



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

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W.P.(MD).Nos.1979, 2100 to 2103 of 2014
M.P.(MD).Nos.1,2,1,2,1,2,1,2,1 & 2 of 2014

K.Nandhan	..	Petitioner in W.P.(MD).No.1979 of 2014
P.Rajagopalan	..	Petitioner in W.P.(MD).No.2100 of 2014
V.Kannaraja	..	Petitioner in W.P.(MD).No.2101 of 2014
N.Vanamoothilingam	..	Petitioner in W.P.(MD).No.2102 of 2014
T.Pethanapandian	..	Petitioner in W.P.(MD).No.2103 of 2014

Vs.

- 1.Tamil Nadu Police Housing Corporation Ltd.,
Through its Chairman cum Managing Director,
No.132, EVR Road, Kilpak,
Chennai.
- 2.The Director,
Employment and Training Department,
Guindy, Chennai.
- 3.The District Employment Officer,
Virudhunagar District,
Virudhunagar. .. Respondents in All petitions
- 4.The District Employment office,
Thoothukudi District.
- 5.The District Employment Office,
Madurai. ..R3 in WP(MD).No.2103/2014
- 6.The Principal Secretary to Government,
Personnel & Administration Reforms Department,
Fort St. George,
Chennai. .. Respondents in W.P.(MD).Nos.
1979, 2100, 2102, 2103 of 2014

(R4 Suo Motu impleaded vide order dated 31.07.2019 made in W.P.(MD).
Nos. 1979, 2100, 2102, 2103 of 2014)

Common Prayer: Writ Petition filed under Article 226 of the
Constitution of India, for the issuance of Writ of Mandamus,
directing the respondents to sponsor and consider the candidature of
the petitioner without reference to the petitioner's age for
appointment to the post of Technical Assistant in the 1st respondent
Department for the year 2014.



For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.D.Muruganandam
Additional Government Pleader
(In all petitions)

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COMMON ORDER

The petitioners in all these writ petitions belonged to either Scheduled Caste or Backward class community. The petitioners in all these writ petitions have obtained Diploma in Engineering and they have registered their qualifications with the third respondent.

2.The first respondent is Tamilnadu Police Housing Corporation Limited which is a State undertaking. When the first respondent issued the notification for the recruitment to the post of Technical Assistant, the petitioners in all these writ petitions have applied. They have educational qualification prescribed for the post. However, none of the petitioners in these writ petitions received call letters. The petitioners stated that their names were not sponsored by the Employment Exchange. The petitioners learnt that they have not been called for interview, because of the petitioners' age factor. Hence, the petitioners have come forward with these petitions for issuance of writ of mandamus, directing the respondents to sponsor and consider the candidature of the petitioners without reference to the age of the petitioners for the year 2014.

3.The petitioner in all these cases have Educational qualification which is required for the post of Technical Assistant in the first respondent Corporation. As per the Tamilnadu Police Housing Corporation Limited Service Regulations 2012, it is admitted that the maximum age limit for SC candidates is 35 years, for BC candidates is 32 years and for OC candidates is 30 years. Though the petitioners in all these cases crossed the age limit prescribed under the Special rules, the petitioners in all these cases rely upon Rule 12 (d) of the Tamilnadu State and Subordinate Service Rules which reads as follows:

12. Qualifications— (a) (i) The minimum general educational qualification wherever referred to in the Special Rules shall mean the qualification prescribed in Schedule I to this Part:

.....

(d) The maximum age-limit prescribed in the special rules shall not apply—

(i) to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Class and Denotified communities or of destitute widows of all castes to a post included in a service for which the Special Rules prescribe a qualification lower than a degree



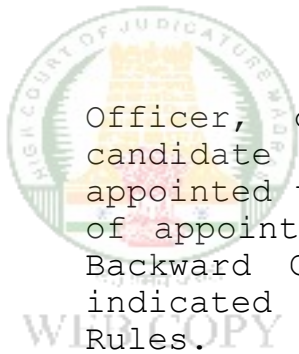
of any University mentioned in Schedule II to this part, if such candidate possesses a general educational qualification which is higher than that referred to in subrule (a) and he is otherwise qualified for appointment;

or

(ii) to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes and Denotified communities or of destitute widows of all castes who holds a degree of any University mentioned in Schedule II to this part, if the degree he holds is not lower than the degree prescribed in the Special Rules for appointment to such post and if he is otherwise qualified for appointment."

