

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 11.02.2020

ORDER PRONOUNCED ON : 14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.19752 of 2018

and

W.M.P.Nos.23194 of 2018 & 971 of 2020

1.M. Baluswamy
2.A. Arun Kumar
3.R. Sivakumar ... Petitioners

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road Town Park,
VOC Nagar,
Chennai - 600 003.

2.The Principal Secretary to Government,
Environment and Forest Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records issued by the first respondent vide Notification No.12/2018 dated 04.07.2018 and quash the same and consequentially direct the first respondent to consider the petitioners' representation dated 09.07.2018, 10.07.2018, 12.07.2018, thereby issue a fresh notification with age relaxation of 5 years in the maximum age limit.

For Petitioners : Mr. N. Manokaran
for M/s. S. Vinoth Kumar

For Respondents : Mr. M. Loganathan, for R1
Standing counsel
Mr. K.J. Sivakumar, for R2
Additional Government Pleader

O R D E R

This writ petition has been filed challenging the notification issued by the first respondent insofar as not providing for relaxation of age limit and for a consequential

direction to the first respondent to consider the candidature of the petitioners by relaxing the maximum age limit.

2. The case of the petitioners is that a notification was issued during the year 2010 to fill up the post of Forest Apprentice. Various writ petitions came to be filed and ultimately the selection itself ended only in the year 2014. The further case of the petitioners is that the Annual Planner of the Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") for the year 2015-16 shows that there were 27 vacancies for the post of Forest Apprentice. Thereafter, the TNPSC issued a notification on 04.07.2018 to fill up the vacancies for the post of Forest Apprentice which included 148 regular vacancies and 10 shortfall vacancies under the SC Category. The notification fixed the maximum age limit for persons belonging to the SC/ST categories as 35 years. The petitioners belongs to the SC Community. According to the petitioners due to the delay caused by the TNPSC in issuing the notification, the petitioners had crossed the age limit and the notification also did not provide for relaxation of the upper age limit. Therefore, the petitioners were not able to participate in the selection and hence they have challenged the notification for not providing the age relaxation.

3. Mr. N. Manokaran, learned counsel appearing on behalf of the petitioners submitted that this Court allowed the petitioners to write the examination, pending the writ petition and the result was subjected to the result of the writ petition. The learned counsel submitted that there was no recruitment for nearly 8 years to the post of Forest Apprentice and therefore, the petitioners had crossed the age limit fixed by this notification. In all the earlier notifications, age relaxation was given by the TNPSC, except the present notification. Therefore, the petitioners were deprived from participating in the selection without age relaxation. Considering the fact that the petitioners are coming from a downtrodden community, the petitioners must be given an opportunity to participate in the selection and the petitioners have no other chance of getting a job for the course undergone by them except as a Forest Apprentice.

4. Mr. M. Loganathan, learned Standing counsel appearing on behalf of first respondent submitted that the petitioners do not have a legal right to seek for age relaxation. The learned counsel submitted that the age limit is fixed only by the State Government and that the TNPSC has no role to play in fixing the age. The learned counsel further submitted that even if such age relaxation is considered, there may be other persons who are similarly placed like the petitioners, who would have participated in the selection. These persons would not have applied on the ground of age bar and if the petitioners alone are given an age relaxation, the same will result in discrimination. The learned counsel

submitted that the TNPSC cannot entertain any application if a candidate does not fulfill the qualification/eligibility prescribed in the notification and this Court also cannot modify/relax the conditions.

5. This Court has carefully considered the submissions made on either side and perused the materials available on record.

6. It will be relevant to take note of the judgment of the Hon'ble Apex Court in State of Tamil Nadu Vs. G. Hemalathaa & Anr. The relevant portions are extracted hereunder:-

"6. Ms. V. Mohana, learned Senior Counsel appearing for the Respondent vehemently argued that we should not exercise our discretion under Article 136 of the Constitution of India. According to her, there is no substantial question of law in the S.L.P. warranting our interference. She submitted that an error was committed by the respondent which was rightly condoned by the High Court. She made a fervent appeal to us that the career of a meritorious backward class candidate should not be nipped at the bud.

7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instruction is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instruction issued by the Commission.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatton (D) By Lrs v. Salambin Mohammad and Chandra Singh and Others v. State of Rajasthan and Another in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of

the Instructions which are binding on the candidates taking the examinations.

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In *Umesh Chandra Shukla v. Union of India*, *Venkataramiah, J.*, held that:

"13...exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

11. *Roberts, C.J.* in *Caperton v. A.T. Massey* held that:

"Extreme cases often test the bounds of established legal principles. There is a cost of yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism:

"Hard cases make bad law."

12. After giving a thoughtful consideration, we are afraid that we cannot approve that judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

7. It is clear from the above judgment that the instructions/conditions given in the notification are mandatory in nature and this Court in exercise of its powers under Article 226 of the Constitution of India cannot modify/relax the conditions. This Court cannot grant any relief on sympathetic considerations or humanitarian grounds.

8. In the considered view of this Court, the TNPSC does not take any decision with regard to the fixation of age limit and it is a decision taken by the State Government after considering the nature of selection. The TNPSC merely adheres to the age limit fixed by the State Government and goes ahead

with the process of selection. The claim made by the petitioners for relaxing the age limit is not based on any legal or statutory right. The petitioners are claiming such a right only on the ground that the recruitment did not take place for the post of Forest Apprentice inspite of vacancies being available. This cannot be a ground for the Court to relax the age limit and direct the TNPSC to consider the candidature of the petitioners. The judgment relied upon by the learned counsel for the petitioners in the case of Dolly Chhanda Vs. Chairman, Jee and Others (2005) 9 SCC Page 779 will not apply to the facts of the present case.

9. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

AT
To

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road Town Park,
VOC Nagar,
Chennai - 600 003.

2.The Principal Secretary to Government,
Environment and Forest Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

सत्यमेव जयते

+1cc to Mr.S.Vinoth kumar , Advocate SR.No. 13677

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and

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A.SK(11/03/2020)

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