to protect the rights of the persons against the failure of the competent authorities to hold selections for direct recruitment year wise. The Rules of 1962 and the Rules of 1955 gives benefit of relaxation in upper age limit, if examination is not held in a particular year. Even this is not necessary that there must have existed vacancies in that particular year. If the competent authority makes determination of vacancies for direct recruitment quota on yearly basis and fill them up regularly in the year in which the vacancies occur, no such difficulty could arise. However, appointing authorities are having multifarious functions to perform. The R.P.S.C. is required to make recruitment for over 50 services apart from consultative functions in the matter of framing of service rules and disciplinary actions in respect of the gazette offices. It is more or less impossible for the R.P.S.C. to make regular selection year wise. That leads to a situation where large number of eligible candidates are rendered ineligible on account of their having become over age merely because in the particular year when they were eligible, recruitment is not made by the competitive body or Commission or other authority. We do not find any justification as to why a provision like one contained in Rule 11 B of 1962 Rules of Rule 10 of 1955 Rules has not been made in other Rules. This would have/eliminated wholly unnecessary litigation of this nature."

12. The learned counsel for the petitioner therefore, contended that the petitioner cannot be penalized for the ban on recruitment and G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, was brought out only to ensure that the unemployed youths who were hit by the ban on recruitment are not affected. He would therefore contend that the candidates who were eligible in a particular year or subsequent years, they should be treated as eligible to appear in the examination by giving age relaxation. Since, no examination was held in 2007, the petitioner would contend that G.O.Ms.No.98 should be applied to the vacancies arising in 2007-2008. Therefore the petitioner was eligible to be considered for the appointment in the year 2007-2008 for the vacancies. The

petitioner therefore contend that, he has been wrongly denied the appointment on the basis of age limit, even though he is qualified.

13. On the other hand, the learned counsel for the TNPSC would severely contend that, fixing of a cut-off date for determining the maximum or minimum age prescribed for a post in the discretion of the rule-making authority or employer. One must accept that such a cut-off date cannot be challenged in a Court and it cannot be interfered with. According to him, cut-off date fixed in the notification itself had different age limit for the different posts depending upon the suitability.

14. According to the learned counsel for the TNPSC, there is no age relaxation and G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, is not applicable to the facts of this case. It is well settled that there is no fundamental right for getting appointment in a Government post. It is up to the Government as to when it notifies vacancies. A Division Bench of this Court in WP.No.24341 of 2015 dated 07.08.2015, while considering the G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, has observed as under:-

"26. Amendments have been made in the General Rules only to facilitate the unemployed youth, and those in service, during the ban period, and affected by the ban order, on recruitment. Even as per the case of the petitioners and the Government Orders, extracted supra, there was no ban from 2006. Even as per the averments, two notifications have been issued in 2007 and 2013 respectively. Concessions granted to the unemployed youth affected by the ban order on recruitment and to those who were in service, and could not take part in the competitive examinations, as there was no recruitment by the Tamil Nadu Public Service Commission, Chennai, due to overage, during the ban of aforesaid period, cannot be extended endlessly, and from the Government Orders issued, we are of the considered view that was not the intention of the Government.

27. Concession granted to the above said specific categories both unemployed youth and those in Government service, during the said period of ban, between 29.11.2001 and 07.02.2006, cannot be claimed as a matter of right stating that the Government should relax the upper age limit of 5 years, to everybody, and more particularly, to those who had the opportunity to participate in the subsequent selection recruitment process in 2007 and 2013 respectively.

Concession and relaxation cannot be claimed, as a matter of right. Depending upon the number of vacancies, need for recruitment and such other factors, the Government notifies the vacancies, through the Tamil Nadu Public Service Commission, Chennai, respondent No.2, the agency, for conducting the competitive examinations. Right to employment is not a constitutional or statutory right, to be enforced against the Government. Nevertheless, it is the duty of the Government to fill up the posts, as and when there is a need.

