

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.95, 544 of 2020, 35849, 35906 of 2019, W.P.(MD) No.201
of 2020 and W.P.SR No.158006 of 2019

and

W.M.P.Nos.111, 639, 640, 641 of 2010;
36668, 36754 and 36821 of 2019

N.S.SIVAKUMAR ..PETITIONER IN WP.No.95 of 2020
C.ARUMUGAM ..PETITIONER IN WP.No.544 of 2020
U.KASIPANDIAN ..PETITIONER IN WP.No.35849 of 2019
B.UDAYAKUMAR ..PETITIONER IN WP.No.35906 of 2019
S.V.NAGARAJAN ..PETITIONER IN WP(MD)No.201 of 2020
MATHI
C.MAHESH ..PETITIONERS IN WP.SR.No.158006 of 2019

-vs-

1. THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF TAMIL NADU,
SECRETARIAT,
FORT ST. GEORGE,
CHENNAI - 600 009.
 2. THE PRINCIPAL SECRETARY TO GOVERNMENT (FAC),
PUBLIC (SPECIAL.A) DEPARTMENT,
FORT ST. GEORGE,
CHENNAI - 600 009.
 3. THE REGISTRAR GENERAL,
HIGH COURT MADRAS,
CHENNAI - 600 104. .. RESPONDENTS IN WP.No.95 of 2020
- 1 STATE OF TAMILNADU REP.BY
PRINCIPAL SECRETARY TO GOVERNMENT (FAC)
PUBLIC (SPECIAL-A) DEPARTMENT
SECRETARIAT CHENNAI -600 009.

- 2 THE REGISTRAR GENERAL
HIGH COURT OF JUDICATURE AT MADRAS
MADRAS HIGH COURT
CHENNAI -600 104.RESPONDENT IN WP Nos.544 OF 2020
and WP.NO.35906 OF 2019
- 1 THE STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT PUBLIC (SPECIAL A) DEPARTMENT
SECRETARIAT FORT ST. GEORGE
CHENNAI 600 009.
- 2 THE REGISTRAR (RECRUITMENT)
HIGH COURT OF MADRAS
CHENNAI 600 104. ... RESPONDENT IN WP NO.35849 OF 2019
- 1 THE REGISTRAR GENERAL,
MADRAS HIGH COURT,
CHENNAI.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT (FAC)
PUBLIC (SPECIAL.A) DEPARTMENT,
FORT ST. GEORGE,
CHENNAI 600009 ..RESPONDENTS IN WP(MD)No.201 of 2020
- 1 THE REGISTRAR GENERAL,
MADRAS HIGH COURT,
CHENNAI.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT (FAC)
PUBLIC (SPECIAL.A) DEPARTMENT,
FORT ST. GEORGE, CHENNAI 600009
3. THE REGISTRAR (RECRUITMENT)
HIGH COURT,
MADRAS.RESPONDENTS IN WP.SR.No.158006 of 2019

Prayer in WP No.95 of 2020 :

Calling for entire records pursuant to the Tamil Nadu Government Gazette Notification Vide No. 376 published on 24.11.2017 regarding amendment to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 issued by the 1st Respondent and the Notification No. 2 of 2019 dated 12.12.2019 issued by the 2nd Respondent regarding Direct Recruitment to the Post of District Judge (Entry Level) in the Tamil Nadu State Judicial Service in so far as altering the

upper age limit for taking part in the selection process from 48 years to 45 years for BC Candidates is concerned and quash both of the them and consequently to direct the 2nd and 3rd respondents to allow the petitioner to take part in the said selection process.

WP No.544 of 2020 :

calling for records and quashing the impugned notification No. 2/2019 dated 12.12.2019 of the first respondent and consequently direct the respondents to revise the upper age limit for candidates belonging to categories other than SC/ST for Direct Recruitment For the Post of District Judge (Entry Level) in the Tamilnadu State Judicial Service.

WP No.35849 of 2019 :

To Call for the records relating to the impugned Notification No.02/2019 dated 12/12/2019 issued by the 1st respondent and to quash the same in so far as Clause 4 (A) of Notification prescribing upper age limit as 45 years of Most Backward Class and Denotified Community category is concerned and consequently directing the respondents to prescribe the upper age limit for BC, BCM, MBC / DC category communities as 48 years on par with the earlier Notification No.01/2019 dated 13.01.2019 issued by the Respondents and consequently allow the Petitioners to participate in the selection to the post of District Judge (Entry Level) on that basis.

WP No.35906 of 2019 : pleased to issue a Writ of Declaration declaring that Rule 5(SL.NO 3) of Tamil Nadu State Judicial Service (cadre and Recruitment rules) 2007 denying relaxaton of age to Backward class/ Most backward Class and Denotified Communities and others in null and void and violative of article 14 to 16 of the constitution of India in so far as fixing the maximum age limit for Backward class community without providing age relaxation is concerned and permit the petitioner to apply and participate in the recruitment process as per notification No.2/2019 dated 12.12.19.

