



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2022

DELIVERED ON : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.4482 of 2021

W.M.P (MD).No.3602 of 2021

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N.Anbarasu

...Petitioner

/Vs./

1.State of Tamil Nadu,
Rep.by its Additional Chief Secretary to the Government,
Tourism, Culture & Religious Endowments (T2) Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.

3.The Assistant Director,
O/o.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.

4.A.Raman,
Assistant Director,
O/o.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,Chennai-600002.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records pertaining to the impugned order in Se.Mu.Aa.No.3807/MaVaMe-2/2018-4 dated 11.01.2021 on the file of the respondent No.2 and quash the same as illegal.

For Petitioner	: Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy
For Respondents	: Mr.N.Satheesh Kumar Additional Government Pleader for RR1 to 3 Mr.G.Prabu Rajadurai for R4

**ORDER**

The order cancelling the regularization and declaration of probation passed by the second respondent in proceedings dated 11.01.2021 is under challenge in the present Writ Petition.

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2. The petitioner joined as Assistant Tourism Officer on 31.01.2011. The services of the petitioner were regularised and his probation was also declared. The petitioner states that he filed a writ petition challenging the promotion granted to the fourth respondent. The said writ petition was allowed and the fourth respondent filed Writ Appeals in W.A(MD).Nos.1008 to 1010 of 2019 and the Hon'ble Division Bench of this Court on 13.11.2019 passed an order allowing the writ appeals on the following conditions:-

(i). The Writ Petition in W.P.No.19524 of 2014 is dismissed, on the ground that G.O.Ms.No.78 had outlived its purpose and worked itself out and on the date of challenge, the said Government Order did not survive, because, G.O.174, dated 06.08.2010 was issued and the rule was amended. Consequently, the order of status-quo is of little avail and based on that, the private respondents cannot claim any advantage. Further, the private respondents are estopped from challenging the ratio of 1: 3 : 1, as admittedly, they have joined the service much after the amended rules, which came into force on 06.08.2018.

(ii). The Writ Petition in W.P.(MD)No.5843 of 2018 has filed challenging the promotion and the temporary panels and the sole ground of challenge was based on the order of statusquo, which we have held as it would not enure to the benefit of the private respondents. That apart, there is no findings rendered as to how the promotion are incorrect or the panels are erroneous. Therefore, the order allowing the writ petition in W.P. (MD)No.5843 of 2018 calls for interference. Hence, the order passed in the said writ petition is set aside and consequently, W.P. (MD)No.5843 of 2016 is dismissed.

(iii). W.P.(MD)No.676 of 2017 has been filed without even giving a representation to the authorities pointing out as to how the appellants lack the requisite qualification. There was no adjudication of the correctness of the stand taken by the private respondents. No counter affidavit was filed by the officials respondents. None were heard on the contentions raised. Therefore, the court could not have ordered for re-verification of the qualifications of the appellants. For the above reasons, W.P(MD).676 of 2019 is dismissed. However, it is open to the private respondents to give a comprehensive representation, if they so desire, pointing out how in their opinion, the appellants do not possess the requisite qualifications. The



representation, if any submitted, be considered in accordance with law.

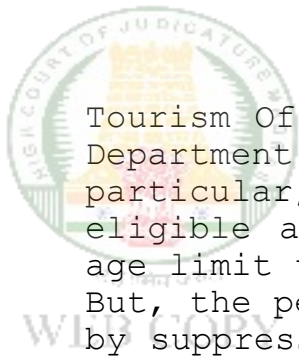
(iv) The Writ Petitions in W.P.(MD)Nos.11514, 11515 and 11516 of 2016 have been filed, challenging the orders of reversion. The learned Single Bench has not recorded any independent reasons as to why those writ petitions are liable to be dismissed and the only reason being the promotion orders have been quashed by allowing W.P.(MD) No.5843 of 2018. We have set aside the order passed in W.P.(MD)No.5843 of 2018, Accordingly, the order passed in the W.P.(MD)Nos.11514 to 11516 of 2016 is set aside and the writ petitions are allowed and the orders of reversion are quashed. The official respondents are directed to re-post the appellants, as Tourist Officers and in the event, any representation is received, as observed earlier, it is open to the official respondents to consider the same in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

3. Thereafter, a writ petition has been filed by the petitioner in W.P(MD).No.7004 of 2020 and this Court issued notice. Ignoring pendency of the writ petition, the contesting respondent was promoted to the post of Assistant Director. The contention of the petitioner is that the fourth respondent is not possessing the requisite qualification for promotion to the post of Assistant Director as the Degree obtained by him was invalid.

