

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

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

W.P.No.3144 of 2019

and

W.M.P.Nos.3409 and 3412 of 2019

Gerald Sam M.D.

....

Petitioner

Vs

The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, Park Town,
VOC Nagar,
Chennai-600 003.

....

Respondent

Prayer : Writ 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 impugned recruitment notification issued by the respondent dated 01.01.2019 vide Notification No.1 of 2019 and quash the same, directing the respondent in respect of appointment to various posts in Group-I Services conducted by the respondent-Commission by giving the necessary age relaxation to the petitioner and consequently direct the respondent herein to permit the petitioner to participate in the abovesaid Group-I Preliminary Examination to be conducted on 3.3.2019 FN subject to the outcome of the present writ petition.

For Petitioner : Mr.R.Vijaya Khumar

For Respondent : Ms.C.N.G.Niraimathi,
Standing Counsel.

O R D E R

The cut off date is the ground raised for assailing the actions of the respondent in respect of the recruitment to Group I posts in the Government of Tamil Nadu. The present writ petition is filed on the premise that for want of one day or a short span of period, the candidate was not permitted to sit for the written examination as well as to participate in the process of selection for recruitment to the posts of Group I services. At the outset, the cut off date for maximum age limit fixed in Notification No.1 of 2019 dated 01.01.2019 as 01.07.2019 is under challenge.

2. The facts in nut shell to be considered for the purpose of deciding the issues raised in the present writ petition is, that the petitioner is educationally qualified to participate in the process of selection for recruitment to the posts of Group I services. However, he was disqualified on the ground that he has crossed the maximum age limit of 37 years prescribed in the recruitment notification dated 01.01.2019.

3. In this regard, the learned counsel appearing on behalf of the writ petitioner contended that fixation of cut off date for maximum age limit fixed after the date of notification is unfair. In fact, the recruitment notification was issued on 01.01.2019 and the cut off date for maximum age limit was fixed as 01.07.2019. Therefore, such a fixation is irrational and not in accordance with the previous notifications issued by the Tamil Nadu Public Service Commission for recruitment to various other posts. In earlier occasions, the recruitment notifications were issued fixing the maximum age limit prior to the date of issuance of the notification. However, in the impugned notification dated 01.01.2019, the cut off date is fixed as 01.07.2019 for the maximum age limit, which is much after the date of the notification.

4. Secondly, it is contended that the maximum age limit of 37 years is fixed pursuant to the concession extended by the Government in G.O.Ms.No.93, Personnel and Administrative Reforms Department dated 17.07.2018; all along the maximum age limit fixed for the recruitment to the posts of Group I services was 35 years and for the first time, in order to redress the grievances of the large number of candidates, who all are aspiring to secure public employment, the Government thought fit to relax the maximum age limit and issued G.O.Ms.No.93 dated 17.07.2019. When the Government took a policy decision to enhance the age limit by extending the concession to a group of people, the same should be implemented in its real spirit by the Public Service Commission. However, the Public Service Commission, by fixing the cut off date as 01.07.2019, restricted the in flow of candidates, who are all falling within the maximum age limit of 37 years.

5. The learned counsel for the writ petitioner further urged this Court by stating that the opportunity extended by the Government cannot be restricted by the Public Service Commission by fixing the cut off date as 01.07.2019 for maximum age limit. For all these reasons, the cut off date fixed after the date of issuance of the notification is to be held as arbitrary and accordingly the date of notification must be the cut off date for the purpose of considering the case of all these candidates for the purpose of participating in the process of selection.

6. The learned Standing Counsel appearing on behalf of the respondent / Tamil Nadu Public Service Commission disputed the contentions in entirety by stating that the policy decision was taken by the Government to relax the maximum age limit from 35 years to 37 years and issued G.O.Ms.No.93 dated 17.07.2018. Thus, subsequently the Public Service Commission issued notification stating that the maximum age limit for recruitment is 37 years. However, the cut off date cannot be questioned as Section 20(4)(iii) of the

Tamil Nadu Government Servants (Conditions of Service) Act 2016, enumerates as follows:

"That such a person satisfies the age prescribed in the Special Rules on the first July of the year in which the vacancy is notified."

In view of the Conditions of Service Rules, 1st July is fixed as cut off date for the purpose of deciding the maximum age limit by the Public Service Commission for recruitment to the posts of Group I services. Thus, there is no irregularity or illegality in respect of the fixation of cut off date of 01.07.2019 for the purpose of accepting the applications submitted by the candidates. The cut off date for maximum age limit is fixed and notified in consonance with the Act and the Rules and there is no infirmity as such.