4.The term Special rules is also defined under Rule 2 (19) of the Tamilnadu States and Subordinate Service Rules. As per Rule 2 (19), 'Special Rules' shall mean the rules in Part III of Tamil Nadu Services Manual applicable to each service governing the posts. Therefore, if the rules in part III of Tamilnadu Service Manual includes the Service Rule framed for the first respondent, the petitioner's case can be considered. By referring to Rule 2 (19) and 2(12)(d) of Tamilnadu State and Subordinate Service Rules, the learned counsel appearing for the petitioner submitted that the maximum age limit prescribed in the Special Rules shall not apply to the appointment of candidates belonging to the Scheduled Casts and Backward Classes to a post included in a service, for which the Special Rules prescribed a qualification lower than a degree of any university mentioned in Schedule II. Stating that the petitioners in these cases possess General Educational Qualification, higher than that referred to in Service Rule and they are otherwise qualified for appointment, it is contended that the petitioners are entitled to get appointment irrespective of their age.

5.In this case, it is contended before this Court that the petitioners in all these cases are entitled to the benefit of Rule 12 (d) of Tamilnadu State and Subordinate Service Rules as Tamil Nadu Police Housing Corporation Limited Service Regulations 2012 is also a Special Rules as defined under Section 2(19) of Tamil Nadu State and Subordinate Service Rules. Further counsel for the petitioner submitted that the question whether the Rule namely Tamilnadu Police Housing Corporation Limited Service Regulations 2012 is included in the Manual or not is not relevant in view of the judgment of this Court by a learned single Judge in the case of **D.Mangayarkarasi Vs. The District Backward Classes Welfare Officer, Vellore - 1, North Arcot District** reported in **1998 (2) MLJ 370**. Similar issue was raised in a writ petition filed by a candidate to quash the proceedings of the District Backward Class Welfare



Officer, dated 02.06.1998, terminating the appointment of the candidate therein on the ground that she is not qualified to be appointed to the post after crossing the age of 35 years at the time of appointment. The question was whether the Rules of Tamil Nadu Backward Classes Welfare Subordinate Service is a Special Rule indicated in Rule 2(19) of Tamilnadu State Subordinate Service Rules.

6.The judgment of learned single judge in para 7 of the said judgment is relevant, therefore extracted hereunder.

7. The learned Government Pleader submits that it is clear from the language of the rule that it refers only to Special Rules which were in existence at the time when the General Rules came into force i.e., 1.1.1955. According to the learned Government Pleader, the relevant word used in the rule is "prescribed". As it is in the past tense the learned Government Pleader submits that it could apply only to the prescription already made by the Special Rules and that it would not govern the Special Rules which were framed subsequently for different services. As seen already, the Special Rules for The Tamil Nadu Backward Classes Welfare Subordinate Service were framed only in 1978 and by a fiction they were deemed to have come into force from 2nd May, 1969. Hence the arguments of the learned Government Pleader is, Rule 12(d) cannot be invoked by a person seeking appointment to a post governed by the Tamil Nadu Backward Classes Welfare Subordinate Service Special Rules. Though the arguments is attractive, it cannot be accepted. Rule 2(19) of Part I - Preliminary of the Tamil Nadu State and Subordinate Services Rules defines "Special Rules" to mean the rules in Part III applicable to each service or class of service'. Whenever Special Rules are framed under Article 309 of the Constitution of India, they are included in Part III of the Tamil Nadu State and Subordinate Service Rules. In fact the Special Rules for the Tamil Nadu Backward Classes Welfare Subordinate Service Manual, Volume II 1970. Applying the definition of 'Special Rules' found in Rule 2(19) of Part I Preliminary of the Tamil Nadu State and Subordinate Services Rules to Rule 12(d) of Part II, viz., General Rules, it is evident that Rule 12(d) of the General Rules will govern the Special Rules for the Tamil Nadu Backward Classes Welfare Subordinate Service. There is no warrant for construing Rule 12(d) of the General Rules as to



apply one to the Special Rules already made or the age limit prescribed already in the Special Rules in existence in 1955. That would be really adding words to Rule 12(d) which is not permissible. The Rules has to be understood as it is. Rule 12(d) of the General Rules has really been framed in the patterns adopted by the Legislature in several enactments. Many an enactment have utilised the word "prescribed" in the sections thereof. Normally, the terms "prescribed" whenever used in an enactment will also be defined in that enactment as "prescribed by Rules framed under the Act". Since Rules could be framed under an Act only after the Act came into force, the term "prescribed" in such Acts would necessarily apply to Rules framed subsequent to the Act."

