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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.02.2022**

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.457 of 2018

and

W.M.P(MD)Nos.461, 462 & 463 of 2018

S.Thanushkodi

... Petitioner

Vs.

1.The Commissioner,
H.R & C.E. Department,
Nungambakkam,
Chennai-34.

2.The Joint Commissioner /Executive Officer,
H.R & C.E. Department,
Kanyakumari District.

... Respondents

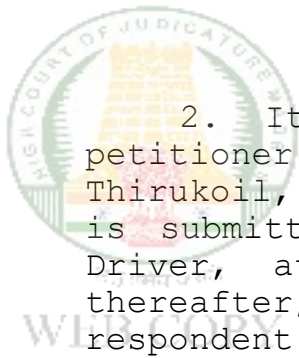
Prayer: Writ Petition is filed under Article 226 Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the first respondent in O.Mu.No.18440/2017/U1 dated 20.12.2017 and quash the same and further direct the respondents to appoint the petitioner under the resolution passed by the trustee on 22.03.2017 vide Resolution No.2958.

For Petitioner : Mr.Anand C.Rajesh
for Mr.H.Velavadhas

For Respondents : Mr.P.Subbaraj
Special Government Pleader for R.1
Mr.K.Sathya Singh for R.2

ORDER

The petitioner has challenged the impugned communication of the first respondent, rejecting the recommendation of the second respondent to appoint him as a Driver.



2. It is the specific case of the petitioner that the petitioner was appointed as a Watchman in the Arulmighu Krishnasamy Thirukoil, Panchalingapuram, Kanyakumari District, on 01.06.1997. It is submitted that one Manickavasagam Pillai, who was working as Driver, attained the age of superannuation on 31.05.2016 and thereafter, a vacancy arose in the post of the Driver in the second respondent Office.

3. Under these circumstances, the petitioner was directed to report to duty to discharge duties as a Driver in the Head Office of the second respondent.

4. The learned counsel for the petitioner submits that the second respondent also sent a suitable recommendation to the first respondent to promote the petitioner as the Driver with effect from 31.08.2016 in the respondent. However, the first respondent rejected the candidature of the petitioner on the ground that the petitioner had crossed the age for being appointed/promoted as a driver. The learned counsel appearing for the petitioner submits that as on date the petitioner has attained the age of 50 years.

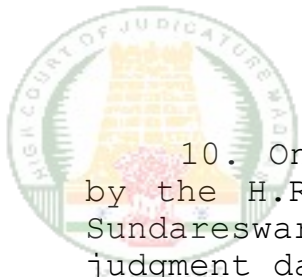
5. The learned counsel for the petitioner particularly drew attention to provisions for the Tamil Nadu Hindu Religious Institutions (Officers and servants) Service Rules, 1964. It is submitted that there was no disqualification/impediment to promote the petitioner as a Driver.

6. It is submitted that the aforesaid Rule was replaced by the Tamil Nadu Hindu Religious Institutions Employees (Conditions of service) Rules, 2020. It is submitted that the amended Rule has no relevance to the facts of the case.

7. The learned counsel for the petitioner specifically referred to Section 55 of the Hindu Religious and Charitable Endowments Act and stated that vacancies whether as a permanent or temporary office holders or a servants of the religious institutions is to be filled up only by the Trustee.

8. It is submitted that the petitioner was working as a Watchman in Arulmigu Krishnasami Thirukoil, Panchalingapuram, Kanyakumari District, which was one of the Devasthanam Temple pursuant to the reorganization of the State. It is therefore submitted that, the Trustees alone were entitled to appoint and promote the employees of the aforesaid temple.

9. The learned counsel for the petitioner submits that under similar circumstances, in **Athitia Gnaanam [Junior Engineer] Vs. Hindu Religious and Charitable Endowments Board and another** [W.P.No.14345 of 2012], this Court vide order dated 01.07.2014 allowed the Writ Petition.