4. Irrespective of all these facts relating to the promotion of the fourth respondent, the learned counsel appearing for the petitioner with reference to the impugned order of cancellation cancelling the regularization and declaration of probation of the petitioner in the post of Assistant Tourism Officer, made a submission that the order impugned has been issued without any show cause notice and therefore, it is in violation of the principles of natural justice.

5. The allegation regarding the promotion of the fourth respondent to the post of Assistant Director is one aspect of the matter and the impugned order dated 11.01.2021 is relating to the cancellation of regularization and declaration of probation of the petitioner. In this regard, the ground raised is that no show cause notice was issued to the petitioner and on that ground, the matter is to be remanded back for re-consideration.

6. The learned Additional Government Pleader objected the said contention by stating that the factual details are relevant for the purpose of considering the present writ petition. Eight employees including the petitioner have joined in service in violation of the age limit. It is contended that the petitioner and other Assistant



Tourism Officers Grade-II have joined the employment of the Tourism Department fraudulently by suppressing their actual age and in particular, the petitioner belongs to backward community and the eligible age limit is 32 years and considering the enhancement of age limit to additional 5 years, the eligible age limit is 37 years. But, the petitioner joined in the Department at the age of 38 years, by suppressing his actual age as per the records and therefore, the initial appointment was secured by way of fraudulent activity and illegal declaring his age.

7. In this regard, the details of eight employees including the petitioner who were joined in services are as under:-

Sl.No	Name and Designation Thiru.	Caste	Date of Birth	Joining date as ATO Gr-II	Age cut-off date:01.07.2010	Age limit as per Rules 54-B	Entered service crossing
2010-2011 Batch							
1.	H.Govindaraj	BCO	05.06.1973	31.01.2011	37 years, 1 month, 26 days	32+5 =37	37+1 month+26 days.
2.	N.Anbarasu (the petitioner)	BCO	22.05.1973	31.01.2011	37 years, one month, 9 days	32+5 =37	37+1 month + 9 days.
2011-2012 Batch							
Sl.No	Name and Designation Thiru.	Caste	Date of Birth	Joining date as ATO Gr-II	Age cut-off date:01.07.2011	Age limit as per Rules 54-B	Entered service crossing
1.	C.Satheesh Kumar	MBC	23.04.1973	25.06.2012	38 years, 2 month, 8 days	32+5 =37	37+1 year+ 2 months + 8 days
2.	S.Varatharajan	BCO	25.05.1972	29.06.2012	39 years, 1 month, 6 days	32+5 =37	37+2 years, + 1 month+ 6 days
3.	P.Muthusamy	BCO	09.05.1974	25.06.2012	37 years, 1 month, 22 days	32+5 =37	37+1 month + 22days



4.	B.Ilamurugan	BCO	03.06.1966	25.06.2012	45 years, 28 days	32+5 = 37	37+8 years + 28 days
5.	R.Saravanan	BCO	11.06.1965	25.06.2012	46 years, 20 days	32+5 = 37	37+9 years + 20 days
6.	N.Chandra kumar	BC	17.07.1968	09.07.2012	42 years, 11 months, 14 days	32+5 = 37	37+5 years, + 11 months + 14 days

8. More specifically, on verification, the date of birth of the petitioner is mentioned as 22.05.1978. But, as per SSLC Certificate, the actual date of birth of the petitioner is 22.05.1973 and the difference is almost five years. Thus, the petitioner has committed an act of fraud for the purpose of securing public employment. An official enquiry was conducted. All documents were perused and the genuinity of the documents was ascertained. The petitioner was selected and he joined in the Department on 31.01.2011 as Assistant Tourist Officer Grade-II at Tourist Office, Kodaikanal. The service of the petitioner was regularised in proceedings dated 28.07.2018 and his probation was declared by the second respondent in proceedings dated 20.03.2020.

9. When the appointment of the writ petitioner was based on malpractice and fraud, the petitioner has no *locus standi* to question the promotion of the contesting respondent to the post of Assistant Director. When the order impugned is relating to the cancellation of regularization and declaration of probation, the petitioner cannot travel beyond the scope of impugned order and question the promotion of fourth respondent to the post of Assistant Director.

