



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.21983 of 2021 and
W.M.P.Nos.23198 & 23199 of 2021

- 1.C.Ponnusamy
- 2.R.Lakshmi
- 3.P.Arumugam
- 4.G.Subramanian
- 5.K.Subramanian
- 6.V.Sasikumar
- 7.M.Lourduraj
- 8.P.Rajendran
- 9.K.Manjula
- 10.G.Nirmala
- 11.D.Krishnankumar
- 12.Dr.C.Seenivasan
- 13.A.Vimala
- 14.C.Prappa Joselin
- 15.A.Premalatha
- 16.C.S.Sailaja
- 17.S.Thamaraiselvi
- 18.U.Vedhasalam

...Petitioners

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St. George, Secretariat,
Chennai 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai 600 006.
3. Teachers Recruitment Board,
Rep. by its Chairman,
DPI Campus, College Road,
Chennai 600 006.

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Declaration,



declaring Rule 6 of Special Rules of Tamil Nadu Higher Secondary Educational Service notified in G.O.Ms.No 14, School Education Department dated 30.01.2020 prescribing the maximum age limit as 40 for direct recruitment to the post of P.G Assistant and consequential Notification issued by the 3rd respondent in Advertisement No.1/2021 dated 09.09.2021 in so far as Clause 5 prescribing the maximum age limit as 40 is concerned, as arbitrary, irrational, unconstitutional and consequently allow the petitioners to participate in the selection to the post of P.G. Assistant.

For Petitioners : Mr.G.Sankaran

For R1 : Mr.P.Muthukumar
State Government Pleader

For R2 : Mr.R.Neelakandan
Additional Advocate General

For R3 : Mr.C.Kathiravan
Standing Counsel

O R D E R

(Order of the Court was made by T.S. SIVAGNANAM, J.)
(Through Video Conferencing)

This writ petition has been filed for a Writ of Declaration declaring Rule 6 of Special Rules of Tamil Nadu Higher Secondary Educational Service, notified in G.O.Ms.No.14, School Education Department, dated 30.01.2020, prescribing the maximum age limit as 40 for direct recruitment to the post of P.G Assistant and consequential notification issued by the 3rd respondent in Advertisement No.1/2021, dated 09.09.2021, insofar as Clause 5 prescribing the maximum age limit as 40 is concerned, as arbitrary, irrational, unconstitutional and consequently, allow the 18 petitioners to participate in the selection to the post of P.G. Assistant.

2.Mr.G.Sankaran, learned counsel appearing for the petitioners, submitted that the impugned Rule is grossly discriminative and violative of Articles 14 and 16 of the Constitution of India. He sought to pitch his case by referring to amendment to Adhoc Rules relating to the age limit for the post of Lecturer (Engineering Subjects) in Government Polytechnic Colleges and Special Institutions in Tamil Nadu Educational Service, as notified in G.O.Ms.No.156, Higher Education (B1) Department, dated 15.09.2014. It is pointed out that, in Rule 4 in Sub Rule (a), initially, age stipulated was 35 years, which was amended to 57 years. Further, the learned counsel has referred to the recruitment notification issued by



the 3rd respondent for the post of Assistant Professor in Tamil Nadu Collegiate Educational Service, dated 28.08.2019, wherein, the age limit has been prescribed as 57 years. Further, the learned counsel pointed out that, in G.O.Ms.No.29, Personnel and Administrative Reforms (S) Department, dated 25.02.2021, the age of superannuation of Government servants, teachers, etc. was increased to 60 years. On these grounds, the learned counsel would submit that the impugned Rule is discriminative and violative of Articles 14 and 16 of the Constitution of India.

3.Further, it is contended that the method of selection to the posts of School Education Department was based on Employment Exchange seniority till 2012, except three selections which were done through open competition between 2012 and 2016, thereby, the petitioners have been deprived of their right to participate in the selection for the teaching posts for several years and in such circumstances, the State Government has prescribed the maximum age limit as 57 years in the other categories of selection and restricting the age limit to 40 years insofar as it relates to the Higher Secondary Educational Service, is arbitrary, unreasonable and illegal. Further, it is submitted that, restricting the age limit to 40 years has no rationale or reasonableness. Further, it is submitted that there cannot be different yardstick for fixation of upper limit in respect of teaching posts in School Education Department in the State Government of Tamil Nadu, whereas there is no age restriction for the post of Lecturer in Government Polytechnic and Special Institutions in the Tamil Nadu Educational Service, as well as the post of Assistant Professor in Engineering Colleges in the State of Tamil Nadu.