10. On further appeals in W.A.Nos.1441 and 1448 of 2014 filed by the H.R. & C.E. Board and the Temple viz., Arulmigu Meenakshi Sundareswarar Thirukoil, the Division Bench of this Court, vide its judgment dated 11.03.2015, upheld the decision of the learned Single Judge with the following observation:-

'26.In this connection, this Court significantly points out that ordinarily a Court of Law would not issue a direction for promoting a person from a retrospective date. But on the facts and circumstances of the present case which float on the surface clearly points out that even though the First Respondent/Petitioner is fully qualified and is discharging the duties of Junior Engineer (Electrical) from the date on which he was issued with 'C' license i.e., for very long years in the Temple and also when the Temple Authorities had recommended his case for promotion on two earlier occasions by passing necessary resolution and this Court taking note of the fact that when the First Respondent/Petitioner had approached this Court on previous occasions, issued a direction to consider his case for promotion. At this stage, this Court to prevent an aberration of justice and in furtherance substantial cause of justice and in the interest of Equity, Fair Play, Good Conscience and even as a matter of Prudence, directs the Commissioner, Hindu Religious and Charitable Endowments Board (Appellant in W.A.1441 of 2014) to promote the First Respondent/Petitioner to the post of Junior Engineer (Electrical) on regular basis with effect from 15.09.2006 from the date of resolution passed by the Board of Trustees of the Temple with all attendant, monetary and service benefits on or before 26.03.2015 since the First Respondent/Petitioner is retiring on 31.03.2015.'

11. The learned counsel for the petitioner further submits that since the second respondent had also recommended the petitioner, the first respondent ought to have granted suitable permission.

12. The learned counsel for the petitioner has also drawn attention to paragraph No.13 of the decision of the Hon'ble Supreme Court in **Badri Prasad & others Vs. Union of India & others reported in 2005(4) SSC 591**, which reads as under:-

13."The Practice adopted by the railways of taking work from employees in group 'D' post on a higher Group 'C' post for unduly long period legitimately raises hopes and claims for higher



posts by those working in such higher posts. As the railways is utilizing for long periods the services of employees in Group 'D' post for higher post in Group 'C' carrying higher responsibilities benefit of pay protection, age relaxation and counting of their service on the higher post towards requisite minimum prescribed period of service, if any, for promotion to the higher post must be granted to them as their legitimate claim.

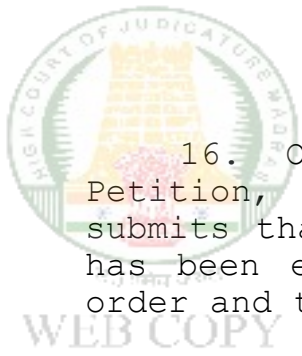
14. As held by the High Court - the appellants cannot be granted relief of regularizing their services on the post of Store man/Clerk merely on the basis of their ad hoc promotion from open line to higher post in the Project or construction side. The appellants are, however, entitled to claim age relaxation and advantage of experience for the long period spent by them on a higher group 'C' post."

13. The learned counsel for the petitioner has drawn attention to the decision of the Division Bench of this Court in W.P.No.14852 of 2009 dated 15.10.2009, which reads as under:-

"8. Therefore, the age and educational qualification prescribed for direct recruitment is not applicable for direct promotion. Hence, the petitioner fixed age limit of 53 years as on 01.07.2007 is not correct, and it is illegal and contrary to their own rules. Admittedly, the first respondent is senior to the selected candidate, who is the second respondent herein. Therefore, the Tribunal is right in setting aside the selection of the second respondent and directing the DCP to reconsider the case of the first respondent for promotion along with the other candidates."

14. Finally, the learned counsel for the petitioner has shown instances of appointment of Watchman being appointed as a Junior Assistant in terms of proceedings of the second respondent on 04.01.1997 and consequently Government Order in G.O.M.S.No.17 dated 12.01.2006.