28. Merely because, Group I examination was not conducted, as expected by the petitioner and others, relaxation of upper age cannot be claimed, as a matter of right. Government have not issued any promise for relaxation of upper age limit by 5 years, to all the unemployed youth and in service candidates, for all times to come. Government Orders have been made only to cover those, who could not participate in the selection process for the period between 29.11.2001 and 07.02.2006. Yet another factor to be considered by this Court is that when notification was issued in 2007, there was no objection to the same, when the Government have fixed the age limit. Again in 2013, there was no challenge. The petitioners had an opportunity to participate in the selection process. Now, when notification dated 10.07.2015, is issued in 2015, fixing the upper age limit, the petitioners have alleged violation of Article 14 and contended that there is a violation of the principles of promissory estoppel and doctrine of legitimate expectation.

Government have never made any promise that the upper age limit would be relaxed, for all times. That would be against the statutory rules, wherein upper age limit is prescribed, for the posts. There was no specific promise by the Government, that in all future recruitments to the posts in Group I Services, in Government, upper age would be relaxed, by five years. Government have issued orders only to those, affected by the ban period between 29.11.2001 and 07.02.2006. Therefore, it would not be appropriate on the part of the petitioners to contend that the doctrine of promissory estoppel has to be applied. Therefore, the question of applying Doctrine of Promissory Estoppel does not arise."

15. The said judgment covers the case and the contention of the petitioner cannot be accepted in the light of the judgment

of the Division Bench.

16. The petitioner cannot invoke the principle of legitimate expectation. The Hon'ble Supreme Court of India in the case of Food Corporation of India Vs. M/s.Kamadhenu Cattle Feed Industries, reported in (1993) 1 SCC 71, has observed as under:-

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

17. Similarly, the Hon'ble Supreme Court of India in the case of Union of India & others Vs. Hindustan Development Corporation & others, reported in (1993) 3 SCC 499, has observed as under:-

"23. In Halsbury's Laws of England, Fourth Edition, Volume I(I) 151 a passage explaining the scope of "legitimate expectations" runs thus:

"81. Legitimate expectations.- A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.

The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to

defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectation, it must afford him an opportunity to make representations on the matter. The courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

(emphasis supplied)

24. We find that the concept of legitimate expectation first stepped into the English Law in *Schmidt v. Secretary of State for Home Affairs* [(1969) 2 Ch 149 : (1969) 1 All ER 904] wherein it was observed that an alien who had been given leave to enter the United Kingdom for a limited period had a legitimate expectation of being allowed to stay for the permitted time and if that permission was revoked before the time expires, that alien ought to be given an opportunity of making representations. Thereafter the concept has been considered in a number of cases. In *A.G. of Hong Kong v. Ng Yuen Shiu* [(1983) 2 AC 629 : (1983) 2 All ER 346] Lord Fraser said that "the principle that a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty, is applicable to the undertaking given by the Government of Hong Kong to the respondent ... that each case would be considered on its merits".

25. In *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 All ER 935] a question arose whether the decision of the Minister withdrawing the right to trade union membership without consulting the staff which according to the appellant was his legitimate expectation arising from the existence of a regular practice of consultation, was valid. It was contended that the Minister had a duty to consult the staff as per the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the existing practice would be followed. On behalf of the Minister on the basis of the evidence produced, it was contended that the

decision not to consult was taken for reasons of national security. The Court held as under:

"An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal. The appellants' legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the minister's exercise of the power contained in Article 4 of the 1982 order, namely an obligation to act fairly by consulting the GCHQ staff before withdrawing the benefit of trade union membership.

26. The learned counsel for these three big manufacturers, however, relied on various decisions in *Amarjit Singh Ahluwalia v. State of Punjab* [(1975) 3 SCC 503 : 1975 SCC (L&S) 27 : (1975) 3 SCR 82], *Ramana Dayaram Shetty case* [(1979) 3 SCC 489 : (1979) 3 SCR 1014] and *Peerless General Finance and Investment Co. Ltd. case* [(1992) 2 SCC 343] and contended that failure to follow the existing procedure resulting in denial of a right directly arising out of legitimate expectation is per se arbitrary and unreasonable and therefore illegal and consequently violative of Article 14 of the Constitution.

27. Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement of this Court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation.

