

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on : 20.12.2019

Reserved on : 11.05.2020

CORAM

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

Rev.Appl.No.237 of 2019
against W.A.No.815 of 2019

S.P.Murugan

.. Review Applicant

Vs.

1.The Secretary to Government
Personal and Administrative Reforms Department
Fort St George, Chennai-600 009.

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

.. Respondent

Prayer:- Review Application filed under Order XLVII Rules 1 and 2 CPC
r/w. Section 114 CPC to review the Judgment dated 14.03.2019 made in
W.A.No.815 of 2019.

For Applicant : Mr.S.P.Murugan, Party-in-Person

For Respondents : Mr.Akhil Akbar Ali, GA for R1
Ms.C.N.G.Niraimathi, for R2

ORDER

P.D.AUDIKESAVALU, J.,

Heard Mr. S.P.Murugan, Petitioner-in-Person, Mr. Akhil Akbar Ali, Learned Government Advocate, appearing for the First Respondent and Ms. C.N.G. Niraimathi, Learned Standing Counsel, appearing for the Second Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner in this application has sought for review of the order dated 14.03.2019 in W.A. No. 815 of 2019 passed by the Division Bench of this Court confirming the order dated 21.02.2019 in W.P. No. 1769 of 2019 passed by this Court dismissing the Writ Petition filed by the Petitioner to accept the application for Group-I Service Posts as published by the Second Respondent, viz., Tamil Nadu Public Service Commission (hereinafter referred to as 'TNPSC' for short) in Notification No. 01/2019 dated 01.01.2019.

3. The chronological sequence of events leading to the filing of this Review Application is narrated below:-

- (i) Prior to the Notification No. 01/2019 dated 01.01.2019 issued by TNPSC, the last notification for filling up Group-I Service Posts in the Government of Tamil Nadu had been issued in the year 2016 and there had not been any fresh recruitment to those posts thereafter.
- (ii) The Government of Tamil Nadu in G.O. Ms. No. 93, Personnel and Administrative Reforms (M) Department dated 17.07.2018, enhanced the maximum age limit for the candidates appearing for the competitive examinations conducted for Group-I Services by TNPSC from 35 years to 37 years in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Most Backward Classes, Denotified Communities and Backward Classes, and from 30 years to 32 years for others, and it was informed that necessary amendments to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, will be made separately.
- (iii) In the Notification No. 01/2019 dated 01.01.2019 issued by TNPSC for recruitment to 139 vacancies for the years 2017, 2018 and 2019, it had been specified in Column No. 6(A) that for Applicants not possessing B.L., Degree, they should not have completed the maximum age of 37 years as on 01.07.2019 in respect of those belonging to the Scheduled Castes,

Scheduled Castes (Arunthathiyars), Scheduled Tribes, Most Backward Class, Denotified Communities, Backward Classes, Backward Classes (Muslim), Destitute Widows, and the maximum age of 32 years as on 01.07.2019 for others in terms of Section 20(4)(iii) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads as follows:-

“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 basis, or the appointing authority in other cases, that such a person satisfies the age prescribed in the Special Rules on the First day of July of the year in which the vacancy is notified.”

- (iv) As the Petitioner, claiming to belong to Most Backward Class, whose date of birth is 21.05.1982, would have crossed the maximum age of 37 years as on 01.07.2019, he was not eligible to apply for the vacancies specified in the aforesaid Notification No. 01/2019 dated 01.01.2019 issued by TNPSC;
- (v) Aggrieved thereby, the Petitioner along with one A. Raju, who is similarly placed to him, had filed Writ Petition in W.P. No. 1769 of 2019 for the aforesaid relief;
- (vi) The Writ Court by order dated 05.02.2019 in W.P. No. 3384 of 2019 and by order dated 21.02.2019 in W.P. Nos. 4333, 1769, 2526, 2828, 2846, 2849, 2850, 2851, 2852, 2854, 2855, 2857 and 3287 of 2019, rejected the

contentions of the Petitioner and others, who are similarly placed to him;