WP(MD)No.201 of 2020 : pleased to issue a Writ of Declaration declaring the Sl.No.4 of the notification No.2/2019 dated 12.12.2019 as null and void as its violates petitioner's fundamental rights guaranteed under the Constitutions of India U/A 14,16 and 21 and consequently direct the 1st Respondent to consider my application for the appointment of District Judge (entry level) as per merit in selection.

Prayer in WP.SR.No.158006 of 2019 : pleased to issue a Writ or order or orders or direction, particularly in the nature of Writ of Certiorarified Mandamus to call for the records made in Notification No.2/2019 dated 12/12/2019 on the file of second respondent herein and quash the same as illegal in so far as petitioners are concerned fixing the upper age limit as 45 instead of 48 as fixed in earlier Notification No.1 of 2019 dated 13/01/2019 of the 2nd Respondent herein.

For Petitioner : Mr.Om Prakash
in W.P.No.95/2020 Senior Counsel
for Mr.V.Vasanthakumar
for Mr.T.P.Prabhakaran

For Petitioner : Mr.V.Arun
in W.P.No.35849/2019

For Petitioner : Mr.M.Muthappan
in W.P.No.35906/2019

For Petitioner in : Mr.K.Ravi Anantha Padmanaban
W.P.No.544 of 2020

For Petitioner in W.P. : Mr.Muthappan
(MD) No.201/2020 for M/s.V.Lakshmanan

For Petitioner in : Mr.R.Sankarasubbu
W.P.No.SR 158006/2019

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader
for respondent Nos.1 and 2
in W.P.No.95/2020;

Respondent No.2 in
W.P.Nos.35849/2019;
W.P.(MD) No.201/2020 and
W.P.No. SR 158006/2019

Respondent No.1 in
W.P.Nos.35906/2019 and
544/2020

: Mr.B.Vijay
for respondent No.3 in
W.P.No.95/2020;

Respondent No.2 in
W.P.Nos.35849, 35906/2019;
544/2020

Respondent No.1
in W.P. (MD) No.201/2020

Respondent Nos.1 and 3
in W.P.No. SR 158006/2019

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioners in all the writ petitions are candidates of the Backward Class Category claiming relaxation in age at par with the candidates of Schedule Castes and Schedule Tribes, which stands at 48 years, on the ground that they also belong to the reserved category of candidates and, therefore, any denial of age relaxation to them would amount to invidious discrimination by not extending a benefit which otherwise ought to have been also given to the petitioners herein. Their contention is that this is not based on any rationale and there are no reasons available, more so in view of the fact that the respondents had extended this benefit in the previous notification dated 13.1.2019, but for the same vacancies and for the same selections, the fresh impugned notification dated 12.12.2019 omits the said benefit. The affidavit of the State Government as well as the High Court nowhere discloses any rational basis and there being no intelligible differentia decipherable, the said benefit should be extended to the petitioners herein as they also belong to the weaker section of the Backward Class Category. This they say is in order to allow a concession enabling the reserved category Backward Class candidates to attain the objective of getting suitable representation, inasmuch as relaxation in age is a tool to fulfill the aim of reservation and denying the said benefit, therefore, is against the constitutional mandates for the reserved category.

2. The second argument emphasizes on the fact that the vacancies for which such relaxation is being claimed relate to

the year 2013, when the last selections were held. These selections were inordinately delayed for almost six years and commenced in the year 2019. This long lapse of time, therefore, deprived the petitioners of their opportunity to avail the benefits as candidates in the said selection process and, therefore, by placing heavy reliance on a Division Bench judgment of the Jharkhand High Court in *Bhola Nath Rajak and others v. The State of Jharkhand and others*, 2014 SCC Online Jhar 73: (2014) 2 AIR Jhar R 638, it is urged that in order to remedy this unjust deprivation, a relaxation over and above the maximum age should be otherwise prescribed to enable the petitioners to undertake the fresh examinations and selection process of District Judge (Entry Level).

3. It is submitted that the petitioners had a right to apply and appear in the recruitment process, which rights have been taken away in spite of the fact that they were eligible, but a delay and then the subsequent change in the stand of the respondents has brought about this unjust situation.

4. It is further submitted that age relaxation for recruitment to the other posts of the Subordinate Judiciary is available to the Backward Class candidates, but there is no rationale behind non providing of this relaxation to the candidates who are seeking to participate in the selection process for the post of the District Judge (Entry Level). In the absence of any distinctive rational for the said purpose, there cannot be any justification for not providing any such relaxation to the petitioners.

5. It is also submitted that relaxation in marks has been given, but there is no reason as to why relaxation in age cannot be afforded to the petitioners in order to fulfill the object of reservation.

6. One more fact deserves to be taken notice of, that is against the notification issued on 13.1.2019, no single candidate could be selected and, therefore, in this peculiar situation also a fresh opportunity by providing relaxation, more particularly in the case of reserved category candidates, should be extended.