28. Time is a three-fold present: the present as we experience it, the past as a present memory and future

as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

29. It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "legitimate expectation" is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future, perhaps, the principle of proportionality". A passage in Administrative Law, Sixth Edition by H.W.R. Wade page 424 reads thus:

"These are revealing decisions. They show that the courts now expect Government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine."

Another passage at page 522 in the above book reads thus: "It was in fact for the purpose of restricting the

right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in a case where alien students of 'scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The court of appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context, where car-hire drivers had habitually offended against airport byelaws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.

There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing."

(emphasis supplied)

30. In some cases a question arose whether the concept of legitimate expectation is an impact only on the procedure or whether it also can have a substantive impact and if so to what extent. Attorney General for New South Wales v. Quin [(1990) 64 Aust LJR 327] is a case from Australia in which this aspect is dealt with. In that case the Local Courts Act abolished Courts of Petty Sessions and replaced them by Local Courts. Section 12 of the Act empowered the Governor to appoint any qualified person to be a Magistrate in the new court system. Mr Quin, who had been a Stipendiary Magistrate in charge of a Court of Petty Sessions under the old system, applied for, but was refused, an appointment under the new system. That was challenged. The challenge was upheld by the appellate court on the ground that the selection committee had taken into account an adverse report on him without giving a notice to him of the contents of the same. In the appeal by the Attorney-General against that order before the High Court, it was argued on behalf of Mr Quin that he had a legitimate expectation that he would be treated in the same way as his former colleagues considering his application on its own merits. Coming to the nature of the substantive impact of the

doctrine, Brennan, J. observed that the doctrine of legitimate expectations ought not to "unlock the gate which shuts the court out of review on the merits", and that the courts should not trespass "into the forbidden field of the merits" by striking down administrative acts or decisions which failed to fulfil the expectations. In the same case Mason, C.J. was of the view that if substantive protection is to be accorded to legitimate expectations that would encounter the objection of entailing "curial interference with administrative decisions on the merits by precluding the decision-maker from ultimately making the decision which he or she considers most appropriate in the circumstances".

31. In *R v. Secretary of State for the Home Department ex parte Ruddock* [(1987) 2 All ER 518] Taylor, J. after referring to the ratio laid down in some of the above cases held thus:

"On these authorities I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesi there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty, as here, in the exercise of a prerogative power. I accept the submission of counsel for the Secretary of State that the respondent cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it would be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties. Had the criteria here needed changing for national security reasons, no doubt the respondent could have changed them. Had those reasons prevented him also from publishing the new criteria, no doubt he could have refrained from doing so. Had he even decided to keep the criteria but depart from them in this single case for national security reasons, no doubt those reasons would have afforded him a defence to judicial review as in the *GCHQ* case."

(emphasis supplied)

In Breen v. Amalgamated Engineering Union [(1971) 2 QB 175 : (1971) 1 All ER 1148, 1154 (f-h)] Lord Denning observed as under:

"If a man seeks a privilege to which he has no particular claim – such as an appointment to some post or other – then he can be turned away without a word. He need not be heard. No explanation need be given; see the cases cited in Schmidt v. Secretary of State for Home Affairs [(1993) 1 SCC 71 : JT (1992) 6 SC 259] at pages 170-171. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand." (emphasis supplied)

32. At this stage it is necessary to consider the scope of judicial review when a challenge is made on the basis of the doctrine of legitimate expectation. In Findlay v. Secretary of State for the Home Department [(1984) 3 All ER 801] it was observed as under:

"The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. These two applicants obtained leave. But their submission goes further. It is said that the refusal to accept them from the new policy was an unlawful act on the part of the Secretary of State in that his decision frustrated their expectation. But what was their legitimate expectation? Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case will be examined individually in the light of whatever policy the State sees fit to adopt, provided always that the adopted policy is a lawful exercise of the discretion conferred on him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by the statute on the minister can in some cases be restricted so as to hamper, or even prevent, changes of policy. Bearing in mind the complexity of the issues which the Secretary

of State has to consider and the importance of the public interest in the administration of parole, I cannot think that Parliament intended the discretion to be restricted in this way."

In Council of Civil Service Unions' case [(1984) 3 All ER 935] Lord Diplock observed thus:

"To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a 'legitimate expectation' rather than a 'reasonable expectation', in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a 'reasonable' man, would not necessarily have such consequences."

