

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.04.2019

CORAM

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

W.P.No.10953 of 2019
W.M.P.Nos.11386 & 11387 of 2019

J.Sathish

..Petitioner

vs

1. The Secretary to Government,
Government of Tamil Nadu
Environment and Forest Department,
Secretariat, Fort St.George,
Chennai-600 009 cum
Chairman, the Tamil Nadu Pollution Control Board.

2. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road,
Guindy, Chennai-600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of Writ of Mandamus, directing the respondents herein to grant age relaxation to the petitioner in respect of the upper age limit of 35 years for SC/ST candidates for participating in the selection process for the post of Assistant Engineer, (Engineering Services) in the Tamil Nadu Pollution Control Board pursuant to the notification No.01/2019 dated 06.03.2019, grant preference to the petitioner in the said selection process for the post of Assistant Engineer, select and appoint the petitioner as Assistant Engineer in the light of the orders passed by this Court in W.P.No.33124 of 2014 dated 13.06.2016 and W.A.No.98 of 2017 dated 05.06.2017.

For Petitioner : Mr.A.R.L.Sundarasam
Senior Counsel for Mrs AL.Ganthimathi

For Respondent : Mrs.Thanga Vadhana Balakrishnan
Additional Government Pleader(Forest)
for R1.

O R D E R

The relief sought for in the present writ petition is for a direction the respondents to grant age relaxation to the writ petitioner in respect of the upper age limit for 35 years for SC/ST candidates for participating in the selection process for the post of Assistant Engineer(Engineering Services) in the Tamil Nadu Pollution Control Board, pursuant to the notification No.01/2019 dated 06.03.2019, and to grant preference to the petitioner in the said selection process for the post of Assistant Engineer, select and appoint him as Assistant Engineer in the light of the orders passed by this Court in W.P.No.33124 of 2014 dated 13.06.2016 and W.A.No.98 of 2017 dated 05.06.2017.

2. The learned Senior Counsel appearing on behalf of the writ petitioner states that the writ petitioner had completed B.E. in Chemical Engineering and M.E. in Environmental Management. He had registered his name in the Employment Exchange. The respondents issued a notification for recruitment to the post of Assistant Engineer in the Tamil Nadu Pollution Control Board. The educational qualifications prescribed for the post of Assistant Engineer is M.E. in (Environmental Engineering). The petitioner has obtained M.E.Degree in (Environmental Management). The government issued a G.O.Ms.No.190, Higher Education Department clarifying that both the degrees viz., M.E. in (Environmental Engineering) and M.E. In (Enviornmental Management) are equal. During the earlier notification issued in the year 2012, the name of the writ petitioner was not considered and accordingly, the writ petitioner filed a writ petition in W.P.No.33124 of 2014. This Court passed an order on 13.06.2016 as follows:

7. As rightly pointed out by the learned Special Government Pleader for the respondents 1 and 2 that the petitioner cannot claim appointment on the basis of original notification since he did not participate in the interview because even though he could have participate in the interview, it is not sure that he will get appointment. Therefore, prayer as such is not maintainable. But, at the same time, he had acquired requisite qualification at the time of application. As there was a doubt about his qualification, he was not allowed to participate in the interview. Subsequently, by G.O.Ms.No.190, dated 18.11.2014 issued by the Higher Education Department, it was clarified that the qualification acquired by the petitioner is equivalent to the qualification prescribed.

8. In view of the above, this writ petition is disposed of with a direction to the respondents 1 and 2 to give some preference to the petitioner atleast in the

next selection process. Consequently, connected miscellaneous petition is closed. No costs.

3. Challenging the order passed in the writ petition, the petitioner preferred W.A.No.98 of 2017 and the Hon'ble Division Bench passed an order on 05.06.2017 as follows:

9. It is not in dispute that the appellant was not allowed to participate in the interview for the post of Assistant Engineer in the Tamil Nadu Pollution Control Board, on the premise that the educational qualification acquired by the appellant was not equivalent to the qualification prescribed for the said post. Subsequently, it was clarified by the Government in G.O.Ms.No.190, dated 18.11.2014, issued by the Higher Education Department, that the degree in M.E.(Environmental Management) awarded by Anna University, acquired by the appellant, is equivalent to M.E. (Environmental Engineering), the qualification prescribed by the Tamil Nadu Pollution Control Board for the post of Assistant Engineer. Now the appellant claims appointment on the basis of the original notification. As the appellant did not participate in the interview, he cannot claim appointment on the basis of the original notification. Further, as rightly held by the learned Single Judge, even though the appellant could have participated in the interview, it is not sure that he will get appointment. The clarification by the Government in G.O.Ms.No.190 was not made at the time of the recruitment process in question. Since the entire recruitment process has been completed and appointments have been done, the learned Single Judge had given a direction to the respondents 1 and 2 to give some preference to the appellant in the next selection process. Further, the prayer made in the writ petition was only for a direction to the respondents 1 and 2 to consider the representation of the petitioner and pass appropriate orders. The appellant had not challenged any appointment made in the recruitment process in question, in the writ petition.