7. One of the other arguments that has been advanced is that a number of vacancies for which the selections were to be held arose prior to the amendment which is under challenge and the eligibility of age should always be construed with reference to the year of vacancy. Learned counsel advancing this

submission, apart from relying on other judgments to which reference shall be made herein after, has heavily relied on a Division Bench judgment of the Rajasthan High Court in the case of Prakash Chand and others v. The State of Rajasthan and another, reported in 1990 (2) WLN 317.

8. Replying to the said submissions, learned counsel for the State has relied on the counter affidavit filed in one of the writ petitions, namely W.P.No.35906 of 2019, to contend that the Apex Court in All India Judges' Association and others v. Union of India, reported in (2002) 4 SCC 247, in paragraphs (37) and (38), had accepted the Shetty Commission report in relation to age relaxation, which does not contain any separate age relaxation for the Backward Classes. To the contrary, the issue was very much discussed by the Supreme Court vis-a-vis in particular to the State of Tamil Nadu, where such recommendations had been made, but the Apex Court while accepting the report of the Shetty Commission did not provide any such benefit of relaxation in age to the Backward Class category. Learned Government Pleader, therefore, contends that such relaxation cannot be read beyond the said judgment.

9. It is further submitted that the issue of any delay in holding of the selections does not per se extend any such right or confer any benefit on the petitioners, inasmuch as such benefits were never extended in the past under any rule that was for the time being in force to the Backward Class community. Secondly, the posts are being filled up keeping in view the constant monitoring and directions issued by the Apex Court in the case of Malik Mazhar Sultan v. U.P. Public Service Commission and others, in Civil Appeal No.1867 of 2006, where in relation to the State of Tamil Nadu as well as other States, the following orders were passed on 6.11.2019:

"... The note of learned Amicus Curiae would go to show that there are 30 posts in the District Judge which are to be filled up against the direct recruitment quota. It appears that the said vacancies are yet to be notified. The High Court is requested to notify the same within two weeks and thereafter, complete the process of selection and appointment as per the schedule laid down by this Court in Malik Mazhar Sultan case."

10. It is, therefore, urged that this issue of any delay now cannot be entertained as the answering respondents are under a mandate of the Supreme Court to complete the selection process. No directions have been given by the Apex Court to

grant any relaxation in age and even otherwise, any such clarification in respect of the said directives can only be obtained from the Apex Court keeping in view the directions contained in paragraph (40) of the judgment in the case of All India Judges' Association and others v. Union of India (supra).

11. It is also the contention of the Government that in the absence of any such rules, no such benefit can be extended, nor is there any power of relaxation so as to extend such benefit

12. He has further supplemented the arguments advanced by the learned counsel for the High Court by relying on two judgments of this Court in the case of R.Srinivasan v. The State of Tamil Nadu and others, [W.P.No.14437 of 2013, decided on 4.7.2013], more particularly paragraph (8), as followed by another Division Bench in the case of S.Manikandasamy v. The Registrar General and another [W.P. (MD) No.10624 of 2013, decided on 16.7.2013], where a similar challenge raised was rejected by the High Court.

13. Mr.Vijay, learned counsel for the High Court had advanced his submissions contending that equality in opportunity in matters of employment does not mean equality or uniformity in all respects. It is urged that there is no manifest arbitrariness demonstrated by the petitioners and a mere difference in age relaxation between two different classes of the reserved category does not amount to any invidious or hostile discrimination.

14. He further submits that the judgment of the Jharkhand High Court in Bhola Nath Rajak and others v. The State of Jharkhand and others (supra), as relied on by the learned counsel for the petitioners, does not come to their aid, for which reliance has been placed on other judgments to be detailed herein after.

15. His further contention is that once a rule is in place, the same cannot by any administrative decision be upturned, nor can it be interfered with by way of a judicial intervention, inasmuch as there is neither any infirmity or constitutional invalidity so as to infer any deficiency in the Rule.

16. He has then contended that the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995, as it then stood, prescribed the maximum age of 48 years on the 1st July of the year in which the selection/appointment was to be made. There was no separate prescription of relaxation, nor was there

a minimum age prescribed for a candidate. The said Rules came to be repealed and were substituted by the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, where the said prescription of age was redefined by providing that a candidate must not have attained the age of 48 years in the case of SC/ST and 45 years in the case of others as on 1st July of the year in which the selection/appointment is made. This change in the Rule indicated that the maximum age of 48 years was by way of a relaxation only to SC/ST candidates, whereas for all other categories it was 45 years only. It is contended by the learned counsel that this was in conformity with the report of the Shetty Commission, as accepted by the Apex Court in All India Judges' Association and others v. Union of India (supra).

17. He then submits that the said Rules came to be amended vide notification dated 24.11.2017 and Clause (3) in the schedule to Rule 5 of the aforesaid Rules, for the first time introduced the minimum age to be possessed by a candidate, which is 35 years. The rest of the provision of the maximum age of 48 years in the case of SC/ST and 45 years in the case of others as on the 1st July of the year of recruitment was kept intact.