- (vii) The Intra-Court Appeal preferred against the order dated 05.02.2019 in W.P. No. 3384 of 2019 was dismissed by order dated 28.02.2019 in W.A. No. 624 of 2019 and following the same, the Intra-Court Appeal filed by the Petitioner and the said A. Raju was dismissed by order dated 14.03.2019 in W.A. No. 815 of 2019 passed by the Division Bench of this Court;
- (viii) The Hon'ble Supreme Court of India was not inclined to entertain the Special Leave Petition in S.L.P. (Civil) No. 11143 of 2019 under Article 136 of the Constitution of India preferred by the Petitioner against the aforesaid order dated 14.03.2019 in W.A. No. 815 of 2019 passed by the Division Bench of this Court, and accordingly, by order dated 06.05.2019 dismissed the same;
- (ix) The Petitioner thereafter preferred this Review Application on 11.06.2019 citing the decision of the Hon'ble Supreme Court of India in *Khoday Distilleries Limited -vs- Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal* [(2019) 4 SCC 376] holding that once a Special Leave Petition under Article 136 of the Constitution of India is dismissed by the Hon'ble Supreme Court of India, an application to review the judgment of the High Court would be maintainable, irrespective of the fact as to whether it

was filed before or after the dismissal of that Special Leave Petition.

- (x) The delay of 58 days in filing the Review Application has been condoned by this Court by order dated 20.12.2019 in C.M.P. No. 13861 of 2019 in Review Application S.R. 69924 of 2019.

4. The Petitioner has made desperate attempt to re-agitate the same pleas, which have already been rejected by the Writ Court as well as the Division Bench, and we are not inclined to once again undertake the exercise of traversing the same at length, having regard to the legal principles governing the ambit and scope of review under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908, as succinctly culled out by the Hon'ble Supreme Court of India in *Kamlesh Verma -vs- Mayavati* [(2013) 8 SCC 320], after referring to earlier binding decisions on that subject, as follows:-

“Summary of the Principles:

20. Thus, in view of above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the Petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” has been interpreted to mean a reason sufficient on grounds at least analogous to those specified in the rule.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

On perusal, it is seen that none of the grounds and additional grounds in the

memoranda of review filed by the Petitioner relate to the permitted extents and on the contrary, they demonstrably fall under the classifications which are barred for consideration.

5. Be that as it may, for the sake of rendering substantive justice, we would examine the question as to whether the failure of TNPSC to fill up the vacancies that have arisen in a particular year in the same year itself creates any semblance of legal obligation to necessarily extend the benefit to persons, who have become ineligible only on account of upper age limit due to such inaction, of applying for those vacancies in the subsequent year. In this regard, reference must be made to the decision of the Constitution Bench of the Hon'ble Supreme Court of India in *Shankarsan Dash -vs- Union of India* [(1991) 3 SCC 47] in which the dictum has been laid down as follows:-

“7. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons and if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.”

The factual aspect of the matter in this recruitment has already been addressed

by the Division Bench of this Court in the case of another similarly placed person in the order dated 28.02.2019 in W.A. No. 624 of 2019, and it would suffice here to extract the relevant portions therefrom, which read as follows :-

“14. The TNPSC filed a counter affidavit in a connected writ petition in W.P.No.1769 of 2019 contending that due to various administrative reasons, the notification for recruitment to Group I posts has not been issued during the years 2017 and 2018. Since it was made out as if only on account of the administrative reasons, notifications were not issued during 2017 and 2018, we have directed the Advocate General to take instructions as to whether it would be possible to re-fix the cut-off date and the appeal was adjourned to be posted today.

.....

17. The factual matrix indicates that the TNPSC has not conducted examination for the years 2017-2018. The last examination was conducted in 2016. The notification was issued on 9 November 2016. The preliminary examination was conducted on 19 February 2017 and the main examination was on 3 October 2017. The results were published only on 31 December 2018.

18. Even though we are not in favour of setting aside the notification on the grounds raised by the appellant in the appeal, still we are constrained to observe that TNPSC ought to have taken appropriate action for conducting examination in 2017 and 2018. The TNPSC was not expected to keep the subsequent selection in abeyance on the ground that the results for the earlier years are yet to be announced. Nothing prevented the TNPSC from initiating action for selection appointment by issuing notification every year. In case, notifications are issued every year

for making appointment to the relevant year, it would enable the candidates who would meet the eligibility criteria including the age to submit application.