10. In view of the above stated circumstances, the writ appeal is disposed of directing the respondent Board to consider the case of the appellant for appointment to the said post, preferably in the next selection process as per law. No costs.

4. The learned Senior Counsel relying on the judgment in writ petition as well as in the writ appeal made a submission that the name of the writ petitioner ought to have been considered and preference must be given for appointment to the post of Assistant Engineering in the Tamil Nadu Pollution

Control Board.

5. The respondents now issued a recruitment notification No.01/2019 dated 06.03.2019. As per the notification, the writ petitioner is fully qualified and possesses the requisite educational qualification. However, the application submitted by the writ petitioner was not accepted, in view of the fact that the writ petitioner was over aged. The age limit prescribed in the notification as on 01.01.2018 is 35 years for SC/ST. In view of the fact that the writ petitioner is now aged about 37 years, his application was not even accepted by the respondents. Thus, the writ petitioner is constrained to move the present writ petition.

6. The learned Senior Counsel is of the opinion that the case of the writ petitioner ought to have been considered, by giving some preference in the matter of age limit prescribed in the notification dated 06.03.2019.

7. This Court issued a direction to the second respondent therein to give some preference to the writ petitioner atleast in the next selection process.

8. Relying on the said observation, the learned Senior Counsel states that the writ petitioner had established that he was fully qualified for appointment to the post of Assistant Engineer in respect of the recruitment conducted during the year 2012. This Court issued a direction to give some preference to the writ petitioner atleast in the next selection process.

9. Thus, the writ petitioner must be given age relaxation enabling to him to participate in the present recruitment process, which is notified on 06.03.2019.

10. At the outset, it is stated that preference stated in the order of this Court is with reference to the age relaxation to be granted.

11. This Court is of the considered opinion that such observation was made by the Court, considering the nature of the case and the earlier writ petition was filed by the writ petitioner with reference to the educational qualifications possessed by him. Equivalence was granted by the competent authorities and based on the equivalence certificate, the writ petitioner was found that he was qualified to participate in the selection process to the post of Assistant Engineering. However, by that time when the writ petitioner got the equivalence certificate, the selection was over and the selected persons were also appointed. Under those circumstances, the writ petitioner was unable to participate in the earlier selection

process and give some preference to the writ petitioner atleast in the next selection process. The next selection process is now notified on 06.03.2019 after a lapse of about 6 years. By this time, the writ petitioner is over aged.

12. Under these circumstances, the question that arises for consideration is whether the High Court granted age relaxation in respect of the notification issued or not?

13. Undoubtedly, the High Court cannot issue any direction to grant age relaxation in violation of the recruitment notification issued by the respondent. The power of judicial review cannot be exercised so as to grant age relaxation to a candidate for the purpose of participation in the selection process to the post of Assistant Engineer. The power of judicial review can be exercised only in the event of illegality or irregularity or violation of the statute and rules, and not otherwise.

14. Thus, the exercise of judicial review must be cautiously made in matters relating to age and educational qualifications, which all are prescribed by the State. In respect of grant of relaxation by the competent authorities, this Court has considered the legal principles, in W.P.No.2762 of 2014 dated 05.10.2017. The relevant paragraphs are extracted here under:

10. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

11. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated

as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

12. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

13. Thus, this Court is also of the opinion that the power to grant and exemption, cannot be exercised in a manner to destroy the general provision from which the

exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

14. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

15. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed in a routine affair. Thus, this Court is of the firm view that all the appointments and regularizations are to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 in certain cases.

16. The consequences of exercising the power of relaxation under Rule 48 in a routine manner will affect the right of the employees who were appointed regularly in accordance with the recruitment rules in force. In other words, there are large number of employees who are working in the Departments, were fully qualified and who were appointed in accordance with the recruitment and service rules in force. Any relaxation granted under Rule 48 should not have an impact of depriving those

candidates, who were appointed regularly in accordance with the rules in force, specifically in the matter of promotions.

17. Thus, the Court has to adopt a balancing approach in this kind of cases, where the relaxation is sought for as a prayer in the writ petition. Now let us look into the case of a regular employee in verge of promotion for a particular cadre after satisfying the regular recruitment rules in force. If a relaxation is granted to an unqualified person, then he will supersede the candidates who were otherwise qualified and it will create a discrimination amongst the employees and it is the constitutional perspective that an equal opportunity in employment as well as in the promotion to be ensured to the qualified persons. The constitutional perspective in this regard is that the equality class provided to all the citizens, who were equally placed and no person can be deprived of his right of promotion to the higher cadre. In the event of granting relaxation under Rule 48, the right of the employees, who were appointed in accordance with the rules will also get affected. Such a regularization granted in a routine manner will affect the equality clause and the constitutional directives in this issue.