18. Learned counsel for the High Court contends that on 13.1.2019 an erroneous notification containing an inadvertent error was issued, where the age of 48 years prescribed as the maximum age for SC/ST category candidates also indicated the same age for the Backward Class category candidates. It is urged that this prescription was erroneous, being not in accordance with Rules, 2007 but after the preliminary examinations were held, since no candidates could qualify in the examinations, the said process was terminated, whereafter the notification dated 12.12.2019 was issued in compliance of the directions of the Apex Court in the case of Malik Mazhar Sultan v. U.P. Public Service Commission and others (supra), where the correct prescription was again indicated with regard to relaxation of age up to the age of 48 years only in the case of SC/ST candidates and for all other candidates, the maximum age prescribed was 45 years, that was continuing from before.

19. He, therefore, submits that no vested right had accrued either under the old Rules or even under the new Rules and any such prescription in an erroneous notification does not create any right or a legitimate expectation in favour of the petitioners so as to extend the benefits, that too even through a judicial intervention in the present proceedings.

20. He contends that the decisions relied on by the learned counsel for the petitioners do not come to their aid and he has cited the judgments in his favour to substantiate his submissions on the ground that a long pendency of selection by itself will not extend any such benefit and he has attempted to distinguish the judgment of the Jharkhand High Court in Bhola Nath Rajak and others v. The State of Jharkhand and others (supra) relied on by the learned counsel for the petitioners by placing reliance on the judgment of the Division Bench of the Delhi High Court in Gaurav Mehta and others v. High Court of Delhi, reported in MANU/DE/0743/2014 : 2014 Supreme (Del) 841.

21. He also contends that the Division Bench judgment of the Rajasthan High Court in Prakash Chand and others v. The State of Rajasthan and another (supra) was delivered on the strength of the Rules of relaxation that were available extending automatic entitlement to a candidate to appear in the next examinations in the event of any non holding of examinations in any particular year. The ratio thereof does not apply in the instant case where no similar rules exist.

22. In rejoinder, learned Senior Counsel, Mr. Om Prakash, inviting the attention of the Court to the judgment in the case of Nawal Kishore Mishra and others v. High Court of Judicature of Allahabad and others, reported in (2015) 5 SCC 479, has urged that while considering the issue of reservation, the Apex Court had ruled that the High Court being empowered to act under Articles 233, 234 and 235 of the Constitution of India, and being a high constitutional functionary, it can provide for a scheme of reservation governing all State Services, including Judiciary. He submits that the Apex Court interpreted that the Rules framed under Article 309 of the Constitution of India and the provisions of Article 245 would have to be read subject to Articles 233 and 234 of the Constitution of India and, accordingly, the High Court can extend the benefit of such relaxation as is being claimed by the petitioners, for which there is neither any legal nor constitutional bar.

23. It is his submission that in the background aforesaid, on both counts, namely that of the rights available to the petitioners in lieu of the vacancies that had come into existence long before amendments and in view of the delayed selection process, the petitioners are entitled to the extension of benefit of relaxation.

24. Learned counsel for the High Court has supplemented his submissions by contending that the Apex Court has answered these

questions against the petitioners in the case of Hirandra Kumar v. High Court of Judicature at Allahabad and others, reported in 2019 (2) SCALE 752. He has also cited the Division Bench judgment in the case of C.Ramesh Kumar v. The Registrar General and others [W.P.No.18020 of 2013, decided on 25.7.2013] to contend that the upper age limit as prescribed being within the realm of the rule making authority, no arbitrariness can be attributed if a particular age has been fixed and the reasonableness or unreasonableness thereof is beyond the pale of judicial scrutiny.

25. The pleadings have been exchanged and after the filing of the counter affidavit a prayer for grant of an interim order was declined by us calling upon the parties to complete their pleadings and had fixed 4.2.2020 to proceed in the matter. Against this order declining interim relief on 13.1.2020, one of the petitioners approached the Apex Court by filing Special Leave to Appeal (c) No.2140 of 2020, which was disposed of by the following order:

"The petitioner is before this Court assailing Order dated 13.01.2020 in W.M.P. NO.113/2020 in W.P.NO.95/2020 whereby the Division Bench of the High Court of Judicature at Madras has declined to permit the petitioner to appear for examination by relaxing the age provided in Notification NO.2 dated 12.12.2019.

Having heard Mr. E. Om Prakash, learned senior counsel appearing for the petitioner, keeping in view the fact that the writ petitions are pending before the High Court and presently the issue is only with regard to the High Court of non-granting the permission to the petitioner to apply and appear for the examination for the post of District Judge, we do not propose to intervene in the matter at this stage. However, we take note of the contention as put forth by learned senior counsel appearing for the petitioner that the last date prescribed for filing/submitting the application is 31.01.2020 and the preliminary examination is to be held during the first week of April 2020.

Though in a normal circumstance, we refrain from requesting the High Court to dispose of the matter in a time frame, in the instant case since the urgency is made out and the High Court itself has indicated the next date instead of allowing the

matter to linger on with interim orders, we request the High Court to take up the matter and dispose of the same on the date on which the High Court has itself fixed the writ petition(s) for consideration or within a period of three weeks thereafter.

