

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**
and
The Hon'ble Mr. Justice **KRISHNAN RAMASAMY**

W.A.No. 395 of 2014

Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8.

... Appellant

Vs

1.R.Shivakumar

2.The Secretary to Government,
Housing and Urban Development
Department, Fort St. George,
Chennai - 9.

... Respondents

Appeal filed under Clause 15 of the Letters Patent against the
order dated 23.04.2013 passed in W.P.No. 35457 of 2007.

For Appellant ..

Mr.S.Thiruvengadam

For Respondents ..

Mr. V.Vijayashankar for R1
Ms.A.Sri Jayanthi,
Spl. Govt. Pleader for R2

JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

This writ appeal is directed against the order dated 23.04.2013 passed in W.P.No. 35457 of 2007.

2.The short point for consideration in this appeal is as to whether the appellant ought to have exercised the power of relaxation in the case of the first respondent while considering his case for appointment to the post of Assistant Planner by way of direct recruitment.

3.Learned counsel appearing for the appellant would submit that the relaxation hitherto given was for the reserved categories. Giving relaxation would amount to inter se seniority. Further, the first respondent was already given promotion. Therefore, the order of the learned single Judge would require interference.

4.Learned counsel appearing for the first respondent would submit that what we are concerned in the present case is direct recruitment. Except the first respondent, no other person was found to be qualified otherwise. The rule of relaxation with respect to age

merely speaks about the specific cases and therefore, the reserved category or otherwise has got no rationale for such an exercise. The fact that the first respondent was promoted subsequently as per Rule will not take away his right to be considered by way of direct recruitment. Therefore, the appeal will have to be dismissed. He further submitted that 18 vacancies are available and yet to be filled up even under the open category.

5. We do not find any merit in this appeal. The power of relaxation is to be applied with respect to specific cases. Such specific case cannot be restricted to reserved categories alone. When we speak about the specific cases, the contingency which has been created for want of suitable candidate is certainly a factor to be reckoned while exercising the power. Admittedly, in the case on hand, except the first respondent, no other suitable candidate was found. Therefore, even in the interest of the appellant, such a power ought to have been exercised. After all, the object is to fill up the vacancy with the available eligible and qualified candidates by giving due relaxation of age. It is also to be noted right from the year 2007, nobody was found to be eligible till now. Therefore, the fact that the first respondent was promoted as Planning Assistant and thereafter, as Assistant Planner recently cannot be a ground to defeat his right to be considered by

way of direct recruitment to the post of Assistant Planner.

6. In such view of the matter, we do not find any error in the order of the learned single Judge, warranting interference. The writ appeal is dismissed. The direction given by the learned single Judge for considering the case of the first respondent will have to be given effect to within a period of four weeks from the date of receipt of a copy of this order. No costs.

(M.M.S.J.,) (K.R.J.,)

01.02.2019

Index: Yes/No
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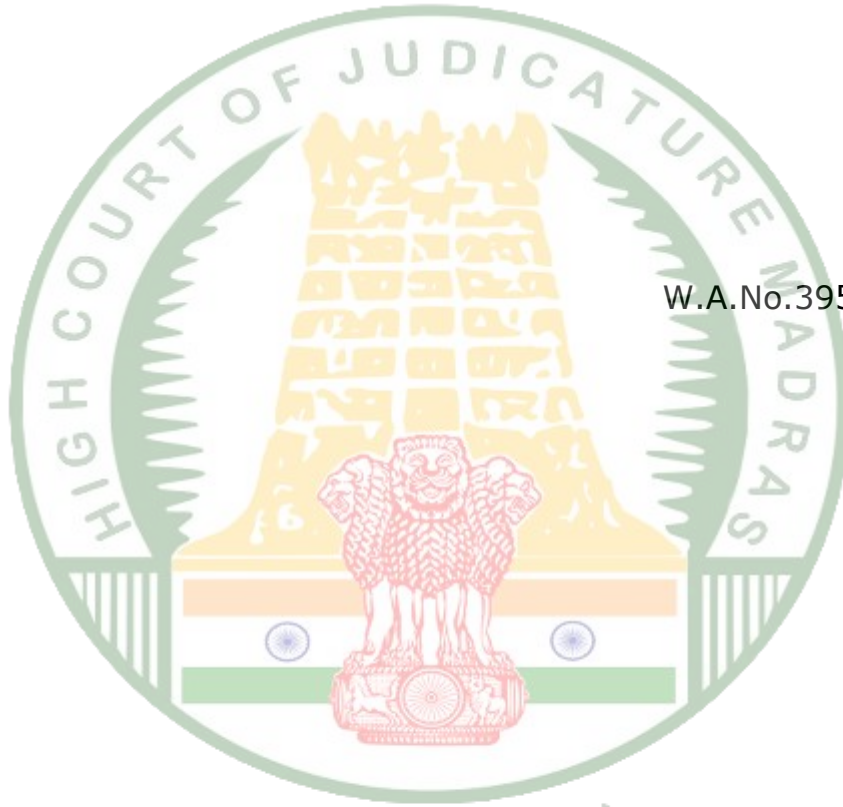
The Secretary to Government,
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Department, Fort St. George,
Chennai - 9.

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**M.M.SUNDRESH, J.
and**

KRISHNAN RAMASAMY, J.

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