In Attorney General for New South Wales case [(1990) 64 Aust LJR 327] it is observed as under:

"Some advocates of judicial intervention would encourage the courts to expand the scope and purpose of judicial review, especially to provide some check on the Executive Government which nowadays exercises enormous powers beyond the capacity of the Parliament to supervise effectively. Such advocacy is misplaced. If the courts were to assume a jurisdiction to review administrative acts or decisions which are 'unfair' in the opinion of the court – not to product of procedural fairness, but unfair on the merits – the courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ.

If judicial review were to trespass on the merits of the exercise of administrative power, it would put its own legitimacy at risk. The risk must be acknowledged for a reason which Frankfurter, J. stated in *Trop v. Dulles* [(1958) 35 US 86, 119] :

'All power is, in Madison's phrase, "of an encroaching nature" Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.'

If the courts were to postulate rules ostensibly related to limitations on administrative power but in reality calculated to open to the gate into the forbidden field of the merits of its exercise, the function of the courts would be exceeded: of *R. v. Nat Bell Liquors Ltd.* [(1922) 2 AC 128, 156] If the courts were to define the content of legitimate expectations as something less than a legal right and were to protect what would be thus defined by striking down administrative acts or decisions which failed to fulfil the expectations, the courts would be truncating the powers which are naturally apt to affect those expectations. To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. The authority of the courts and their salutary capacity judicially to review the exercise of administrative power depend in the last analysis on their fidelity to the rule of law, exhibited by the articulation of general principles.

To lie within the limits of judicial power, the notion of 'legitimate expectation' must be restricted to the illumination of what is the legal limitation on the exercise of administrative power in a particular case. Of course, if a legitimate expectation were to amount to a legal right, the court would define the respective limits of the right and any power which might be exercised to infringe it so as to accommodate in part both the right and the power or so as to accord to one priority over the other. (That is a commonplace of curial declarations.) But a power which might be so exercised as to affect a legitimate expectation falling short of a legal right cannot be truncated to accommodate the expectation.

So long as the notion of legitimate expectation is seen merely as indicating 'the factors and kinds of factors which are relevant to any consideration of what are the things which must be done or afforded' to accord procedural fairness to an applicant for the exercise of an administrative power (see per Mahoney, JA in Macrae, at 285), the notion can, with one important proviso, be useful. If, but only if, the power is so created that the according of natural justice conditions its exercise, the notion of legitimate expectation may useful focus attention on the content of natural justice in a particular case; that is, on what must be done to give procedural fairness to a person whose interests might be affected by an exercise of the power. But if the according of natural justice does not condition the exercise of the power, the notion of legitimate expectation can have no role to play. If it were otherwise, the notion would become a stalking horse for excesses of judicial review."

(emphasis supplied)

In this very case, Brennan, J. after referring to Schmidt case [(1969) 2 Ch 149 : (1969) 1 All ER 904] observed thus:

"Again, when a court is deciding what must be done in order to accord procedural fairness in a particular case, it has regard to precisely the same circumstances as those to which the court might refer in considering whether the applicant entertains a legitimate expectation, but the inquiry whether the applicant entertains a legitimate expectation is superfluous. Again, if an express promise be given or a regular practice be adopted by a public authority, and the promise or practice is the source of a legitimate expectation, the repository is bound to have regard to the promise or practice in exercising the power, and it is unnecessary to inquire whether those factors give rise to a legitimate expectation. But the court must stop short of compelling fulfilment of the promise or practice unless the statute so requires or the statute permits the repository of the power to bind itself as to the manner of the future exercise of the power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits. The notion of legitimate expectation was introduced at a time when the courts were developing the common law to suit modern conditions and were sweeping away the unnecessary archaisms of the prerogative writs, but it

should not be used to subvert the principled justification for curial intervention in the exercise of administrative power."

(emphasis supplied)

In the same case, Dawson, J. observed thus:

"It also follows that the required procedure may vary according to the dictates of fairness in the particular case.