Further the apprehension of learned senior counsel appearing for the petitioner about the last date for application would stand addressed since if ultimately the petitioner succeeds, the High Court would also take note of granting the time to file/submit the application of the petitioner notwithstanding the fact that the last date for the same would have elapsed.

With the above observation, the special leave petition is disposed of.

Pending applications, if any, shall also stand disposed of."

26. It is in this background that we have heard the arguments on behalf of the respective parties, where the learned counsel have consumed almost the entire day of the Court.

27. The contest is on the premise that since the petitioners belong to the reserved category of candidates, they are entitled to a similar treatment in the matter of age relaxation and to deny them such a benefit is discriminatory and violative of Article 14 of the Constitution of India. This argument has been advanced in the backdrop that neither the Shetty Commission Report, nor All India Judges' Association and others v. Union of India (supra), nor any Rules deny such benefit. It is further submitted that in the cadre of lower judiciary, such benefits of relaxation in age at par with the SC/ST candidates has been given to the Backward Class Category candidates as well, and hence there is no rationality in denying the same benefits at the District Judge (Entry Level). Reliance, as indicated above, is placed on the decision in the case of Nawal Kishore Mishra and others v. High Court of Judicature of Allahabad and others (supra), contending that there is no dearth of power and the High Court itself can exercise this authority to give effect to an opportunity of employment to the reserved category candidates and secondly, such benefit had been extended through the notification dated 13.1.2019, which is being described by the High Court as an inadvertent error.

28. To supplement the arguments, as noted above, strong reliance was placed on the Division Bench judgments of the Jharkhand High Court in the cases of Bhola Nath Rajak and others v. The State of Jharkhand and others (supra) and Sanjiv Kumar Sahay v. State of Jharkhand, reported in 2008 (2) JLR 543.

29. At the outset, we may clarify that the issue of reservation cannot be mixed up with the question of relaxation of age, inasmuch as reservation is provided in terms of Article 16 of the Constitution of India to enable the fulfillment of the constitutional goal of equitable representation of the oppressed classes. Reservation in matters of employment is a constitutional mandate which is a policy or a concept for keeping a fixed number of jobs protected, and to the exclusion of others, for a certain class of people. It is to carve out a determined number or a percentage out of the whole by setting it aside and limiting its utilization for a particular class, caste or community, that is not to be given to or meant for others. Relaxation is an act or exercise of authority that renders a rule or some form of control or prescription, less strict or severe. It is an act that brings about some sort of partial remission by lessening the stiffness or intensity by bending it to a certain extent. The former, in terms of the Indian Constitution and in the present context partakes the nature of a fundamental constitutional right. The latter is a prescription of statutory procedure to meet a certain exigency at the option of the authority to exercise such power. The power to relax is not a fundamental right of reservation to be enforced under Part III of the Indian Constitution. It is in cases of hostile discrimination or manifest arbitrariness that a challenge be raised upon exercise of such power. Reservation and relaxation have therefore to be understood as two separate concepts and hence, relaxation is not a synonym for reservation. It is nobody's case that reservation has not been granted to the Backward Classes, to the contrary the notification and the impugned advertisement dated 12.12.2019 clearly specify the number of vacancies that are reserved for these category of candidates. The issue, therefore, is only of an additional relaxation in the upper age limit being granted to the reserved category candidates.

30. In this regard, we may refer to the judgment in the case of Ami Lal Bhat v. State of Rajasthan and others, reported in (1997) 6 SCC 614, which has also been referred to by the Division bench of the Jharkhand High Court decision in the case of Bhola Nath Rajak and others v. The State of Jharkhand and others (supra). In our understanding the said judgment in the

case of *Ami Lal Bhat v. State of Rajasthan and others* (supra) has to be understood in the context in which it was decided. The issue had arisen on account of the prescription of a cut-off date coupled with a situation where selections take an uncertain time thereby resulting in a disadvantage to a candidate who becomes ineligible at a later point of time. The Apex Court held that in the first place while construing the validity of any given rule, the same cannot be a question of reasonableness or unreasonableness of the Rule by looking at border-line cases. However, the Apex Court further went on to hold in paragraph (11) as follows:

"11. In our view this kind of an interpretation cannot be given to a rule for relaxation of age. The power of relaxation is required to be exercised in public interest in a given case; as for example, if other suitable candidates are not available for the post, and the only candidate who is suitable has crossed the maximum age-limit; or to mitigate hardship in a given case. Such a relaxation in special circumstances of a given case is to be exercised by the administration after referring that case to the Rajasthan Public Service Commission. There cannot be any wholesale relaxation because the advertisement is delayed or because the vacancy occurred earlier especially when there is no allegation of any mala fides in connection with any delay in issuing an advertisement. This kind of power of wholesale relaxation would make for total uncertainty in determining the maximum age of a candidate. It might be unfair to a large number of candidates who might be similarly situated, but who may not apply, thinking that they are age-barred. We fail to see how the power of relaxation can be exercised in the manner contended."