15. It is submitted that one P.Thangasamy Nadar, who was working as a Watchman like that of the petitioner was promoted as Record Clerk. Similarly, a reference was made to the proceedings of the second respondent, dated 04.01.1997 appointing Arumuganainar pillai, who was also working as a Watchman and was promoted as Junior Assistant.



16. Opposing the relief sought for in the present Writ Petition, the learned Standing Counsel for the second respondent submits that the discretion under Rule 17 of the H.R. & C.E. Rules has been exercised. Therefore, there is no error in the impugned order and the present Writ Petition is liable to be dismissed.

17. The learned Standing Counsel for the second respondent submits that the decision of the Division Bench of this Court in W.A.Nos.1441 and 1448 of 2014 in the case of **Hindu Religious and Charitable Endowments Board and another Vs. Athitia Gnaanam**, dated 11.03.2015 is distinguishable on facts. That apart, the learned Standing Counsel for the second respondent further submits that after the candidature of the petitioner was rejected, Paper Publication was made in the daily Newspaper calling for the applications and 68 applications were received for filling up the vacancy of the Driver within the jurisdiction of the second respondent.

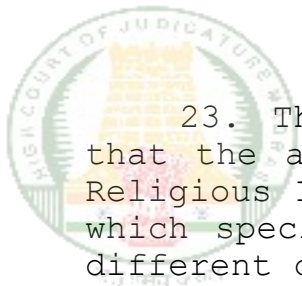
18. It is submitted that out of 68 applications, 3 applications were rejected as ineligible and 65 applicants were called for interview. It is submitted that 44 applicants participated in the interview held on 24.01.2018 and 25.01.2018 in the presence of the Joint Commissioner/Executive Officer of Arulmighu Ramanatha Swamy Thirukoil as a representative of the H.R. & C.E. Department, Chennai.

19. It is submitted that there are no Rules to promote a person from the post of a Watchman to the post of a Driver. Since the petitioner has attained the age of 45 years, the question of appointing the petitioner as a does not arise. It is further submitted that the petitioner has not filed any appeal against the order rejecting his candidature.

20. It is further submitted that the petitioner has an alternate remedy and therefore, on this ground also, the present Writ Petition is liable to be dismissed.

21. It is further submitted by the learned Standing Counsel for the second respondent that the petitioner is a employee of the Temple of Section 46 of the H.R. & C.E. Act. Therefore, the decision/resolution of the Trustee cannot be countermanded by the Commissioner and only the Government can countermand such decisions.

22. By way of rejoinder, the learned counsel for the petitioner submits that the impugned order rejecting the resolution of the Trustee was neither communicated nor an alternate or efficacious remedy was available to the petitioner under the Act.



23. The learned counsel appearing for the petitioner submits that the age limit has been prescribed under the Tamil Nadu Hindu Religious Institution (Officer and Servants) Service Rules, 1964, in which specific criteria has been given to the persons belonging to different communities.

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24. It is submitted that the age for appointing a person as a Government Servant is 30 for the persons belonging to Open Category, 35 for the persons belonging to BC and MBC categories and 40 for the persons belonging to SC/ST categories. The age criteria for promotion was not applicable to promotion.

25. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

26. When the panel for promotion was prepared for promoting the petitioner as a Driver, the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 was in force.

27. The petitioner is an Outdoor Servant within the meaning of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. The expression 'Outdoor Servant' is defined in Rule 2(f) of the aforesaid Rules. It reads as under:-

'2(f): 'Outdoor Servant' means a servant other than a Indoor Servant [Ulthurai Servant].'

28. The expression "Indoor Servant" is defined in Rule 2(e) of the aforesaid Rules. It reads as under:-

'2(e) 'Indoor Servant' [Ulthurai Servant] means a servant whose duties mainly relate to the performance or rendering assistance in the performance of Poojas, rituals and other services to the deities, the recitation of Mantras, Vedas, Prabandhams, Thevarams and similar invocations and performance of duties connected with such performance or recitation in a religious institution.'