19. The TNPSC issued the last notification only in 2016. Selection process was not initiated thereafter for a period of two years. The enhancement of age was given by the Government by order dated 17 July 2018. In case of issuance of notification immediately thereafter, the candidates like the appellant would have been benefited. The appellant is therefore prima facie correct in his contention that on account of the delay in publishing the notification, he was denied the benefit of re- fixing the upper age limit. The TNPSC must rise to the occasion and should ensure that examination is conducted every year to the extent possible or in the event of any difficulty to conduct the examinations, action must be taken at least to issue the notification every year so as to enable the concerned candidates to submit application by satisfying the age criteria. This would help the applicants who are nearing the upper age limit.

.....

24. It is true that the notification was issued after a period of two years. There was no recruitment for the years 2017 and 2018. Even after giving enhancement in the maximum age limit by the Government, follow up action was not taken by the TNPSC to issue the recruitment notification in 2018. This sorry state of affairs could have been avoided, in case, TNPSC issued a notification well in advance taking into account the vacancy position. In fact, the TNPSC issued an Annual Recruitment Planner for 2018 indicating that the notification for Group I post would be issued in the first week of May 2018. Though we see considerable force in the submission made on behalf of the TNPSC that the Annual Planner is in the

nature of a calendar and no writ petition would lie to enforce the said calendar, still, we are of the view that TNPSC is bound by the Calendar and every effort should be taken to conduct the examination as scheduled. This case should be an eye opener to the TNPSC and they should not foreclose the chances of the candidates to write the examination for appointment to the posts included in Group-I.

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.”

In view of the aforesaid observations, it is hopefully expected that TNPSC would hereafter endeavour to fill up the vacancies arising each year in the same year itself abiding to the time schedule published in its Annual Planner so that valuable employment opportunities are not lost to eligible persons due to delay in issuing notification. Such failure would not, however, confer any right in favour of persons, who have become ineligible on account of their age, to stake claim that should be permitted to apply for those vacancies in the subsequent years, as canvassed by the Petitioner for this recruitment. This view is also fortified by the ratio laid down by the Hon’ble Supreme Court of India in [Dr. Ami Lal Bhat -vs- State of Rajasthan \[\(1997\) 6 SCC 614\]](#) as follows:-

“5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, *per se*, arbitrary.

Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, *per se*, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable.”

The Hon’ble Supreme Court of India has reiterated that legal position in *Hirandra Kumar -vs- High Court of Judicature at Allahabad* (Order dated 29.01.2019 in W.P. (Civil) No. 1343 of 2018) as extracted hereunder:-

“21. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and *ultra vires*, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of [Article 14](#) of the Constitution.”

During the hearing, the emphatic thrust of the resentment grudged by the Petitioner in this case is that the vacancies now sought to be filled up have arisen

in the years 2017 and 2018 when there had not been any recruitment for those posts and that acting upon the representations claimed to have been made by him and others identically situated, the Government of Tamil Nadu has announced the increase in the upper age limit from 35 years to 37 years in the aforesaid Governmental Order dated 17.07.2018 to set right that mistake, but by TNPSC postponing the issuance of the recruitment notification till 01.01.2019, he has been unfairly deprived of extension of that benefit, which could still be rectified by altering the maximum age of 37 years as on 01.07.2018 instead of 01.07.2019 in this recruitment notification. It must, at once, be pointed out that there is basic fallacy in that contention of the Petitioner insofar as his claim is concerned. Inasmuch as the date of birth of the Petitioner is 21.05.1982 and the upper age limit for the post was 35 years till 17.07.2018, the last year in which he could have applied for the posts was 2016, when recruitment admittedly took place, and if the Petitioner had been unsuccessful in getting selected till then, he has to only blame himself for it. In other words, the subsequent announcement made for increasing the maximum age as 37 years in 2018 was a fortuitous circumstance and as such, the issuance of the recruitment notification by TNPSC on 01.01.2019 has not resulted in forfeiture of any pre-existing right, much less caused actual prejudice, to the Petitioner whatsoever. Even if the contention of the Petitioner that the increase in the upper age limit to 37 years in the

Governmental Order dated 17.07.2018 was to provide opportunity to persons who had attained the maximum age of 35 years in the years 2017 and 2018 when recruitment was not conducted, is assumed to be true, it is noticeable that their interests to participate in the recruitment in the year 2019 has been suitably taken care, as they are not affected by fixing the maximum age as on 01.07.2019 following the requirement of Section 20(4)(iii) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, in that notification.