31. It is the same paragraph which has been relied upon by the Jharkhand High Court in *Bhola Nath Rajak and others v. The State of Jharkhand and others* (supra), but, in our opinion, applying the same principles on the facts of the present case, the first thing that we find is that there is no mala fide alleged; secondly, there was no complaint about delay in the holding of the examinations before the previous notification dated 13.1.2019. The contention of the petitioners that the benefit of relaxation in the upper age limit up to 48 years had been advertised for the Backward Classes in the notification

dated 13.1.2019, was clearly contrary to the existing rules that does not provide any relaxation in the upper age limit to Backward Classes. An advertisement contrary to rules cannot create a vested right or even give rise to a legitimate expectation beyond the rules. Paragraph 16 of the counter affidavit of the High Court is extracted hereinunder:

"16. The contention of the petitioner is that in the previous Notification for recruitment to the post of District Judge published on 13.1.2019 vide Notification No.1 of 2019, the Appointing Authority has prescribed the maximum age as 48 years for all reserved category, whereas in the impugned Notification the maximum age had been reduced to 45 years, which is per se arbitrary and unreasonable. The maximum age prescribed under earlier Notification dated 13.1.2019 is not in consonance with the age limit prescribed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007. The Appointing Authority has inadvertently prescribed the maximum age as 48 for reserved categories and the petitioner cannot take any advantage on the mistake crept in the previous recruitment Notification. The mistake committed in the previous recruitment in regard to fixation of maximum age cannot be taken as precedent and the same would not confer any civil or constitutional right to the petitioner to seek for age relaxation contrary to the Service Rules."

32. There was no relaxation in the upper age limit extended to the other Backward Class category candidates, for which we find a strong reason, namely the recommendations of the Shetty Commission, which after considering the proposals of other States, including that of the Tamil Nadu Government, had made a final recommendation of extending the benefit of relaxation in age up to 48 years only to the SC/ST candidates. The relevant part of the said recommendations relating to age limit are extracted herein under.

"10.81. Here again, we find lot of variance amongst the High Courts. It ranges from 35 to 45 years and 35 to 48 years.

10.82. The grievance of the promotees is that younger elements if inducted into the cadre would impair their promotional chances. There cannot be any doubt in this regard. If candidates at a relatively younger age are taken into service, they

would remain longer and march over the promotees for better avenues. The grievance of the service judges in this regard deserves to be removed.

10.83. Some States/High Courts have pleaded for the minimum age of 40. The Judicial Officers' Associations have made similar submissions. It has to be borne in mind that the direct recruits must have sufficient span of service in order to enable them to make some mark and look for career progress.

10.84. Secondly, at the age of 40, people begin to "settle down" with stable commitments. They would make commitment to their family, career, friends or some special interest. When once they make firm commitment in their life, they are unlikely to switch over to service, which entails periodical transfer. They may wait for an opportunity for elevation to High Court if they are really busy practitioners.

10.85. Thirdly, at the age of 40, we may get persons who are mostly unsuccessful at the Bar and the very purpose of direct recruitment of young and brilliant advocates may be defeated.

10.86. We are, therefore, of the opinion that the minimum age for direct recruitment should not be kept at 40.

10.87. The next question is whether it is proper not to prescribe any minimum age for such direct recruitment as it has been the practice in some of the States. We do not think that it is a correct practice. Judicial work requires heavy responsibility at the District Judge level by matured people. They are entrusted with the important Sessions trials apart from other diverse works which involve the demand for greater professionalism in the process of judging. It requires proper development of an attitude of mind and compatible behavioural patterns. The Constitution provides only the minimum standard with seven years practice at the Bar, but Advocates with seven years practice are sometimes selected as Civil Judge (Junior Division). By seven years of practice, one will not get the required maturity to handle Sessions cases. The life and liberty of the persons are at stake in Sessions cases.

10.88. We consider that there should be minimum age for direct recruitment and it should be not less than 35 years. To put it more explicitly, the minimum age should be 35.

10.89. Incidentally, we may state that a District Judge post is equivalent to the post of a Secretary in the State Service and Joint Secretary in the Central Government. In the normal course, the IAS Officers reach the post of Secretary /Joint Secretary at the age of 38 at the minimum and 46 at the maximum. We may explain it further:

10.90. The minimum age prescribed for a candidate for IAS recruitment is 21 and the maximum is 30 for general candidates with 5 years extension to SC/ST and 3 years extension for OBC. A candidate who has been selected to IAS cadre at the age of 22 has to render service for 16 years to become Secretary to the State Government, which is an equivalent post of the District Judge. That means, he would be eligible for the post of Secretary to Government at the age of 38 at the minimum, and 46 at the maximum, depending upon the age at which he has entered the service. With regard to the upper age limit, it seems to us that it should not be more than 45, with relaxation of a few years for SC and ST candidates. Persons beyond the age of 45 will have a short span of service with no scope for any further movement in the judicial career. Such persons would lack enthusiasm for the work and would be a liability than asset to the service.