29. The provisions of Tamil Nadu Ministerial Service Rule which has been referred in Rule 13 of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 applies only to the post of 'outdoor servants' as defined in Rule 2(f) of the aforesaid Rules. Rule 13 of the said Rules prescribes qualification for Outdoor Servant. Rule 13 of the said Rules reads as under:-



''13. Qualification for outdoor Servant:- The minimum general educational qualification prescribed for entry into the Tamil Nadu Ministerial Service shall be the qualification for appointment to the posts of outdoor servants to whom the duties of maintenance and custody of accounts, collection of income and custody of cash and other valuables are entrusted. The qualification prescribed for the entry into Government service for the posts of Record Clerks and Office Assistants shall apply to the other categories of like nature of posts in the temple services. ''

30. Under Rule 13 of the aforesaid Rules, the minimum general educational qualification prescribed for an 'outdoor servant' is the same qualification prescribed for appointment of a person under the Tamil Nadu Ministerial service to whom the duties of maintenance and custody of accounts, collection of income and custody of cash and other valuables are entrusted.

31. The qualification prescribed for entry into Government service for the post of the Record Clerk and Office Assistants shall apply to the 'other categories' like the nature of posts in the temple service. Thus, the qualification prescribed for entry into Government service for the post of Record Clerk and Office Assistant is applicable for the 'other categories of service' which would include the Watchman post. There is no provision under the said Rules for promoting a Watchman as a Driver.

32. The provisions of the Tamil Nadu Ministerial Service Rules read with the Tamil Nadu General Subordinate Service Rules do not apply either for appointing or promoting the petitioner from the post of Watchman to the post of Driver. There was a gap in the aforesaid Rules.

33. The Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, replaced the 1964 Rules. It filled up the gap. As per the amended Rules, no person shall be eligible for appointment by promotion from a non-senior grade temple to senior grade temple, if he has completed 45 years of age on the first day of July of the year in which the vacancy was notified.

34. The intention of the Government is not to stagnate an employee in the same position without any benefit. The Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 framed under Section 116(2) of the Act and replaced the 1964 Rules. The definition in Rule 2(e) and 2(f) of the 1964 Rules has been re-grafted as Rule 2(1)(j) and 2(1)(k) in 2020 Rules. They read as under:-

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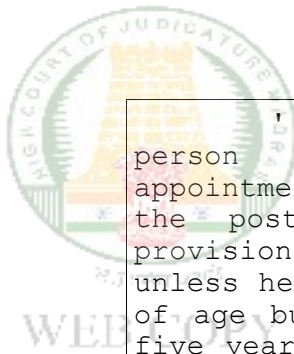


Rule 2(1)(j) and Rule 2(1)(k) of the 2020 Rules	Rule 2(e) and Rule 2(f) of the 1964 Rules
2(1)(J) ''Ulthurai (Indoor) employee'' means an employee whose duties mainly relate to the performance or rendering assistance in the performance of poojas, rituals and other services to the deity, the recitation of mantras, vedas, prabandhams, thevarams and similar invocations and performance of duties connected with such performance or recitation in a religious institution.	2(e) ''Indoor Servant'' [Ulthurai Servant] means a servant whose duties mainly relate to the performance or rendering assistance in the performance of Poojas, rituals and other services to the deities, the recitation of Mantras, Vedas, Prabandhams, Thevarams and similar invocations and performance of duties connected with such performance or recitation in a religious institution.
2(1)(k) ''Velithurai (Outdoor) employee'' means an employee other than an Ulthurai (Indoor) employee.''	2(f) ''Outdoor Servant'' means a servant other than an Indoor Servant [Ulthurai Servant].

35. Service of a ''Watchman'' is classified as an Outdoor Employee under Sl.No.1 in Category XII in Group - A in Class 1 - Senior Grade Temples of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020. Post of a ''Watchman'' is also classified as an Indoor Employee under Sl.No.1 in Category VII, in Group B in Class II - Non Senior Grade Employees.