7. In view of the fact that the notification was issued on 01.01.2019, the Tamil Nadu Public Service Commission has fixed the cut off date as 01.07.2019. Substantiating the above said contentions, the learned counsel for the respondent / Tamil Nadu Public Service Commission cited the judgment of the Honourable Supreme Court of India in the case of reported in "CDJ 1997 SC 516 (Dr.Ami Lal Bhat Vs State of Rajasthan)" and the relevant paragraph No.7 is extracted hereunder:-

"In the present case, the cut off date has been fixed by the State of Rajasthan under its Rules relating to various services with reference to the 1st of January following the year in which the applications are invited. All service Rules are uniform on this point. Looking to the various dates on which different departments and different heads of administration may issue their advertisements for recruitment, a uniform cut off date has been fixed in respect of all such advertisements as 1st January of the year following. This is to make for certainty. Such a uniform date prescribed under all service Rules and Regulations makes it easier for the prospective candidates to understand their eligibility for applying for the post in question. Such a date is not so wide off the mark as to be construed as grossly unreasonable or arbitrary. The time gap between the advertisement and the cut off date is less than a year. It takes into account the fact that after the advertisement, time has to be allowed for receipt of applications, for their scrutiny, for calling candidates for interview, for preparing a panel of selected candidates and for actual appointment. The cut off date, therefore, cannot be considered as unreasonable. It was, however, strenuously urged before us that the only acceptable cut off date is the last date for receipt of applications under a given advertisement. Undoubtedly, this can be a

possible cut off date. But there is no basis for urging that this is the only reasonable cut off date. Even such a date is liable to question in given circumstances. In the first place, making a cut off date dependent on the last date for receiving applications, makes it more subject to vagaries of the department concerned, making it dependant on the date when each department issues an advertisement, and the date which each department concerned fixes as the last date for receiving applications. A person who may fail on the wrong side of such a cut off date may well contend that the cut off date is unfair, since the advertisement could have been issued earlier: Or in the alternative that the cut off date could have been fixed later at the point of selection or appointment. Such an argument is always open, irrespective of the cut off date fixed and the manner in which it is fixed. That is by this court has said in the case of Parameshwaran Match Works(supra) and later cases that the cut off date is valid unless it is so capricious or whimsical as to be wholly unreasonable. To say that the only cut off date can be the last date for receiving applications, appears to be without any basis. In our view the cut off date which is fixed in the present case with reference to the beginning of the Calendar year following the date of application, cannot be considered as capricious or unreasonable. On the contrary, it is less prone to vagaries and is less uncertain."

8. The Honourable Division Bench of our High Court also had taken a view on similar facts and circumstances, in W.P.No.7411 of 2012 reported in CDJ 2012 MHC 1590 (D.Vivekanandan Vs State Government of Tamil Nadu), and the relevant paragraph is extracted hereunder.

"1. The only question involved in this writ petition is as to whether the petitioner who has crossed the maximum age limit of 27 years as on 01.07.2012, is eligible to sit for the written examination for the post of Civil Judge (Junior Division), scheduled to take place on the 24 and 25th instant.

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6. Considering the very same issue, the Apex Court, in Prabhu Dayal Sesma vs. State of Rajasthan and another, (1986) 4 SCC 59, referred to supra, has held as follows:

"9. It is plain upon the language of r. 11-B that a candidate 'must have attained the age of 21 years and must not have attained the age of 21 years on the first day of January next following the last date fixed

for receipt of application'. Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making r. 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birth day. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well-settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day.

12. In *Re. Shurey, Savory v. Shurey*, LR [1918] I Ch. 263 the question that arose for decision was this: Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary? After reviewing the earlier decisions, Sargant, J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty-first or twenty-fifth birthday or other birthday, as the case may be.

13. From Halsbury's Laws of England, 4th edn., vol 45, para 1143 at p. 550 it appears that s. 9 of the Family Law Reforms Act, 1969 has abrogated the old common law rule stated in *Re. Shurey, Savory v. Shurey* (supra)."