10.91. Our recommendation about the age range between 35 and 45 is in consonance with the prevailing pattern followed by some States as we have seen earlier. Besides, the High Courts of Andhra Pradesh, Bombay, Delhi, Gauhati, Himachal Pradesh, Punjab & Haryana and Rajasthan have also expressed the view that 35 years should be the minimum and 45 years the maximum limits for direct recruitment of District Judges.

10.92. It may also be stated that a study of job satisfaction as reported by Robertson and Smith (1985) showed that satisfaction with work tended to increase with age, but that there is a dip in satisfaction in the 40-50 years age group, suggesting that this group is the most difficult to

motivate. (See: A Handbook of Personnel Management Practice by Michael Armstrong, p.273).

10.93. For the aforesaid, we recommend that the candidates for direct recruitment to the cadre of District Judges should be between 35 and 45 years and the upper age may be relaxed by 3 years for SC/ST candidates.

10.94. The same age limit must be applicable to service judges also as and when they are made eligible for such direct recruitment."

33. The said recommendation has found acceptance by the Apex Court in the All India Judges' Association and others v. Union of India (supra) in paragraph 37, which is extracted herein under:

"37. Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted."

34. Even though the issue of any comparative relaxation in age between Backward Class category and SC/ST category was not a specific issue raised in the said case, namely giving of identical relaxation to the other Backward Class categories, yet this issue has been finalized and has attained finality with the acceptance of the Shetty Commission report that has referred to relaxations to Backward Classes and SC/ST's in paragraph 10.90 quoted above. The judgment in All India Judges' Association and others v. Union of India (supra) is, therefore, a conscious decision on the Shetty Commission Report, which even having taken notice of relaxations being available to the other Backward Classes in I.A.S. recruitments, did not make any recommendations for such relaxation in upper age limit to Backward Classes in the judicial services. We are, therefore, bound by the same and we may further quote paragraph (40) of the judgment, which rules that any such clarification can only be sought from the Apex Court. Paragraph (40) is extracted herein under:

"40. Any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court. The proceedings, if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other court shall entertain them."

35. The aforesaid aspects either of the Shetty Commission or its acceptance by the Apex Court have nowhere been even referred to, considered or decided by the Division bench of the Jharkhand High Court in Bhola Nath Rajak and others v. The State of Jharkhand and others (supra) and other such similar cases. We may point out that the Delhi High Court in the case of Gaurav Mehta and others v. High Court of Delhi (supra) had, therefore, declined to follow the line of reasoning given in the case of Bhola Nath Rajak and others v. The State of Jharkhand and others (supra).

36. The counter affidavit filed on behalf of the High Court categorically explains this entire position also placing reliance on the other judgments that have been cited at the bar. Learned counsel for the High Court has also relied on the judgment in the case of Jamaluddin v. State of Jammu and Kashmir and others, reported in AIR 2012 SC 291, where also it has been held that age relaxation cannot be brought about by way of a judicial interpretation, unless the rules make a provision in relation thereto.

37. Additionally, it is an admitted position that the SC/ST category candidates are placed on a different scale as compared to the other Backward Classes. This is supported by the constitutional scheme by making separate provisions for both these classes. Thus, the learned counsel for the High Court is right in his submission that the equality clause would not be attracted so as to infer uniformity in rules of relaxation. Conversely, a mere different parameter of age relaxation cannot be a ground for challenging its validity when they are persons of different classes. It is for this reason that the Shetty Commission Report as well as the All India Judges' Association and others v. Union of India (supra) both have taken notice of the fact of age relaxation and have placed the SC/ST in one category, whereas they have placed all others in the same category for the purpose of age relaxation. It is, therefore, not open for this Court now to extend any such benefit or strike down the rule or read it down or interpret it contrary to what has been said above.

38. There is yet another argument which has been advanced, namely that other High Courts have extended such benefits. If such benefits have been extended by other High Courts, the same cannot be said to be discriminatory as against the petitioners, inasmuch as if they are entitled to any such benefit in other States, the same does not render the present Rules invalid. Even otherwise, under the federal structure of the Judiciary,

there is no such All India Judicial Services in place and each State having its own independent judicial organization as envisaged under the Constitution, each of the States and its High Court having exercise of autonomy over such services are empowered to either extend such benefits or otherwise make some other provision of relaxation which cannot be pressed into service for an argument of invidious discrimination for providing relaxation in upper age limits.

39. We may further point out that the learned counsel for the High Court has rightly contended that the prescription of maximum age either category wise or otherwise is a matter of prescription by the employer and in judicial services this issue has been settled by the Apex Court in the case of *Hirandra Kumar v. High Court of Judicature at Allahabad and others* (supra).