36. The post of a ''Driver'' is classified as a Technical Staff under Sl.No.1 in Category - VI in Group - C in Class I Senior Grade Temples. The post of a ''Driver'' is also classified as an Outdoor Employee under Sl.No.1 in Category IX in Group A, in Class II - Non - Senior Grade Temples.

37. Rule 7 and Rule 13 of the 2020 Rules read as under:-



17. Qualification. (a) Age.- No person shall be eligible for appointment by direct recruitment to the posts for which there is a provision for direct recruitment unless he has completed eighteen years of age but has not completed thirty-five years of age on the first day of July of the year in which the vacancy is notified.

Provided that no person shall be eligible for appointment by promotion from non-senior grade temple to the Senior Grade Temple if he has completed forty-five years of age on the first day of July of the year in which the vacancy is notified.

(b) Other qualifications.- No person shall be eligible for appointment to the category of posts specified in column (1) of the tabular column in the Annexures I to XI by the methods specified in column (2) thereof unless he possesses the qualifications specified in the corresponding entry in column (3) thereof.

Provided that in cases where this rule prescribes a diploma or a degree or a post-graduate degree as qualification for appointment, then,-

- (a) a diploma obtained, after completion of S.S.L.C. or Higher Secondary course [10 + 3 (3 years Diploma)] or [10 + 2 + 2 (Lateral Entry)]; or
- (b) a degree obtained, after completion of S.S.L.C. and Higher Secondary Course (10 + 2 + 3 or more), or
- (c) a post-graduate degree obtained, after completion of S.S.L.C., Higher Secondary Course and a degree (10 + 2 + 3 + 2 or 3) from any University or Institution, recognized by the University Grants Commission shall be recognised as the qualification.'

13. Promotion.- (i) Number of posts which have to be filled up by promotion from the feeder categories within the religious institution shall be worked out by the religious institution and a panel of qualified persons for each post shall be prepared every year as per the seniority in the feeder category.

(ii) No person shall be eligible for promotion unless he has satisfactorily completed his probation.

(iii) If the feeder category for a post is not available in the institution or the person in the feeder category is not suitable for the promotional post, then that vacancy shall be filled up by the employees of other religious institutions by notifying those vacancies and calling for applications from other religious institutions.'

38. As per Rule 13, 14 and 15 of the aforesaid Rules, a method has been prescribed.

39. If the above rule was in force on the date when the panel for promoting the petitioner was prepared, the petitioner would have been eligible for being promoted as he was aged below 45 years. The



first respondent has passed the impugned order when there is no provision for such promotion. However, the intention of the Government is to give a progression in career to employees.

40. In the year 1996, pursuant to the implementation of the Fifth Pay Commission, Assured Career Promotions (ACP) was contemplated for the Central Government employees. This was applied for the State Government employees. As per ACP, two financial upgradations were allowed in 24 years time. This was modified with the implementation of the sixth pay commission and Modified Assured Career Promotions (MACP) as per which 3 financial upgradations were to be given at the end of each 10 year. This was applied for the State Government employees. It is noticed that the petitioner was appointed in the year 1997 as a Watchman. He was later asked to officiate as a Driver since 01.06.2015.

41. There has been no other career benefit conferred on the petitioner. There was also no scope for promotion under the earlier rules. There was also no scope for any ACP or MACP under the Rules for Temple employees.

42. Considering the same, I am inclined to allow this Writ Petition by directing the respondent to approve the promotion of the petitioner as Driver with effect from the date when the panel was prepared. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of copy of this order. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (LA&MC)

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Sub Assistant Registrar(CS)

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To

1.The Commissioner, H.R & C.E. Department,
Nungambakkam, Chennai-34.

2.The Joint Commissioner /Executive Officer,
H.R & C.E. Department, Kanyakumari District.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-6599[F] dated 16/02/2022)

+1 CC to M/s.SPL GP (SR-6233[F] dated 15/02/2022)

W. P (MD) No. 457 of 2018

14.02.2022

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