

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A No.624 of 2019 and
CMP No.5097 of 2019

P.B.Mohideen Abdul Khader ...Appellant

Vs

- 1.State of Tamil Nadu
Rep. by The Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St.George, Chennai - 600 009.
- 2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, VOC Nagar,
Park Town, Chennai - 600 023. ...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order dated 05.02.2019 made in W.P.No.3384 of 2019.

Prayer in W.P.No.3384 of 2019: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of declaration, declaring that the Notification No.1/2019 dated 01.01.2019 of the 2nd Respondent in so far as it erroneously fixed the maximum age limit criteria at clause 6 of the notification, as being illegal, arbitrary and unconstitutional and consequently direct the respondents to accept the candidature of the petitioner in the selection conducted by the second respondent.

For Appellant : Mr.C.K.Chandrasekhar

For Respondents : Mr.Vijay Narayanan
Advocate General
Assisted by Mrs.A.SriJayanthi
Special Govt.Pleader for R1

Mr.V.T.Gopalan, Senior Counsel
for Ms.C.N.G.Niraimathi for R2

J U D G M E N T

(Delivered by K.K.SASIDHARAN,J.)

The Government of Tamil Nadu enhanced the maximum age limit for candidates appearing for the competitive examination for Group 1, 1-A and 1-B posts conducted by the Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC"), by order dated 17 July 2018. The TNPSC pursuant to the said Government Order enhanced the maximum age limit and issued a notification on 1 January 2019 calling for applications for direct recruitment to various posts in Group I Services.

2. The appellant though got the benefit of the enhanced age could not make an application on account of Section 20 (4)(iii) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (Tamil Nadu Act 14 of 2016), which mandates that the candidate must satisfy the age prescribed in the Special Rules on the first July of the year in which the vacancy is notified.

3. The appellant has raised a question as to whether the TNPSC is correct in prescribing the eligibility criteria to the detriment of the candidates who would cross the age limit.

4. The TNPSC issued a notification dated 1 January 2019 calling for applications for appointment to various posts in Group I Services. The notification mandates that the applicants should meet the age criteria as on 1 July 2019.

5. The appellant challenges the notification primarily on the ground that the Government Order in G.O.Ms.No.93 (P & AR) Department enhancing the age limit was issued on 17 July 2018. According to the appellant, the benefit given by the Government was taken away by the TNPSC by issuing a notification in January 2019 notwithstanding the fact that the vacancy relates to the year 2017 and 2018. It was the contention of the appellant before the Writ Court that in case notification was issued in 2018, he would have qualified taking into account his age. The learned single Judge dismissed the writ petition by holding that it is for the authorities to fix the eligibility criteria and judicial review is very limited in such matters. Feeling aggrieved, the unsuccessful writ petitioner has come up with this intra court appeal.

6. The learned counsel for the appellant contended that the TNPSC conducted Group I examination in 2016. Thereafter, examinations were not conducted. According to the learned counsel, the present notification dated 1 January 2019 pertains to the vacancies of the year 2017. The learned counsel submitted that the benefits granted by the government by enhancing the

limit was denied to the candidates on account of the belated issuance of notification by TNPSC. The learned counsel submitted that the principle of promissory estoppel is attracted in the present case. It was further contended that this is the last chance for the appellant and as such, it would not be possible for him to apply once again.

7. The learned counsel for the appellant placed reliance on the judgment of the Hon'ble Supreme Court in *State of Bihar and others v. Kalyanpur Cement Limited* [(2010) 3 SCC 274] in support of his contention that TNPSC is also bound by the principle of promissory estoppel.

