

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2020

CORAM :

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

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.7876 of 2020

1.K.Palanisamy
2.K.Chandra Sekar
3.S.Sriram
4.S.Vijay Anand
5.K.Thetchina Moorthy

... Petitioners

-vs-

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring Section 20(4)(iii) of Tamil Nadu Government Servant Service Conditions Act 2016 and Notification No.1/2020 dated 01.01.2020 issued by the 2nd respondent as invalid and unconstitutional and violative of Articles 14 and 16 of the Constitution and direct the respondents to permit the petitioners to participate in the selection for Group I posts pursuant to the said notification by reckoning the maximum age limit as on 01.07.2019 instead of 01.07.2020.

For Petitioners : Mr.P.V.S.Giridhar
for Mr.P.R.Krishnaraj

For Respondents : Mr.V.Jayaprakash
Narayanan
State Government Pleader
for respondent No.1

: Ms.C.G.N.Niraimathi
for respondent No.2

ORDER
THE CHIEF JUSTICE

This is a writ petition seeking a declaration that Section 20(4)(iii) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 [for brevity, "the 2016 Act"] and the Notification issued on 1.1.2020 by the Tamil Nadu Public Service Commission are unconstitutional, being violative of Articles 14 and 16 of the Constitution of India, and for a further direction to permit the petitioners to participate in the selection for Group-I posts pursuant to the notification dated 1.1.2020, by reckoning the prescribed maximum age limit as on 1.7.2019 instead of 1.7.2020.

2. The petitioners, in essence, therefore seek a declaration to the effect that the prescription in Section 20(4)(iii) of 2016 Act should be read in a manner so as to treat 1.7.2019 as the cut-off date for the age prescription and not 1.7.2020. In order to understand the controversy, Section 20(4) of the 2016 Act is extracted herein under:

"Section 20. Qualifications.

(1) to (3)

(4) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the Commission in cases where the appointment has to be made in consultation with it or the appointing authority, in other cases—

(i) that his character and antecedents are such as to qualify him for such service;

(ii) that such a person does not have more than one wife living or if such a person is a woman, that she is not married to any person who has a wife living;

(iii) that such a person satisfies the age prescribed in the special rules on the first July of the year in which the vacancy is notified; and
(iv) that, notwithstanding anything contained in the special rules, such a person also possesses the qualifications including experience prescribed for a post, on the date of notification of the vacancy."

3. The contention of Mr.Giridhar, learned counsel is that the phrase "first July of the year in which the vacancy is notified" occurring in Clause (iii) of Section 20(4) of the 2016 Act should be construed as the year in which the vacancy is declared and is notified by the Government to the Tamil Nadu Public Service Commission for proceeding with the recruitment. The argument is that if upon occurrence the vacancy had been intimated to the Public Service Commission in the year 2019, then the prescription of age has to be reckoned as on 1.7.2019. He contends that in the present case the advertisement issued on 1.1.2020 by the Public Service Commission cannot be the date of notification of the vacancy and, therefore, it is erroneous on the part of the respondents to advertise 1.7.2020 as the date of reckoning of the age prescription, which is 37 years in the present case. Admittedly, the petitioners had not completed 37 years of age as on 1.7.2019, but they are all beyond the age of 37 years as on 1.7.2020, thereby making them ineligible for appearing in the examinations under the impugned notification.

4. The contention of Mr.Giridhar is that the intention of the legislature is quite clear and he has laid emphasis on the word "notified", which means notification of the vacancy to the Public Service Commission and not the advertisement issued by the Commission. He submits, that had this been the intention, the aforesaid Section would have categorically stated about the issuance of the advertisement and not of the notification of the vacancy. The submission is that the advertisement by the Public Service Commission is not the notification, and if such is the stand of the respondents, then the same has to be read down or even struck down as being arbitrary, as the age prescription is related to the vacancy, and the vacancy being notified in the year 2019, the said Section cannot be construed otherwise. He urges that the implementation of the said Section by the respondents contrary to the intention will have to suffer the pain of invalidation, as this amounts to denial of an opportunity of public

employment to the petitioners, which violates Article 16 of the Constitution of India as well as the equality clause enshrined under Article 14 thereof.

5. The prayer has been opposed both by the learned Government Advocate appearing on behalf of the State as well as the learned counsel for the Public Service Commission.

6. Learned Government Advocate for the State has relied on a Division Bench judgment dated 28.2.2019 in W.A.No.624 of 2019 [P.B.Mohideen Abdul Khader v. State of Tamil Nadu and another, MANU/TN/2231/2019], particularly paragraphs (24) and (25) to contend that this identical issue having been answered by the Division Bench, the plea raised by the petitioners deserves to be rejected. He further submits that the word "notified", as occurring in the Section 20(4) (iii) of the 2016 Act, refers to the notification to the aspirants at large which is the advertisement, and is not relatable to the internal communication of the Government to the Public Service Commission.

7. Learned counsel for the Public Service Commission contends that the communication to the Commission is not a notification of the vacancy and the purpose of the Section aforesaid is to apply the prescription of age on the first July of the year in which the vacancies are advertised for selections.

