



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.25839 of 2012

M.Jaishankar,
Qualified Unemployed
Graduate Association,
having its office at
Manalagaram, Madhalam Post,
Sirkhazhi Taluk,
Nagapattinam District.

.. Petitioner

Vs.

1. The Chief Secretary,
Government of Tamilnadu,
Fort St. George,
Chennai 600 009.

2. The Chairman,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai-600 006.

3. The Controller of Examinations,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai-600 006.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 19.07.2012 with regard to age relaxation immediately.

For Petitioner : Mr.K.Desingh

For Respondents: Ms.K.Bhuvaneswari
Additional Govt. Pleader for R1

Mr.M.Devendran,
Standing Counsel for RR2 and 3



O R D E R

This writ petition has been filed seeking a direction to the respondents to consider the petitioner's representation dated 19.07.2012 with regard to age relaxation immediately.

2. The case of the petitioner association is that it is registered with the Registrar of Societies with an object to help the unemployed graduate youths. It claimed that there are 15 lakhs unemployed graduates and most of them registered with the employment exchange for employment in vain. It is also stated that the Tamil Nadu Public Service Commission (in short, "TNPSC") has not conducted any examination leading to more and more unemployment problems and hence, they were waiting for age relaxation in the conduct of examinations by the TNPSC, like the age relaxation given to the Schedule Caste and Schedule Tribes, by other similar recruiting statutory bodies in the country. The TNPSC issued a notification on 09.07.2012 to conduct examination for selection to the post of Village Administrative Officer (VAO) fixing the upper age limit as 40 years for Scheduled Caste, Schedule Tribe, Backward, Most Backward and Minorities without any age relaxation. The petitioner association sent a detailed representation dated 19.07.2012 to the respondents seeking age relaxation. Since there is no response, the petitioner is before this Court.

3. A counter-affidavit dated 28.02.2013 was filed by the respondents, inter alia, stating that Rule 38(b)III of Special Rule for Tamil Nadu Ministerial Service prescribes the age limit for selection by direct recruitment and following the same the subject notification was issued. It is stated that the authority to relax the rules is the Government and the TNPSC has no role to play in this regard. It is also stated that the TNPSC sent a reply dated 07.08.2012 to the representation of the petitioner dated 19.07.2012 and thus, sought for dismissal of this writ petition.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader and the learned Standing Counsel for the TNPSC.

5. It is true that there was a ban on recruitment imposed vide G.O.Ms.No.212, Public and Administrative Reforms Department, dated 29.11.2001, and that ban was lifted by G.O.Ms.No.14, P&AR Department, dated 07.02.2006. Considering the fact that the ban was in force for five years, the State Government thought it fit that those persons, who were affected by the said ban and lost their opportunity to get employment in the Government and Public Sector undertakings, must be suitably compensated and with that intention, the Government made a



policy decision, which was announced in the Assembly on 24.05.2006. Thus, G.O.Ms.No.98, P & AR Department, dated 17.07.2006, was issued enhancing the upper age limit for entering into Government Service by five years so as to enable the persons to apply for Government jobs who were affected by the ban on recruitment. However, since it is an one time concession, it was restricted for a period of five years from the date of lifting up of the ban, i.e., 07.02.2006 and thus, was operative till February 2011 and thereafter, the original upper age limit as found in the service rules was revived.

6. At this juncture, it is relevant to note that Hon'ble Mr.Justice V. RAMASUBRAMANIAN (as His Lordship then was) in D. Ameer Raja and Another v. State of Tamil Nadu and Another (Order dated 09.01.2013 in W.P.(MD) Nos. 65 and 66 of 2013) held as follows:

"13. A careful scrutiny of G.O.Ms.No. 98 would show that the ban order itself was in force only for a period of less than 4 years and 3 months. The ban order was in force from 29.11.2001 upto 7.2.2006. But the relaxation in the upper age limit was granted by G.O. Ms. No. 98, for a full period of 5 years. Persons who were on the verge of reaching the upper age limit during the period of ban order, namely, from November 2001 to February, 2006, were the persons who were actually intended to be benefited by the Government Order and the relaxation. Persons, who were not at the fringe, did not come within the zone within which the relaxation would have been beneficial for him.