8. The learned Advocate General appearing on behalf of the State contended that the TNPSC in its notification very clearly indicated that the maximum age would be 37 years for Scheduled Castes and other Backward Classes and it would be 32 years for Others. The learned Advocate General submitted that the results of 2016 examination for Group I Services was announced only on 31 December 2018 and that was the reason for issuing the subsequent notification on 1 January 2019. It was further contended that in case the cut-off date is re-fixed, about 13127 candidates would be denied of the chance to take part in the examination. The learned Advocate General would further submit that there is no amendment to Section 20(4)(iii) of Act 14 of 2016, which mandates that the age should be as on the First July of the year in which the vacancy is notified and the fact that the appellant was denied an opportunity to submit the application on account of the age criteria alone cannot be the reason to set aside the notification.

9. The learned Senior Counsel for TNPSC by placing reliance on a recent judgment of the Hon'ble Supreme Court in *Hirandra Kumar v. High Court of Judicature at Allahabad* and another [W.P. (Civil) No.1343 of 2018 dated 29.01.2019], contended that the TNPSC implemented the age criteria in accordance with the Government Order in G.O.Ms.No.93 dated 17 July 2018. According to the learned Senior Counsel, it would not be possible for the TNPSC to adhere to the particular time schedule for recruitment on account of the delay in conducting and concluding various examinations. It was further contended that the judicial review is very limited in a matter of this nature and more so, on account of the statute prescribing the cut-off date.

10. The TNPSC issued the notification dated 1 January 2019 calling for applications for appointment to the posts included in Group I Services. The notification was published on 1 January 2019 fixing the cut-off date for submission of online application on 31 January 2019 and making payment for examination on 2 February 2019. The preliminary examination is

on 3 March 2019. The notification contained the age criteria. The candidate must meet the age criteria as on 1 July 2019. The age criteria was prescribed in accordance with Section 20(4) (iii) of Act 14 of 2016.

11. The Government of Tamilnadu enhanced the maximum age limit for candidates appearing for the competitive examination for Group I, 1-A, 1-B posts conducted by the TNPSC. The maximum age was fixed as 37 years for SC/ST/MBC/BC & De-notified categories and for other categories, it was fixed as 32 years.

12. The appellant filed the writ petition challenging the notification on the ground that in case it was issued in the year 2018, he would be eligible inasmuch as 1 July 2018 would be the relevant date in such case for fixing the age criteria. Before the Writ Court, the appellant contended that it was only to help the applicants like the appellant, the Government enhanced the maximum age limit. However, it was denied on account of the arbitrary action of the TNPSC in issuing the notification on 1 January 2019 fixing the cut-off date as 1 July 2019.

13. The learned single Judge dismissed the writ petition on the ground that it is for the examining body to fix the cut-off date and the Court has no say in such matters.

14. The TNPSC filed a counter affidavit in a connected writ petition in W.P.No.1769 of 2019 contending that due to various administrative reasons, the notification for recruitment to Group I posts has not been issued during the years 2017 and 2018. Since it was made out as if only on account of the administrative reasons, notifications were not issued during 2017 and 2018, we have directed the Advocate General to take instructions as to whether it would be possible to re-fix the cut-off date and the appeal was adjourned to be posted today.

15. The learned Advocate General has demonstrated before us that in case cut-off date is re-fixed, several candidates would be denied of the opportunity to take part in the examination as they would not have attained 21 years, which is the minimum age for submitting application for appointment.

16. There is no challenge to the provision fixing the cut-off date. The challenge is only to the notification issued by the TNPSC. The appellant has taken up a contention that the decision of the Government enhancing the maximum age limit was not translated into action by TNPSC. There is absolutely no merit in the said contention. The notification issued by the TNPSC, which was impugned in the writ petition clearly shows that the TNPSC incorporated the new eligibility criteria.

17. The factual matrix indicates that the TNPSC has not conducted examination for the years 2017-2018. The last examination was conducted in 2016. The notification was issued on 9 November 2016. The preliminary examination was conducted on 19 February 2017 and the main examination was on 3 October 2017. The results were published only on 31 December 2018.