8. Having considered the submissions raised, the right of an aspirant to apply or be considered against a post in matters of direct open recruitment commences only on the issuance of an advertisement. Consequently, the age prescription is clearly relatable to the terms as contained in the advertisement. Section 20(4)(iii) of the 2016 Act would, therefore, be referable to the advertisement being notified by publication. The vacancy has to be notified through the advertisement for making the aspirants aware of the number of vacancies and also the other prescriptions of qualification.

9. In our opinion, the requisitioning of vacancies to the Public Service Commission is an internal communication and at times the Public Service Commission does consume a certain period before the advertisement is issued. The word "notified" occurring in Section 20(4)(iii) of the 2016 Act does not reflect the requisition of vacancies through an internal communication by the Government to the Public Service Commission. In such circumstances, the first July of the year has to be construed the year in which the

vacancy appears in the advertisement issued by the Public Service Commission. The intimation of the vacancy to the Public Service Commission is only a requisition for filling up of the post and is not a notification to the aspirants at large. The reckoning of the date of eligibility and qualifications and the right to be considered of an aspirant, therefore, is only after an advertisement is issued indicating the vacancies and the posts. It is in this context that the word "notified" has to be understood, as the advertisement is the first step making an offer to the aspirants to enable them to apply. The word "notified" does not connote any notification to the Public Service Commission by the Government relating to any vacancies which are to be filled up by way of direct recruitment.

10. Accordingly, the argument of the learned Government Advocate for the State, as well as the learned counsel for the Public Service Commission has to be accepted and we see no reason to differ from the view taken by the Division Bench in P.B.Mohideen Abdul Khader case (supra). Paragraph (25) of the said decision, referred to above, is extracted herein under:

"25. In the subject case, notification was issued on 1 January 2019. The cut-off date to satisfy the age criteria is 1 July 2019 in view of Section 20(4)(iii) of Act 14 of 2016. In view of the statutory position, we do not find any reason to set aside the notification."

11. The writ petition raising a challenge to the validity of the Section 20(4)(iii) of the 2016 Act cannot be supported on the strength of the judgment relied on by the learned counsel for the petitioner in the case of Y.V.Rangaiah and others v. J.Sreenivasa Rao and others, (1983) 3 SCC 284, which was a case of drawing of panels for promotion on a higher rank.

For the foregoing reasons, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.9296, 9299 and 9300 of 2020 are closed.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

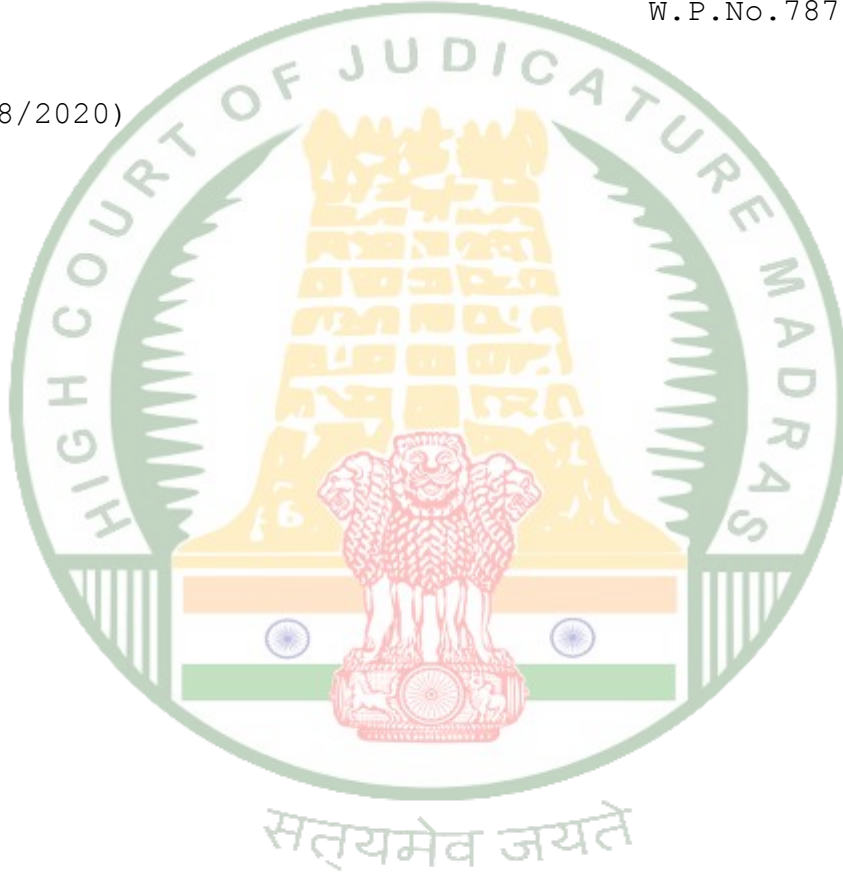
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To:

- 1.The Secretary to Government,
State of Tamil Nadu,
Personnel and Administrative Reforms Department,
Fort St. George, Chennai.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.

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MG (CO)
CB(03/08/2020)



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