

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.19144 OF 2018

ORDER

This writ petition is filed seeking the following relief:

“....to issue writ or direction preferably Writ of Mandamus declaring the Memorandum *vide* Rc.No.370/A2/2018, dt 3.5.2018 issued by the respondent No.3 and the action of the respondents in not considering the candidatures of the petitioners for appointment by transfer to the post of Assistant Analytical officer (I.D Assistants) in intelligence department as per the cut of date of 30-6-2017 as prescribed in the Memorandum Rc.No.370/A2/2018, dt 20.1.2018 as illegal, arbitrary and in violation of principles of natural justice and violative of Art 14 and 21 of Constitution of India and consequently direct the respondents to consider the candidatures of the petitioners without reference to the memorandum of Rc.No.370/A2/2018 dt 13.2.2018 in so far as it concerns modification of cut of date and pass such other order or orders as the Hon'ble Court deems fit and proper in the circumstances of the case.”

Heard Sri D.Sudharshan, learned counsel appearing for the petitioners and learned Government Pleader appearing for the respondents.

Learned counsel appearing for the petitioners submits that the respondents have issued the notification on 20-01-2018 for filling up the vacancies of Assistant Analytical Officer, wherein it was specifically mentioned that no person

shall be eligible who has completed 32 years of age as on 30-06-2017; that in pursuance thereof, the petitioners have applied for the said posts; that as per Rules, the requirement of fulfilling the upper age limit as on 1st July of the recruitment year is made applicable only in respect of direct recruits, but not in respect of candidates appointed by transfer. Learned counsel has drawn attention of this Court to G.O.Rt.No.643, dated 10-05-2017, wherein Rule No.6 issued in G.O.Ms.No.168, dated 25.09.1999 was amended by substituting that “no person shall be eligible for appointment by transfer, if he has completed 28 years and in the case of direct recruitment, if he has completed 28 years of age as on the 1st day of July of the year in which the notification for selection is made”. Learned counsel further submits that the said amendment to Rule No.6 of G.O.Ms.No.168, dated 25.09.1999 clearly shows that the requirement of 28 years as on the 1st day of July of the year in which the notification was issued was made applicable in respect of direct recruitment, but not appointment by transfer; that the requirement of upper age limit of 28 years has been enhanced to 32 years by way of another amendment to Rule No.6 vide G.O.Ms.No.411, dated 25.09.2009; that the respondents have issued another Memorandum dated 13.2.2018, wherein partial amendment

was made to the effect that no person shall be eligible who has completed 32 years of age as on 1.7.2018; that in view of the said partial amendment, the petitioners are ineligible for appointment to the post of Assistant Analytical Officer; that challenging the said Memorandum dated 13.2.2018, the petitioners have filed W.P.No.10111 of 2018; that this Court vide order dated 6.4.2018 disposed of the said writ petition directing the respondents therein to consider the representation of the petitioners dated 22.03.2018 and take appropriate action in accordance with law, till then, ten posts of Assistant Analytical Officers (I.D. Assistant) shall be kept vacant; that pursuant to the said order passed by this Court, the respondents have considered and rejected the cases of the petitioners vide Memorandum dated 3.5.2018 on the ground that no person shall be eligible who has completed 32 years of age as on the 1st day of July of the year, in which the notification for selection is made, which is contrary to G.O.Rt.No.643, dated 10.05.2007; that when the said G.O.Rt.No.643 makes it clear that the requirement of upper age limit of 28 years as on 1st day of July in which notification is made is applicable only in respect of direct recruits, but the petitioners have applied as in-service candidates; that all the petitioners are eligible for the post of Assistant Analytical

Officer as on the date of notification dated 20-01-2018 and therefore, their cases be considered for appointment to the post of Assistant Analytical Officer without insisting that one must be within the age of 32 years as on 1st July of the year in which notification for selection is made; that several vacancies are available in the cadre of Assistant Analytical Officer; that appropriate orders be passed directing the respondents to consider the cases of the petitioners for promotion to the post of Assistant Analytical Officer.

Learned Government Pleader appearing for the respondents submits that the respondents have rightly rejected the cases of the petitioners vide proceedings dated 3.5.2018; that as per the Rules, one must satisfy the age requirement as on 1st July of the year in which notification is made; that recruitment notification was issued in the year 2018 and one must satisfy the maximum age as on 1st July of the year in which notification is made; that since the petitioners are all age barred, their cases were not considered for promotion to the post of Assistant Analytical Officer and that the respondents have rightly rejected the cases of the petitioners.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that

the impugned rejection order dated 3.5.2018 is contrary to G.O.Rt.No.643, dated 10-05-2007. G.O.Rt.No.643 makes it clear that the upper age limit is being insisted as on 1st July of the year in which notification is issued, only in respect of direct recruits, but not to the candidates appointed by transfer. Admittedly, the petitioners are in-service candidates and they are seeking promotion to the post of Assistant Analytical Officer under appointment by transfer. Further, this Court while disposing of W.P.No.10111 of 2018, dated 6.4.2018, reserved 10 posts of Assistant Analytical Officer till disposal of the representation of the petitioners. Since the respondents have considered and rejected the cases of the petitioners *vide* impugned Memorandum dated 3.5.2018 and thereafter, no recruitment has taken place to the post of Assistant Analytical Officer, there are 10 clear vacancies available in the cadre of Assistant Analytical Officer. Hence, the cases of the petitioners can be considered in the unfilled vacancies.

Accordingly, the Writ Petition is disposed of. The respondents are directed to consider the cases of the petitioners, who are eligible as on the date of issuance of notification dated 20-01-2018, for promotion to the post of the Assistant Analytical Officer and pass appropriate orders

within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

27th February, 2019
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