4.Responding to the said contentions, Mr.P.Muthukumar, learned State Government Pleader appearing for the 1st respondent, referred to the decision of the Hon'ble Supreme Court in the case of P.U.Joshi and others, Union of India v. The Accountant General [Appeal (Civil) No.4679-4680 of 1996 & Appeal (Civil) No.10983 of 1996, dated 19.12.2002] and submitted that, fixing the conditions of service for recruitment to public employment is a policy matter and the Courts should be slow in interfering with those conditions.

5.Mr.R.Neelakandan, learned Additional Advocate General, appearing for the 2nd respondent, submitted that the Adhoc Rules, which were referred to by the learned counsel for the petitioners, is of the year 2015 and insofar as the Collegiate Education is concerned, only one recruitment was done in the year 2019 and the present recruitment, which has been notified by the Teachers Recruitment Board, is the first recruitment after the Tamil Nadu Government Servants (Conditions and Service) Act, 2016, was enacted and new Rules have been framed. It is

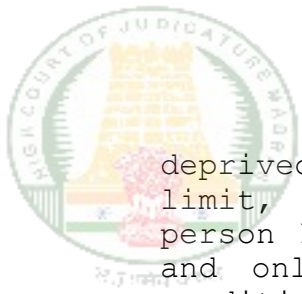


6. It is pointed out by the learned Additional Advocate General that it is not only the Special Rules for the Higher Secondary Educational Service have been notified, but similar age restriction has been introduced vide G.O.Ms.No.12, School Education Department, for Elementary School Educational Service and G.O.Ms.No.13, School Education Department, for School Educational Service.

8. The present writ petition challenges a Subordinate Legislature, namely, Special Rules for the Tamil Nadu Higher Secondary Educational Service. The Hon'ble Supreme Court, in various decisions, and more particularly in the case of State of Tamil Nadu and Another vs. P. Krishnamurthy [(2006) 4 SCC 517], has held that the challenge to Subordinate Legislature can be on the following grounds :

9. The first and foremost aspect that the petitioners have to establish is that the Rules suffer from legislative incompetency, or in other words, there is no power vested with the respondent to enact such Rule. This is not the case of the petitioners, and nothing is on record to establish any legislative incompetency.

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deprived of getting public employment and by fixing the lower age limit, they have become ineligible to apply. Admittedly, no person has got vested right to be appointed to a public office and only has a right to be considered, and so far as the conditions of service are concerned, it is for the State to take a policy decision in the matter and it is within their exclusive discretion and jurisdiction and it is not for the Court to direct the respondents to take a policy decision in a particular manner. The respondents, in their wisdom, have thought fit to fix the age limit at 40 years for general candidates and 45 years for reserved candidates and on the grounds raised by the petitioners, it can never be stated that any of the rights of the petitioners guaranteed under Part-III of the Constitution has been infringed.

11.The next aspect would be whether, the impugned Rule is manifestly arbitrary and irrational. In the recruitment to various posts in the Higher Secondary Educational Service, in all probabilities, the respondents have thought fit to employ teachers of younger age and they fixed the age limit and this can never be said to be irrational or manifestly arbitrary.

12.Therefore, on the grounds raised by the petitioners, the challenge to the impugned Rule cannot be sustained and the consequent relief sought for to quash the notification issued by the Teachers Recruitment Board also cannot be granted.

For the above reasons, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George, Secretariat,
Chennai 600 009.



2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai 600 006.

3. The Chairman,
Teachers Recruitment Board,
DPI Campus, College Road,
Chennai 600 006.

+1 CC to Mr.G.Sankaran, Advocate sr 53570.

+1 CC to The Government Pleader sr 53151 & 53502

W.P.No.21983 of 2021

GSM(CO)
SP(09/11/2021)