15. Even recently, the Hon'ble Supreme Court of India in the case of ZAHoor AHMAD RATHER AND OTHERS VS. SHEIKH IMTIYAZ AHMAD AND OTHERS reported in 2019 2SCC 404 in Civil Appeal Nos.11853-54 OF 2018 held as follows:

26. We are in respect agreement with the interpretation which has been placed on the judgment in Jyoti K.K. In the subsequent decision in Anita. The decision in Jyoti K.K. Turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or

should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti.K.K. Turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

16. The Apex Court, in unambiguous terms held that "The State as the employer is entitled to prescribe the qualifications as a condition of eligibility". Equivalence of qualifications cannot be a subject matter, which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent, is a matter for the State, as the recruiting authority, to determine.

17. Therefore, prescription of age limit, educational qualification and other criteria for selection are the administrative prerogative of the employer and the power of judicial review in these aspects are certainly limited and only in the event of unconstitutionality or violation of the statutes, the Court can interfere and not otherwise.

18. In the present lis on hand, the main contentions of the writ petitioner is that during the earlier round of litigation, the High Court made an observation that some preference may be given to the age relaxation. If such claims are entertained, similar claim would be made by many number of persons. Mere observation of High Court in this regard, would not confer any right for age relaxation.

19. Thus the claim of the writ petitioner set out in the present writ petition is devoid of merits. Accordingly, the writ petition stands dismissed. Connected mis Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

ssb

To

1. The Secretary to Government,
Government of Tamil Nadu
Environment and Forest Department,
Secretariat, Fort St.George,
Chennai-600 009 cum
Chairman, the Tamil Nadu Pollution Control Board.

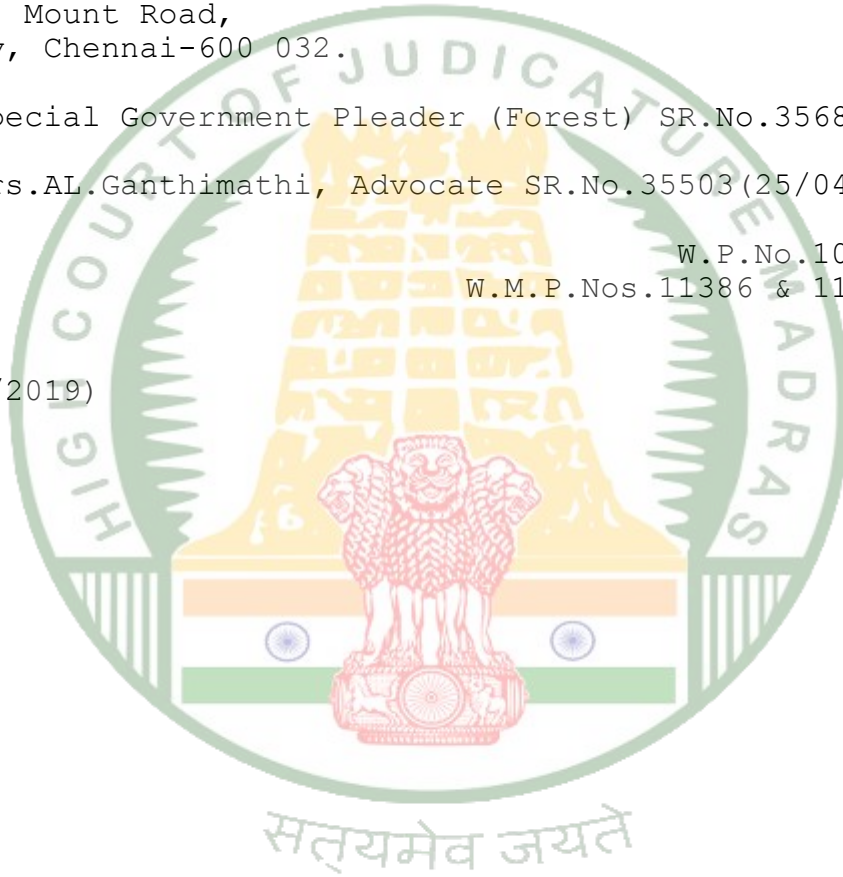
2. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Road,
Guindy, Chennai-600 032.

+1cc to Special Government Pleader (Forest) SR.No.35687

+1cc to Mrs.AL.Ganthimathi, Advocate SR.No.35503(25/04/2019)

W.P.No.10953 of 2019
W.M.P.Nos.11386 & 11387 of 2019

KAN(CO)
GMY(24/04/2019)



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