9. Even recently, the Honourable Supreme Court of India in the case of Hirendra Kumar Vs High Court of Judicature at Allahabad in W.P.(Civil) No.1382 of 2018, has held as follows:

"21.The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution. 22 Several decisions of this Court have dealt with the issue. In Dr Ami Lal Bhat v. State of Rajasthan, a two judge Bench of this Court dealt with the provisions contained in the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rule 11 (1) prescribed that a candidate for direct recruitment should not have attained the age of 35 years on the first day of January following the last date fixed for the receipt of applications. Rejecting the contention that the cut-off was arbitrary, this Court held that the fixation of a cut-off 11 (1997) 6 SCC 614 prescribing maximum or minimum age requirements for a post is in the discretion of the rule making authority. The Court held thus:

"5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off

date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable." The same view has been adopted in other decisions, including those in (i) State of Bihar v Ramjee Prasad¹² ("Ramjee Prasad"); (ii) Union of India v Sudheer Kumar Jaiswal¹³ ("Sudheer Kumar Jaiswal"); (iii) Union of India v Shivbachan Rai¹⁴ ("Shivbachan Rai");

and (iv) Council of Scientific and Industrial Research v Ramesh Chandra Agarwal¹⁵ ("Ramesh Chandra Agarwal").

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32. We are unable to accede to that request. For one thing, there would be other candidates who have not approached this Court and who would have been in the same position of not meeting the age criterion. Moreover, allowing a group of candidates to breach the age criterion by taking recourse to the power under Article 142 of the Constitution of India would, in our view not be appropriate inviting, as it does, a breach of the governing Rules for the UP Higher Judicial Service."

10. Considering the submissions made by the respective parties, first of all, appointment can never be claimed as a matter of right, so also, the selection. Mere selection will not confer any right on the candidate to seek for an appointment. Undoubtedly, the process of selection and the appointment to the public posts are to be done strictly in accordance with the recruitment rules and by following the procedures as contemplated, as well as the terms and conditions stipulated in the Recruitment Notification. The Constitutional schemes prescribe recruitment through open competitive process, which is more transparent and an established procedure. Equal opportunity in public employment is a Constitutional Mandate. All eligible persons must be provided with an opportunity to participate in the process of selection, enabling them to compete with others for the purpose of securing a public employment. The equality clause enshrined, is designed to cover the class of people, covered under the terms and conditions of the Recruitment Notification. It is not as if, an opportunity must be given to the candidates, who all are falling within the terms and conditions of the Recruitment Notifications are based on the Service Rules framed for a particular post by the appropriate Government or competent authority. Thus, only in the event of

any violation of the statutory rules or an unconstitutionality in the process of selection, the Constitutional Courts can exercise the powers of judicial review and not otherwise. Equal opportunity indicates that opportunity should be provided to all the candidates, who all are falling within the parameters of the rules as well as the Recruitment Notification. Thus, the very cut off date fixed cannot be questioned by the writ petitioner mainly on the ground that he is not falling within the class of people on account of the fact that the cut off date is fixed as 01.07.2019 and the date of the Notification is 01.01.2019. These all are the policy decision to be taken by the competent authority and it is an administrative prerogative. Thus, Court cannot fix a fresh cut off date, so as to include some more candidates within the parameters of the Recruitment Notification, enabling them to participate in the process of selection. The selection authorities, while framing the scheme as well as the terms and conditions of the Recruitment Notifications, are taking various factors into consideration. Court cannot go deep into those aspects, which all are falling within the administrative prerogative of the appropriate Government or authority. In the present writ petition, the cut off date is fixed, based on Section 20 (4) (iii) of the Tamil Nadu Government Servants (Condition of Service) Act, 2016. Thus, the fixation of the cut off date cannot be held as unconstitutional. The cut off date is not violating the rule of law as well as the opportunity to be provided amongst the class of people, who all are falling within the parameters of the terms and conditions of the Recruitment Notification.

11. In the current day of competitive world, the selecting authorities are conducting research in respect of the mode of selections to be adopted for public employment and for admissions in higher courses. Negative marks are implemented now for filtering the candidates every year. The competition for securing public employment and to secure admission for higher education are certainly enhanced. In a competitive world, the selection authorities must not only be fair and transparent, but also, ensure that appropriate meritorious candidates are selected and appointed and by following the rule relating to reservation and other Service Rules. This being the very purpose and object of the conduct of open competitive process, the authorities competent are bound to adopt a fair procedure, so as to ensure equal opportunity as far as the eligible candidates are concerned and select meritorious, by constituting the mode of recruitment in such a way. The task of undertaking the process of selection is mostly at the wisdom of the selection agency namely, the Tamil Nadu Public Service Commission in the present case and therefore, the Courts, in ordinary circumstances, would not enter into the arena of such decisions taken by such agency, so as to conduct the process of selection in a transparent and fair manner. No unfairness

is established by the writ petitioner except by stating that the cut off date must be altered and more specifically, the cut off date must be fixed prior to the date of the issuance of the Notification. Such an idea mooted out by the writ petitioner cannot stand in the scrutiny of law. Such ideas to cover the candidates, who have completed 37 years of age on the cut off date i.e., 01.07.2019, cannot have any sanctity, nor the Courts can support such idea or the grounds raised.

