



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.12397 of 2021

WEB COPY

M.Srinithya

... Petitioner

Vs.

1.The Secretary to Government,
Law Department,
Fort St. George,
Chennai - 9.

2.The Chairman,
Tamil Nadu Public Service Commission,
Chennai.

3.The Secretary to Government,
Department of Welfare of the Disabled Persons,
Fort St. George, Chennai.

4.The Registrar,
Recruitment, High Court of Madras,
High Court Buildings,
Chennai.

5.The Registrar,
The Drafting Committee,
Tamil Nadu Civil Judges Recruitment,
High Court Campus,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to relax the age and experience conditions for the disabled persons in the forthcoming notifications of the Civil Judges which will be conducted by the second respondent / Tamil Nadu Public Service Commission as per the Person with Disabilities Act, 1995 and the Right of Person with Disabilities Act, 2016 (equal opportunities, protection of right and full participation) and as per the representation dated 05.05.2021 and 14.06.2021.

For Petitioner : Ms.M.Srinithya
Party-in-person

For Respondents : Mr.Veerakathiravan
Senior Standing Counsel for Govt.,
A.K.Manickam
Standing Counsel for Government



O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

With the consent on either side, the Writ Petition itself is taken up for final disposal.

2. Heard Ms.M.Srinithya, petitioner appearing in person and Mr.Veerakathiravan, learned Senior Standing Counsel for Government assisted by Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the respondents.

3. This writ petition has been filed by Ms.Srinithya, who is a physically challenged person and she seeks for relaxation of the age and experience conditions for differently abled persons in the forthcoming notification of Civil Judges, as per the Person with Disabilities Act, 1995 and the Right of Person with Disabilities Act, 2016 (equal opportunities, protection of right and full participation), by considering her representations dated 05.05.2021 and 14.06.2021.

4. Identical prayer was sought for by one other physically challenged person in W.P.No.16230 of 2020, wherein the petitioner sought for issuance of a Writ of Declaration. The said writ petition was disposed of by the Hon'ble First Bench by order dated 04.02.2021, by observing that 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 the date and in the event, High Court resolves to provide for age relaxation, immediate urgent steps may be taken to publish the relevant notification in accordance with law. The said order reads as follows:

"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 overshot 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."

5. In terms of the directions issued by the Hon'ble First Bench, the matter was placed before the Hon'ble Chief Justice on the administrative side and the Hon'ble Chief Justice has referred the matter to a Committee consisting of five Hon'ble Judges and the first meeting of the Committee was conducted on 17.07.2021.

6. In the light of the above, we dispose of this writ petition with an observation that already the matter is ceased of by the High Court on the administrative side and very soon, a decision will be taken. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

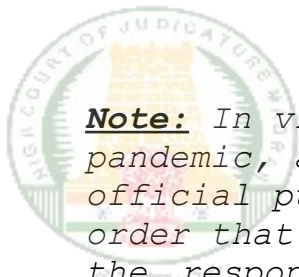
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/ /2021

Sub Assistant Registrar (CS)

MR

<https://hcservices.ecourts.gov.in/hcservices/>



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

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- 5.The Registrar,
The Drafting Committee,
Tamil Nadu Civil Judges Recruitment,
High Court Campus,
Chennai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-23610[F] dated 23/07/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-23615[F] dated 23/07/2021)

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CM(CO)
LR(03.08.2021) 5P 8C