

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

THE HON'BLE MR JUSTICE SANJIB BANERJEE, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.16203 of 2020

V.Packiaraj

... Petitioner

-vs-

1.The Principal Secretary,
Government of Tamil Nadu,
Dept. of Home, Secretariat,
Fort St. George, Chennai.

2.The Registrar General,
High Court of Judicature at Madras,
Chennai.

3.The Chairman,
Tamil Nadu Public Service Commission,
VOC Street, Park Town,
Chennai 600 003.

.... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare Explanation (2) regarding recruitment of Civil judges in Item No. 9 found in the schedule provided under Rule 5 of the of the Tamil Nadu State Judicial Service (Cadre and recruitment) Rules 2007 amended up to 2016 pertaining to age specifically denying relaxation of upper age limit for persons with disabilities as Ultra vires to Section 64 of the Tamil Nadu Governmetn Servants (Conditions of Service) Act 2016 (Tamil Nadu Act 14 of 2016) read with Tamil Nadu Government order G.O.Ms. No. 704 public (Services-A) Department dated 15.04.1964 and further being ontrary to the provisions of section 34(3) of Rights of Persons with Disabilities Act 2016 and consequently direct the respondents to provide further 10 years relaxation for persons with disabilities like the petitioner herein, over and above the upper age limits prescribed for recruitment of civil judges in future by the Tamil Nadu State Judicial Services.

For Petitioner : Mr.M.Purushothaman

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader
for R-1

: Mr.B.Vijay for R-2

: Mr.M.Loganathan for R-3

ORDER

(Made by The Hon'ble Chief Justice)

The writ petitioner, who suffers from a locomotor disability, failed to make a cut at a recent examination conducted for inducting judicial officers at the lowest level. The writ petitioner overshoot the age limit by 19 days or so.

2. An initial writ petition was instituted that culminated in the same being permitted to be withdrawn since the relevant rule had not been challenged. This subsequent petition has been filed by virtue of the liberty reserved unto the writ petitioner to file a more comprehensive petition.

3. The petitioner refers first to Section 34 of the Rights of Persons with Disabilities Act, 2016, and the provision in sub-section (3) thereof that makes room for the appropriate Government to provide relaxation of the upper age limit for employment of persons with benchmark disability.

4. It must also be noticed that there is an element of discretion which has been left to the Government in both the use of the word 'may' and the expression 'as it thinks fit' in the provision. Elsewhere, in Section 34, particularly, in sub-section (1) thereof, there is a mandate to reserve vacancies in the use of the word 'shall'.

5. The discretion which has been given to the appropriate Government is due to the fact that there are several kinds of disabilities and there are several kinds of job opportunities. Not all job descriptions can accommodate persons with every kind of disability. It is in such sense that the discretion has been left to the appropriate Government in such regard. However, the spirit of the statute requires some form of relaxation to be made in case of persons with disabilities, when it comes to the upper age limit pertaining to employment. Section 64 of the Tamil Nadu Government Servants (Conditions of Service) Act,

2016, provides for age concession for differently abled persons. However, when it comes to appointment of judicial officers, there is no provision for any age relaxation and the notification that is referred to by the writ petitioner expressly excludes application of Section 64 of the said local Act of 2016 to the relevant post.

6. The petitioner says that he has lost his chance and all that he wants is for the judiciary to be more sympathetic towards persons with disabilities and re-think the matter.

7. It is submitted on behalf of the High Court administration that shortly after the disposal of the earlier writ petition, the matter was brought to the notice of the then Chief Justice and the Chief Justice referred the same to the Recruitment Committee of the High Court and the Recruitment Committee has now sent the matter to the Rules Committee for appropriate rules to be framed.

8. In a sense, the grievance of the petitioner has been adequately redressed. Though the writ petitioner says that he made no representation of the kind which resulted in the matter being referred to the Recruitment Committee or, subsequently, to the Rules Committee, the fact that the High Court has taken steps on its own demonstrates a move in the right direction. The writ petitioner expresses a hope that the High Court accepts the suggestion and in appropriate cases, age relaxation is granted to allow persons with disabilities the opportunity to apply for and obtain employment.

9. The writ petitioner's effort is appreciated and it is hoped that in the spirit of the submission of the writ petitioner, the High Court ultimately re-thinks its decision and opens its doors to persons with disabilities in such areas where the disability would not seriously impair the functioning of the employee or cause prejudice to the work required to be discharged.

10. The High Court, on its administrative side, will do well to arrive at a final decision in such regard within a period of three months from date. In the event the High Court resolves to provide for age relaxation, immediate urgent steps must be taken to publish the relevant notification in accordance with law.

W.P.No.16203 of 2020 is disposed of with an expression of gratitude to the writ petitioner for bringing an important aspect to the notice of the Court for immediate remedial measures to be adopted. There will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sra
To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Dept. of Home, Secretariat,
Fort St. George, Chennai.
- 2.The Registrar General,
High Court of Judicature at Madras,
Chennai.
- 3.The Chairman,
Tamil Nadu Public Service Commission,
VOC Street, Park Town,
Chennai 600 003.

Copy to

The Section Officer,
B Section,
High Court, Madras.

+1cc to Mr.M.Loganathan, Advocate Sr.6149

sr[co]
srg 08/02/2021

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