Thus, in order to succeed, the respondent must be able to point to something in the circumstances of the case which would make it unfair not to extend to him the procedure which he seeks. There is no doubt that the respondent had a legitimate expectation of continuing in his position as a stipendiary magistrate such that it would, apart from statute, have been unfair to remove him from that position without according him a hearing. If the principle of judicial independence extended to a stipendiary magistrate, then, no doubt, that would have strengthened his expectation. But the respondent was not removed from his position of stipendiary magistrate by administrative decision. He was removed by a statute which abolished the position of stipendiary magistrate and established the new position of magistrate. Not only that, the statute, the Local Courts Act, clearly contemplated that not all the former stipendiary magistrates would be appointed as magistrates pursuant to its terms. Accordingly it made provision for those who were not so appointed. It may be possible to deprecate the manner in which the statute removed the respondent from office, but it is not possible to deny its effect. Any unfairness was the product of the legislation which conferred no right upon the respondent to a procedure other than that which it laid down."

सत्यमेव जयते (emphasis supplied)

33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding

public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

34. We find in Attorney General for New South Wales case [(1990) 64 Aust LJR 327] that the entire case-law on the doctrine of legitimate expectation has been considered. We also find that on an elaborate and erudite discussion it is held that the courts' jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of 'legitimate expectation'. In Public Law and Politics edited by Carol Harlow, we find an article by Gabriele Ganz in which the learned author after examining the views expressed in the cases decided by

eminent judges to whom we have referred to above, concluded thus:

"The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel, but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it very difficult to predict how the hybrid will develop in future. This could be regarded as giving the concept a healthy flexibility, for the intention behind it is benign; it has been fashioned to protect the individual against administrative action which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting interpretations in the same decision."

However, it is generally accepted and also clear that legitimate expectation being less than right operates in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.

35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must

not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case [(1990) 64 Aust LJR 327] : "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognized general principles of administrative law applicable to such facts and the concept of legitimate

expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case [(1990) 64 Aust LJR 327] the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

16. The Hon'ble Supreme court of India, in the case of National Buildings Construction Corporation Vs. S.Raghunathan, reported in (1998) 7 SCC 66, has observed as under:-

"18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

19. Lord Scarman in R. v. IRC, ex p Preston [1985 AC 835 : (1985) 2 All ER 327 : (1985) 2 WLR 836, HL] laid down emphatically that unfairness in the purported exercise of power can amount to an abuse or excess of power. Thus the doctrine of "legitimate expectation" has been developed, both in the context of

reasonableness and in the context of natural justice.

20. Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174, HL] laid down that the doctrine of "legitimate expectation" can be invoked if the decision which is challenged in the court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

(emphasis supplied)

17. The Doctrine of Promissory Estoppel also cannot be applied in this case. For the Doctrine of Promissory Estoppel, the petitioner has to show that he has altered his position due to the Government order Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006 to his detriment. Without establishing that the petitioner altered his position to his detriment in view of the G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, the petitioner cannot invoke the Doctrine of Promissory Estoppel. As held by this Court in its order dated 07.08.2015 in WP.No.24341 of 2015, there was no promise by the Government that it will conduct an examination for all categories in the year 2007-2008 and it cannot be said that the petitioner has acted on the basis of the promise to his detriment. In the absence of any promise neither Doctrine of Legitimate Expectation nor Doctrine of Promissory Estoppel can be invoked by the petitioner.

18. Determining the maximum or minimum age limit required to the post is in the discretion of the rule-making authority or the employer as the case may be. The cut-off date has been fixed. The petitioner was not selected for Group-VIII post. Though he acquired 113th rank for the post of Group-IV, he does not meet the age criteria and G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, cannot be made applicable to the petitioner. The notification does not

say that age limit would be relaxed by 5 years as mentioned in G.O.Ms.No.98, Personnel and Administrative Reforms (S) Department, dated 17.07.2006, in all cases at whatever distance of time. There is no merits on the writ petition. The writ petition dismissed. No Costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Pkn

To

1. The Secretary,
State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St.George, Chennai - 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai - 600 003.
3. The Controller of Examination,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai - 600 003.

+1cc to Mr.A.R.Suresh, Advocate SR.No.34538

+1cc to Government Pleader SR.No.34353

W.P.No. 13309 of 2013

SPD(CO)
GMY(27/05/2019)

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