18. Even though we are not in favour of setting aside the notification on the grounds raised by the appellant in the appeal, still we are constrained to observe that TNPSC ought to have taken appropriate action for conducting examination in 2017 and 2018. The TNPSC was not expected to keep the subsequent selection in abeyance on the ground that the results for the earlier years are yet to be announced. Nothing prevented the TNPSC from initiating action for selection appointment by issuing notification every year. In case, notifications are issued every year for making appointment to the relevant year, it would enable the candidates who would meet the eligibility criteria including the age to submit application.

19. The TNPSC issued the last notification only in 2016. Selection process was not initiated thereafter for a period of two years. The enhancement of age was given by the Government by order dated 17 July 2018. In case of issuance of notification immediately thereafter, the candidates like the appellant would have been benefited. The appellant is therefore prima facie correct in his contention that on account of the delay in publishing the notification, he was denied the benefit of re-fixing the upper age limit. The TNPSC must rise to the occasion and should ensure that examination is conducted every year to the extent possible or in the event of any difficulty to conduct the examinations, action must be taken at least to issue the notification every year so as to enable the concerned candidates to submit application by satisfying the age criteria. This would help the applicants who are nearing the upper age limit.

20. The core question now is as to whether this Court should interfere in the notification solely on account of the fact that it was issued belatedly.

21. There is no dispute that the Government and its instrumentalities are bound by the principle of promissory estoppel. However, to attract promissory estoppel, the party must establish that there was an unequivocal promise or representation by word or conduct by one party or the other party intended to create legal relations and the party invoking the doctrine has altered its position relying on the promise. There should be a clear promise in unequivocal terms to invoke the doctrine of promissory estoppel.

22. In the subject case, the Government issued a notification enhancing the upper age limit. The notification was translated into action by TNPSC by re-fixing the maximum age. The benefit would be given to those who satisfy the eligibility criteria as on 1 July 2019 of the year in which the notification was issued. The TNPSC at no point of time has given an assurance that the cut-off date would be re-fixed taking into account the Government Order enhancing the maximum age. It is not within the province of the TNPSC to amend the rule regarding the cut-off date. We are therefore of the view that the principle enunciated in Kalyanpur Cement (supra) would not apply to the case on hand.

23. The legality and correctness of fixing the cut-off date came up for consideration before the Hon'ble Supreme Court recently in Hirantra Kumar (cited supra). The Supreme Court made it clear that even if there is arbitrariness in fixing the cut-off date, still it would not be a reason to set aside the cut-off date. The relevant observation reads thus:-

"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."

24. It is true that the notification was issued after a period of two years. There was no recruitment for the years 2017 and 2018. Even after giving enhancement in the maximum age limit by the Government, follow up action was not taken by the TNPSC to issue the recruitment notification in 2018. This sorry state of affairs could have been avoided, in case, TNPSC issued a notification well in advance taking into account the vacancy position. In fact, the TNPSC issued an Annual Recruitment Planner for 2018 indicating that the notification for Group I post would be issued in the first week of May 2018. Though we see considerable force in the submission made on behalf of the TNPSC that the Annual Planner is in the nature of a calendar and

no writ petition would lie to enforce the said calender, still, we are of the view that TNPSC is bound by the Calendar and every effort should be taken to conduct the examination as scheduled. This case should be an eye opener to the TNPSC and they should not foreclose the chances of the candidates to write the examination for appointment to the posts included in Group-I.

25. In the subject case, notification was issued on 1 January 2019. The cut-off date to satisfy the age criteria is 1 July 2019 in view of Section 20(4)(iii) of Act 14 of 2016. In view of the statutory position, we do not find any reason to set aside the notification.

26. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary to Government,
State of Tamil Nadu
Personnel and Administrative Reforms Department,
Fort St.George, Chennai - 600 009.

2.The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai - 600 023.

+1 cc to Mr.C.K.Chandrasekhar, Advocate, S.R.No.19608

+1 cc to the Government Pleader, S.R.No.19983

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NRL(CO)
SSM(03/04/2019).