14. The issue can be looked at from another angle. The benefit that the petitioners now claim, is a relaxation in the upper age limit without any restriction with regard to any date. If this is accepted what would happen is that the benefit of relaxation will assume completely disproportionate magnitude to the problem that is sought to resolve. The problem that G.O.Ms.No. 98 sought to resolve was the ineligibility of persons, who were at the fringe, to appear for direct recruitment to Public Services during the period of the ban order. Even persons, who had not attained majority either by 2001 or by 2006, now seek to benefit if a general relaxation upto 5 years is granted for all persons uniformly. Paragraph 2 of G.O. Ms. No. 98 shows very clearly that it was intended only to benefit those who lost the opportunity to participate in any direct recruitment to Public Services.

15. The petitioners, who are now 35 and 39 years of age, would have been only 23 and 27 years of age



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at the time when the ban order was imposed in November 2001. They would have actually become 28 and 32 years of age at the time when the ban order was lifted. After the lifting of the ban order in 2006, the petitioners have had the opportunity to participate in direct recruitment for a period of 5 years, upto 2011.

16. To put it differently, the ban order was a one time affair. What the petitioners now seek is a relaxation as an all time affair. If the malady is a one time affair, the remedy should also be only a one time affair and not an all time affair.

17. Mr. M. Ajmalkhan, learned Senior Counsel assailed the impugned order on the ground that though relaxation cannot be claimed as a matter of right, an order granting relaxation can be tested on the touchstone of Article 14 and on the question whether it seeks to serve the object for which it came into existence. I have, in fact, tested the impugned Rule on the very same touchstone. As pointed out earlier, the ban order came to existence to remove the hardship caused to the aspirants to Public Services, for a period of 4 years and 3 months. Taking a beneficial attitude, the said hardship was removed by providing relaxation upto 5 years, during the period from the date of issue of the Government Order upto the date of expiry of 5 years. Therefore, the Rule has, in fact, sought to achieve the object for which G.O.Ms.No.98 was imposed. Therefore, prima facie, I do not find any illegality in the impugned Rule and hence the writ petitions, cannot be entertained. Accordingly, they are dismissed."

7. A Division Bench of this Court in A. Alagesan and Ors. vs. State of Tamil Nadu and Ors. (2016) 1 CWC 732, had an occasion to consider the above order and while concurring with the said view held as follows :

7. Under similar circumstances, in an earlier round of litigation, a group of similarly placed persons challenged the said Rule 54B of the General Rules and after hearing the parties, by a common order dated 7.8.2015 made in W.P. Nos. 24341 to 24344 of 2015, a Division Bench of this Court comprising S. Manikumar, J. and M. Venugopal, J. in R. Renganathan v. Government of Tamil Nadu, extensively dealt with the contentions raised and dismissed the writ petitions holding as under:

"21. From the reading of G.O.Ms. No. 114, P & AR (S) Department, dated 11.08.2010, it could be further deduced that because there was ban for 5



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years between 29.11.2001 and 07.02.2006, the Government have granted concession of upper age limit, to a maximum period of 5 years, reckoned on and from 17th July 2006, ending with the 16th July 2011, in computing the age for appointment, to any post under the State Government, except the categories of posts of Teachers, Doctors and Police Constabulary.

22. Government Order also makes it clear that the Government have fixed a specific date, for computing the upper age limit, while granting relaxation for applying to any post under the State Government. Concession granted is given only to those who were affected and could not participate in the competitive examination, during the ban period between 2001 and 2006, by giving a specific reason that on account of the ban, during the said period, they became over-aged. After five years period, the concession granted, no longer continued.

...