7.The argument of the respondents that by virtue of Rule 2 of the General Rules, the age limit prescribed in the Special Rules would prevail over the provision contained in Rule 12(d) of the General Rules was not accepted by the learned Judge. Further, it was held as follows:

"11. The argument that by virtue of Rule 2 of the General Rules, the age limit prescribed in the Special Rules would prevail over the provision contained in Rule 12(d) of the General Rules, is also not acceptable. No doubt, Rule 2 of the General Rules provides that a Special Provision will prevail over the general provision. But Rule 12(d) of the General Rules is itself a special provision contained in the general rules. In fact Rule 12 of the General Rules by the terminology used therein should be treated as part of the Special Rules relating to different services whenever they are framed. The applicability of Rule 12 of the General Rules has to be excluded by the Special Rules either expressly or by the implication by containing a provision which is repugnant to Rule 12 of the General Rules. In the matter of interpretation of statutes two Latin maxims are normally found useful. They are (1) generalia specialibus non-derogant i.e., a Special Law is not abrogated by a later General Law and (2) generalibus specialia derogant i.e., a prior general law maybe abrogated by a later special law. The best known judicial statement of the position is Lord Phillimore's in *Nicolle v. Nicolte* (1922) 1 A.C. 284 (P.C.) at page 290, which is as follows:

It is a sound principle of all jurisprudence



that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases of which the particular law is but one."

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8.Learned Additional Government Pleader submits that all special rules which were included in part III of Tamilnadu Services Manual are framed by the State Government in exercise of its power under Article 309 of Constitution of India. He further pointed out that the Tamilnadu police Housing Corporation Limited Service Regulations 2012 was framed by a resolution of the Board and not by the Government. Though the Government framed such regulations, the special rules in this case namely Tamilnadu Police Housing Corporation Limited Service Regulations 2012, is not a Special Rule which could be included in part III of Tamilnadu Service Manual. Even in paragraph 7 of the judgment relied upon by the petitioner's counsel, it is indicated that Tamil Nadu State and Subordinate Service Rules will be applicable to Special Rules framed under Article 309 of Constitution. Rule 3 of Tamil Nadu State and Subordinate Service Rules also makes the position clear.

9.In the absence of any provision connecting the service regulations applicable to Tamilnadu Police Housing Corporation to a Government service, this Court has no reason to reject the contention of the learned Additional Government Pleader regarding the applicability of Rule 12(d) of Tamilnadu State and Subordinate Service Rules. This Court for obvious reasons finds that Tamilnadu Police Housing Corporation Limited Service Regulations 2012 is not a Special Rule as defined under 2(19) of Tamilnadu State Subordinate Service Rules and hence the age limit prescribed under Tamilnadu Police Housing Corporation Limited Service Regulations 2012, will apply to the petitioner. Since the petitioners have crossed the age limit, this Court is unable to entertain these petitions as they are not qualified to be appointed to the post of Technical Assistant in the first respondent. Hence, this Court finds no merit in these writ petitions.

10.Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Chairman cum Managing Director,
Tamil Nadu Police Housing Corporation Ltd.,
No.132, EVR Road, Kilpak,
Chennai.
- 2.The Director,
Employment and Training Department,
Guindy, Chennai.
- 3.The District Employment Officer,
Virudhunagar District, Virudhunagar.
- 4.The District Employment office,
Thoothukudi District.
- 5.The District Employment Office, Madurai.
- 6.The Principal Secretary to Government,
Personnel & Administration Reforms Department,
Fort St. George, Chennai.

+5 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-102861[F] dated 02/12/2019)

W.P. (MD) .Nos.1979, 2100 to 2103 of 2014
29.11.2019

SGS (CO)
KB(29.07.2021) 7P 12C