10. Regarding the ground of violation of principles of natural justice, this Court is of the considered opinion that such show cause notice cannot be issued by way of empty formality and a show cause notice is warranted only in the event of certain actions based on certain materials which are not within the knowledge of the employees concerned. In the present case, the impugned order has been passed based on verification of original documents, more specifically, the school records of the petitioner with reference to his actual date of birth. When the Authorities have verified all the original documents produced by the writ petitioner and found that the petitioner has suppressed his actual age and entered into public service, they have issued the impugned order cancelling the regularization and declaration of probation. The petitioner's actual date of birth is 22.05.1973 and therefore, he was appointed beyond the age limit prescribed for appointment to the post of Assistant Tourist Officer Grade-II.

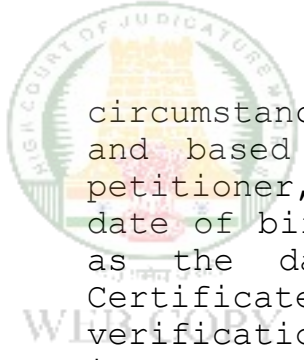


11. The Authorities, while considering the Tourist Officers promotion panel for the year 2020-2021 of the feeder category such as Assistant Tourist Officer Grade-I, Assistant Tourist Officer Grade-2, and Superintendents, have verified the certificates of the petitioners. At the time of verification of the certificates, the Authorities found that many employees including the petitioner have crossed the upper age limit which is in violation of G.O.Ms.No.16, Backward Classes, Most Backward Class and Minorities Welfare (BC-1) Department dated 03.05.2002. In this regard, the Rule 54-B of the Tamil Nadu State and Sub-ordinate Service Rules is relevant which reads as under:-

Age concession for persons affected due to the ban on direct recruitment. - Notwithstanding anything contained in the Special rules for the various State and Subordinate Services or in any adhoc rules applicable to any temporary post in the case of a person who has been affected due to the ban on direct recruitment that was imposed on the 29th November 2001, the upper age limit shall be raised to a maximum period of five years reckoned on and from the 17th July 2006, ending with the 16th July 2011, in computing his age for appointment to any post under the State Government, except the categories of posts of Teachers, Doctors and Police Constabulary and shall be applicable in respect of notifications issued or selections made by competent recruiting authorities or appointments made by competent appointing authorities during the aforesaid period".

12. As per the Adhoc Rules of the Department of Tourism, the crucial date for direct appointment for the post of Assistant Tourist Officer, Grade-II is 1st July of every year, which is the qualifying date for the age limit. Accordingly, as per Rule 54-B of the Government of Tamil Nadu, the maximum age limit for persons belonging to the backward caste for joining in the government service between the period from 17.07.2006 to 16.07.2011 is 37 years. Based upon the same, the age of the petitioner was determined as 01.07.2011 and it was found that the petitioner has obtained the employment only after the crossing the age of 37 years with additional one month and 9 days. Pursuant to the said condition, the orders of cancellation of regularization and declaration of probation have been issued to the petitioner.

13. In view of the facts and circumstances, this Court is of the considered opinion that the question of issuing the show cause notice would not arise as it is only the verification done by the Authorities while considering the cases of the employees for promotion. At that point of time, they have verified the date of birth along with the certificate and found certain discrepancies and accordingly, issued the order impugned. Thus, the facts and



circumstances were very much within the knowledge of the petitioner and based on the educational certificate produced by the writ petitioner, action was taken. Therefore, again with reference to the date of birth of the petitioner, no further opportunity is required as the date of birth of the petitioner as per the School Certificates, cannot be altered or modified. During the verification, the actual date of birth was identified. Thus, issuance of show cause notice would be an empty formality and it would not serve any purpose. Non-issuance of show cause notice has not been caused any prejudice to the writ petitioner. Issuance of show cause notice is mandatory, only if the verification of certificate is caused any prejudice. In fact, the certificates were produced by the petitioner and the Date of birth recorded in the certificate was taken into consideration for the purpose of passing the impugned order. Therefore, non-issuance of show cause notice would not cause any prejudice to the interest of the petitioner. Therefore, there is no infirmity in respect of the decision taken by the Authorities.

14. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

- 1.The Chief Secretary to the Government,
State of Tamil Nadu,
Tourism, Culture & Religious Endowments (T2) Department,
Fort St.George,
Chennai-600 009.
- 2.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.
- 3.The Assistant Director,
O/o.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.



4. Assistant Director,
O/o.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.

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+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20326[F] dated 22/04/2022)

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-20395[F] dated 22/04/2022)

+1 CC to M/s.SPL.GP. (SR-20736[F] dated 22/04/2022)

W.P. (MD) No.4482 of 2021
21.04.2022

MGJ(02.05.2022) 8P 8C