27. Concession granted to the abovesaid specific categories both unemployed youth and those in Government service, during the said period of ban, between 29.11.2001 and 07.02.2006, cannot be claimed as a matter of right stating that the Government should relax the upper age limit of 5 years, to everybody, and more particularly, to those who had the opportunity to participate in the subsequent selection recruitment process in 2007 and 2013 respectively. Concession and relaxation cannot be claimed, as a matter of right. Depending upon the number of vacancies, need for recruitment and such other factors, the Government notifies the vacancies, through the Tamil Nadu Public Service Commission, Chennai, respondent No. 2, the agency, for conducting the competitive examinations. Right to employment is not a constitutional or statutory right, to be enforced against the Government. Nevertheless, it is the duty of the Government to fill up the posts, as and when there is a need.

28. Merely because, Group I examination was not conducted, as expected by the petitioner and others, relaxation of upper age cannot be claimed, as a matter of right. Government have not issued any promise for relaxation of upper age limit by 5 years, to all the unemployed youth and in service candidates, for all times to come. Government Orders have been made only to cover those, who could not participate in the selection process for



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the period between 29.11.2001 and 07.02.2006. Yet another factor to be considered by this Court is that when notification was issued in 2007, there was no objection to the same, when the Government have fixed the age limit. Again in 2013, there was no challenge. The petitioners had an opportunity to participate in the selection process. Now, when notification dated 10.07.2015, is issued in 2015, fixing the upper age limit, the petitioners have alleged violation of Article 14 and contended that there is a violation of the principles of promissory estoppel and doctrine of legitimate expectation.

29. Government have never made any promise that the upper age limit would be relaxed, for all times. That would be against the statutory rules, wherein upper age limit is prescribed, for the posts. There was no specific promise by the Government, that in all future recruitments to the posts in Group I Services, in Government, upper age would be relaxed, by five years. Government have issued orders only to those, affected by the ban period between 29.11.2001 and 07.02.2006. Therefore, it would not be appropriate on the part of the petitioners to contend that the doctrine of promissory estoppel has to be applied. Therefore, the question of applying Doctrine of Promissory Estoppel does not arise."

.....

16. The relaxation granted by the Government was a one-time measure and the same cannot be claimed as a matter of right by the petitioners, as fixing the cut-off date for determining the maximum or minimum age prescribed for a post is in the discretion of the rule-making authority. Whenever a cut-off date is fixed for determining maximum or minimum age for the post, there are bound to be some candidates, who will be over-aged or who are age-barred, but, this alone cannot be the reason for holding that the cut-off date, fixed by the government is arbitrary. Of course, courts are empowered to interfere even with a policy decision, if is found to be wholly irrational. But, merely because the petitioners claim that they had lesser opportunities to appear for examinations for government services, a policy decision cannot be interfered with.

.....



18. For the foregoing reasons, we find no reasons to differ with the view taken by the Division Bench of this Court in R. Renganathan case, referred supra."

8. The Hon'ble First Bench of this Court in the order dated 10.03.2020 made in W.A.No.360 of 2020 (R.Govindasamy Vs. The Government of Tamil Nadu rep. by its Chief Secretary) followed the above said judgments of the two Division Benches and took similar view.

9. It is also relevant to note that for the selection to the post of Junior Assistant, Bill Collector, Field Surveyor, Typist, Steno-Typist, etc., which are similar to that of the Village Administrative Officer, for which a common examination is being conducted by the TNPSC, the upper age limit for the Scheduled Caste and Scheduled Tribe candidates is 35 years, whereas, it is 40 years for the post of Village Administrative Officer. That being the position, this Court cannot interfere with the policy decision of the Government to stretch out the upper age gap.

10. If the prayer of the petitioner association is tested with the touchstone of the above decisions, the irresistible conclusion would be that the petitioner Association is not entitled for the relief sought for in this writ petition. Accordingly, this writ petition stands dismissed as devoid of merits. However, there shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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1. The Chief Secretary,
Government of Tamilnadu,
Fort St. George,
Chennai 600 009.
 2. The Chairman,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai-600 006.
 3. The Controller of Examinations,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai-600 006.
- + 1 cc to Mr.M. Devendran, Advocate SR.NO..22059
+ 1 cc to government Pleader SR.NO..22662

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LN(CO)
EU 10.7.2020