6. Finally, the Petitioner referred to the notifications dated 07.03.2019 and 18.02.2019 issued by TANGEDCO and Police Shorthand Bureau, SBCID, Chennai, respectively in which the maximum age has been fixed as on 01.07.2018 for the recruitments taking place in the year 2019 to carp that invidious discrimination has been meted out to him. As there is nothing to show that Section 20(4)(iii) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, applies to those autonomous bodies governed by their own rules, it is not possible to extend parity to the Petitioner on that count.

7. In the result, as we do not find any merit in this application for review, it is dismissed. No costs.

[M.S.N, J.] [P.D.A., J.]
11.05.2020

Index : No
Internet : Yes
vjt

To

1.The Secretary to Government
Personal and Administrative Reforms Department
Fort St George, Chennai-600 009.

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



WEB COPY

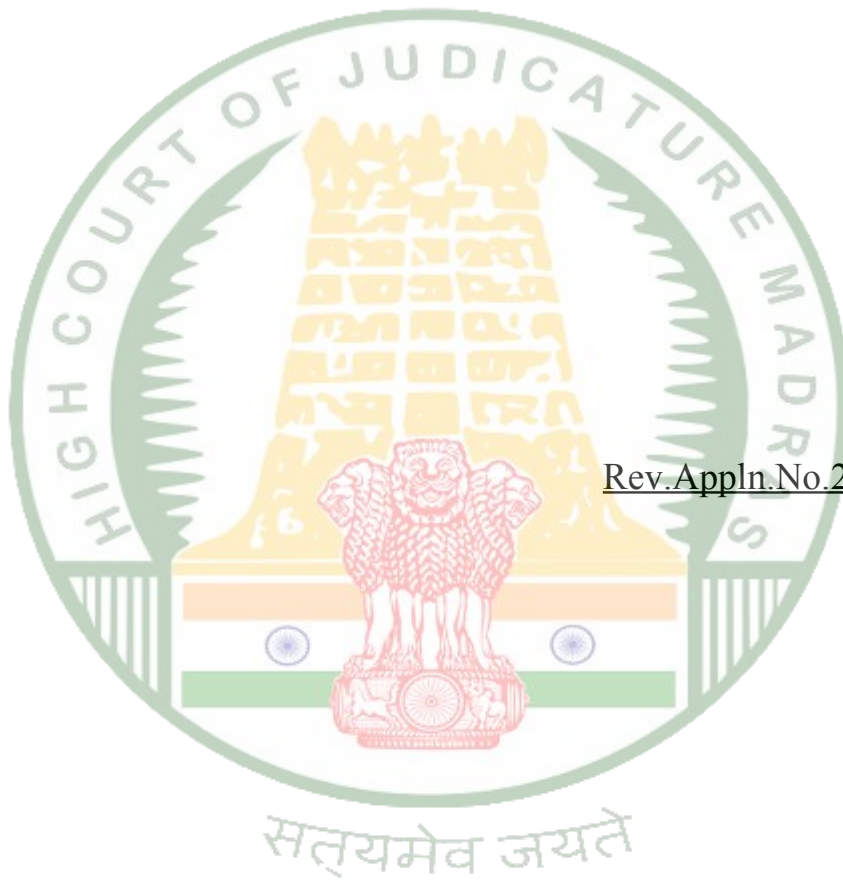
Rev.Appl.No.237 of 2019

M.SATHYANARAYANAN, J.

and

P.D.AUDIKESAVALU, J.

vjt



Order in
Rev.Appln.No.237 of 2019

WEB COPY

11.05.2020