40. The next argument that has been advanced on the strength of the judgment in the case of *Bhola Nath Rajak and others v. The State of Jharkhand and others* (supra) is that on account of the delay in appointments, such relaxation should be made available to the petitioners. Having considered the same, we are of the opinion that a legitimate expectation can only be pressed into as an argument, provided there is an existing right. The right should be legally sustainable and should be an accrued one. A mere chance or an expectancy of appearing in a recruitment process cannot by itself be a right unless it is shown that it violates Article 14 of the Constitution of India or any other constitutional provision or legal provision. Reference be had to paragraphs (20) to (22) of the judgment in the case of *J.S.Yadav v. State of U.P. and others*, reported in (2011) 6 SCC 570 extracted herein under:

20. "The word 'vested' is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as: Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.' Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edn.) at p. 1397, 'vested' is defined as: (Law held by a tenure

subject to no contingency; complete; established by law as a permanent right; vested interests.'" (See Mosammat Bibi Sayeeda and others. etc. v. State of Bihar, AIR 1996 SC 1936)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide Howrah Municipal Corpn. v. Ganges Rope Co. Ltd., (2004) 1 SCC 663)

22. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course."

41. The contention of the petitioners, that had the examinations been held, and even now are being held with regard to the vacancies then existing, therefore they should be treated to be eligible would amount to extending their eligibility age contrary to the Rules. On account of becoming overage or otherwise such a deprivation does not violate any fundamental right or otherwise a legal right. No such ratio has been laid down in the case of Bhola Nath Rajak and others v. The State of Jharkhand and others (supra) and to the contrary, while considering the impact of the said judgment, a Division Bench of the Gujarat High Court in the case of Dushyantbhai Chandrakantbhai Shah v. High Court of Gujarat and others, reported in MANU/GJ/2118/2017 has come to the conclusion that the judgment of the Apex Court in the case of Ami Lal Bhat v. State of Rajasthan and others (supra) lays down the correct position of law. The said judgment of the Gujarat High Court has been upheld by the Apex Court, where a Special Leave to Appeal filed against the same, being Special Leave to Appeal (C) No.2878 of 2017 was dismissed on 11.8.2017.

42. In the case of Bhola Nath Rajak and others v. The State of Jharkhand and others (supra), there was a gap of more than five years between the advertisement earlier issued and when it was next issued in the year 2013. In the instant case, it is correct that after the 2013 selections, the advertisement was first issued in January, 2019. As noted above, no challenge was raised after 2013 to 2019 on the issue of absence of grant of relaxation in the upper age limit to the backward class candidates. The challenge raised in 2013 failed as is evident from the judgment in R.Srinivasan v. The State of Tamil Nadu and others (supra), followed subsequently by another Division Bench in S.Manikandasamy v. The Registrar General and another (supra). The error in the advertisement dated 13.1.2019 has already been dealt with herein above.

43. In the above circumstances, when no such relaxation was either contemplated by the Shetty Commission or even indicated in the All India Judges' Association and others v. Union of India (supra) and for all the reasons stated herein above, we do not find any of the judgments relied on by the learned counsel for the petitioners coming to their aid for extending the benefit of relaxation in age to the Backward Class category candidates at par with the SC/ST candidates. Paragraph (40) of the aforesaid judgment quoted above also restricts our interference in the matter.

44. It is not that the power to relax cannot be inferred, as, the Constitution empowers the High Court under Articles 233 and 235 of the Constitution to exercise such authority by prescribing a rule. The judgment in the case of All India Judges' Association and others v. Union of India (supra) also while accepting the Shetty Commission report does not debar the grant of further relaxation up to 48 years, but the recital of 48 years for SC/ST and 45 years for others is a valid indicator of prescription. It is not the case of the petitioners that no candidates of the Backward Classes are unable to apply or their numbers are so less on account of the prescription of 45 years upper age limit that some justification for relaxation in age can be culled out.

45. So far as the issue relating to the vacancies being of the earlier years is concerned, the petitioners had only a chance of applying and it is by now well settled that even selection does not give a right of appointment. Thus, a loss of opportunity on account of delay in the holding of examinations by itself, without there being any mala fides attributed, cannot

be aground to reinterpret or introduce any further relaxation in age to the benefit of the petitioners.

For all the reasons herein above, we do not find any merit in these writ petitions, which are accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.S.III)

/True Copy/

Sub Assistant Registrar

To:

1. THE ADDITIONAL CHIEF SECRETARY
TO THE GOVERNMENT OF TAMIL NADU,
SECRETARIAT,
FORT ST. GEORGE,
CHENNAI - 600 009.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT (FAC),
PUBLIC (SPECIAL.A) DEPARTMENT,
FORT ST. GEORGE,
CHENNAI - 600 009.
3. THE REGISTRAR GENERAL,
HIGH COURT MADRAS,
CHENNAI - 600 104.
4. THE REGISTRAR - RECRUITMENT,
HIGH COURT, MADRAS - 600 104.

+3cc to Mr.V.Vasanthakumar, Advocate, Sr.No.9191

AKM/07.02.2020/23P- 8C /

W.P.Nos.95, 544 of 2020, 35849, 35906 of 2019
W.P.(MD) No.201 of 2020 and
W.P.SR No.158006 of 2019