12. It is brought to the notice of this Court that the notified vacancies as per the notification dated 01.01.2019 is 139 and the Tamil Nadu Public Service Commission had received more than 2 lakh applications. Under these circumstances, if the cut off date is revised, it will have other repercussions. Learned counsel for the Tamil Nadu Public Service Commission urged before this Court that there is no infirmity as such in fixing the cut off date and the same was done in accordance with the provisions of the Act cited supra and therefore, the writ petitions are liable to be rejected.

13. This Court is of the opinion that the fixation of cut off date is the administrative prerogative of the competent authorities. This apart, fixation of educational qualifications and taking a decision to fill up the vacancies and prescribing the terms and conditions of service are the policy decision of the competent authorities as well as the Government and the power of judicial review cannot be extended for the purpose of quashing such policy decisions taken by the Government.

14. Considering the facts and circumstances and terms and conditions stipulated in the notification in respect of the maximum age limit, this Court has no hesitation in holding that the case of the writ petitioner cannot be considered and the respondent is bound to follow the terms and conditions as well as the provisions of the Act, while undertaking the process of selection for recruitment to the posts of Group I services. This being the factum, the writ petitioner has not established any legal right or an acceptable ground for the purpose of considering the relief as prayed for in the writ petition. Accordingly, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also Closed.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar

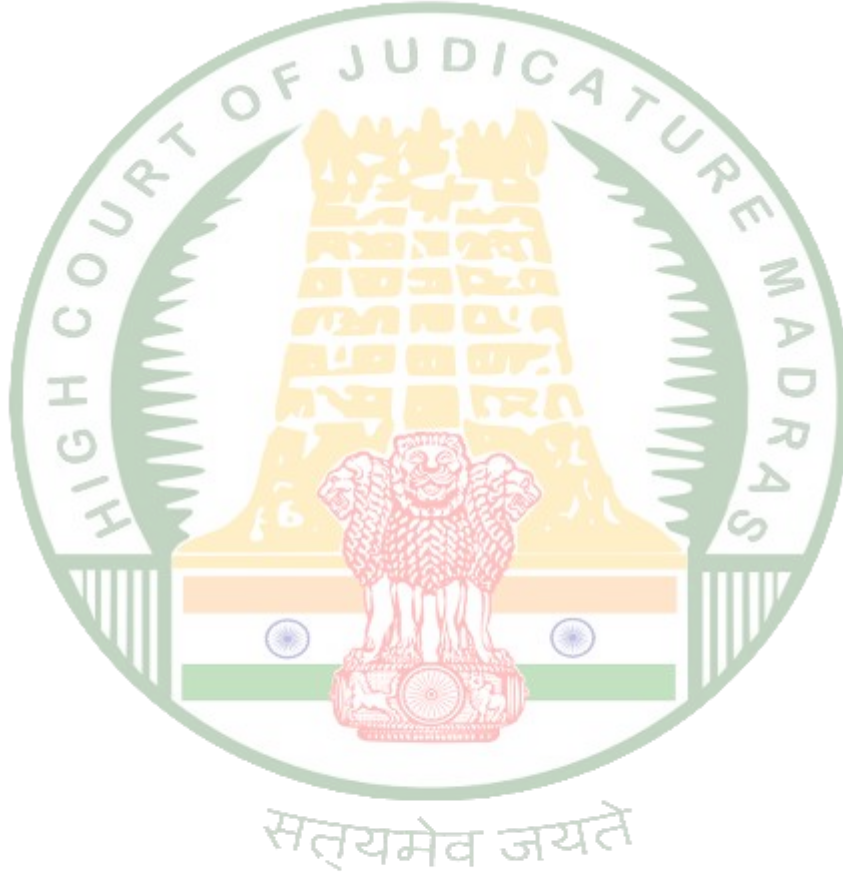
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To

The Secretary,
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W.P.No.3144 of 2019

A.SK(01/04/2019)



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