



W.P.(MD)No.23143 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.23143 of 2022

and

W.M.P(MD)Nos.17240 & 17242 of 2022

P.Paramasivan

... Petitioner

Vs

1.The State,
represented by its Chief Secretary to Government,
Department of Rural Development and Panchayats,
Saint.George Fort, Chennai.

2.The Commissioner,
Department of Rural Development and Panchayats,
Panagal Building, Saidapet, Chennai.

3.The District Collector,
Dindigul District, Dindigul.

4.The Project Director,
District Rural Development Agency,
Dindigul District, Dindigul.

5.The Personal Assistant to District Collector,
Office of the District Collectorate,
Dindigul District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to permit the petitioner to apply for the appointment to the post of Jeep Driver pursuant to the notification issued by the fifth respondent vide his proceedings in Na.Ka.No.3183/2022/Vu.Va.3 dated 09.09.2022 by relaxing his age as contemplated under Section 20(8) (1) and Section 61 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and consequently, to direct the respondents to consider the petitioner for appointment to the post by considering long length of the petitioner's service within the time that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The Personal Assistant to District Collector (Panchayat Development), Dindigul District has issued notification dated 09.09.2022 calling for applications for filling up vacancies for the post of Jeep Driver and Office Assistant in the Department of District Rural Development and Panchayat Unit, Dindigul. The petitioner has applied in response thereto. However, he apprehends that his application may be rejected as age barred. My attention is



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drawn to the stipulation set out in the recruitment notification dated 09.09.2022 that the maximum age limit for candidates belonging to Most Backward Class (MBC) should be 34 as on 01.07.2022. The writ petitioner was born on 28.05.1988. He was 34 years 1 month 3 days old as on 01.07.2022. Hence this writ petition has been filed for directing the respondents to permit him to apply for appointment to the post of Jeep Driver by relaxing age requirement.

3.The learned counsel appearing for the petitioner raised the following contentions:

a) Section 61 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 mandates that the period of service of a temporary Government employee must be excluded provided, he or she has not reached 40 years of age. The petitioner has been working as temporary driver since 2009 and therefore, he is entitled to the benefit set out therein.

b) The Government of Tamil Nadu has issued G.O(Ms)No.91 (Human Resources (S) Department) dated 13.09.2021 in which it has been directed that wherever the upper age limit has been prescribed it would stand extended by two more years. In the notification, the upper age limit has been set out as 34. If the aforesaid Government Order is applied to the case on hand, the



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petitioner will be eligible to participate in the recruitment process.

c)The qualification prescribed in the recruitment rules is only eighth standard. The petitioner has passed SSLC. He belongs to MBC category. Therefore, the maximum age limit prescribed in the sub rule will not apply to him.

He relies on Section 20(8) (i) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

4.The learned Additional Government Pleader appearing for the respondents submitted that none of the contentions advanced by the learned counsel appearing for the petitioner are having substance. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The first question that arises for consideration is whether the petitioner is entitled to the benefit set out under Section 61 of the said Act. Section 61 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows:

“61. Notwithstanding anything contained in the Act or in the special rules for the various State and Subordinate Services, in



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the case of discharged Government employee or a temporary Government employee who has not completed forty years of age, the actual period of his service under the Government, whether continuous or non-continuous shall be excluded in computing his age for appointment to any post under the Government including the appointment made through the Commission.”

To invoke the aforesaid provision, the candidate must have been a temporary employee who has not completed 40 years of age. He should have served under the Government. The petitioner has not completed 40 years of age. In the typed set of papers, the order appointing the writ petitioner as temporary employee has been enclosed. It is seen therefrom that the writ petitioner was appointed by the District Collector on outsourcing basis on consolidated pay. No doubt the order of appointment was issued by the District Collector. But the petitioner had been receiving his monthly pay only from the agency which sponsored him. The petitioner was not drawing his pay from the Government Treasury. The petitioner cannot be termed as a temporary “Government” employee. He worked as a driver on consolidated pay. It cannot be said to be a service under the Government. There was no master-servant relationship. Therefore, the petitioner is not entitled to the benefit set out in the Section 61 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.



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6.Of course, under G.O(Ms)No.91 (Human Resources (S) Department) dated 13.09.2021 taking into account the pandemic that struck the nation, the upper age limit prescribed for various posts had been enhanced by two more years. The contention of the learned counsel appearing for the petitioner is that in the recruitment notification issued by the fifth respondent, the upper age limit of MBC candidate has been fixed as 34 years. Therefore, the petitioner is entitled for extension of two more years. There is no merit in this argument. The learned Additional Government Pleader appearing for the respondents submitted that the recruitment to the posts of Jeep Driver and Office Assistant in the Department of Panchayat Development Unit, Dindigul is governed by ad hoc rules set out in G.O(Ms)No.134, Rural Development and Panchayat Raj (E5) Department, dated 14.12.2009. Rule 5 states that upper age limit for the post of Driver will be 30 years of age as on the first day of July of the year in which the selection for appointment is made. Since the petitioner belongs to MBC category, under the Proviso 2 to Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, he is entitled to extension of two years. By virtue of G.O(Ms)No.91 (Human Resources (S) Department) dated 13.09.2021, there will be extension of two more years for all categories of candidates. Thus the petitioner will be entitled to 4 years



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extension. That is why, the notification issued by the fifth respondent states that the upper age limit for MBC candidates will be 34 years of age. The notification in question has been issued taking into account G.O(Ms)No.134 Rural Development and Panchayat Raj (E5) Department dated 14.12.2009 and G.O(Ms)No.91 (Human Resources (S) Department) dated 13.09.2021 and also the Proviso 2 to Section 20 (8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

7.Though I have rejected the first two contentions advanced by the learned counsel appearing for the writ petitioner, the petitioner will succeed on the third submission. Section 20(8)(i) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 reads as follows:

“20.(8) The maximum age limit prescribed in the special rules shall not apply—

(i) to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Class or Denotified Communities or of destitute widows of all castes to a post included in a service for which the special rules prescribe a qualification lower than a degree of any University recognized by the University Grants Commission, if such candidate possesses a general educational qualification which



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is higher than that referred to in sub-section (1) and he is otherwise qualified for appointment; or”

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All the requirements set out in the aforesaid Rule apply to the writ petitioner. He belongs to MBC category. The qualification prescribed in the ad hoc Rules is only eighth standard. It is lower than the degree of any University. The minimum general educational qualification referred to in Section 20(8)(i) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is set out in Schedule-III. It reads as follows :

“SCHEDULE-III

[See section 20 (1)]

MINIMUM GENERAL EDUCATIONAL QUALIFICATION

(1) A pass in the Secondary School Leaving Certificate Examination with eligibility for admission to College Course of studies in the Universities in this State; or

(2) A pass in the Secondary School Leaving Certificate Examination of this State.

Explanation—(i) A person who had appeared for 11 year S.S.L.C. Public Examination and obtained 35% marks in each subject either in one sitting or compartmentally, shall be deemed to have passed the S.S.L.C. Public Examination.



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Explanation—(ii) A person who had appeared for 11 year S.S.L.C. Public Examination and had failed to obtain 35% marks in one or more subjects, but who has appeared and obtained 35% marks in the corresponding subject or subjects in 10 year S.S.L.C. Public Examination, shall be deemed to have passed the S.S.L.C. Public Examination.

Explanation—(iii) A person who had studied optional subjects in 11 year S.S.L.C. and failed in the optional subjects but had obtained 35% marks in all other subjects except the optional subjects in 11 year S.S.L.C. Public Examination shall be deemed to have passed the S.S.L.C. Public Examination.

Explanation—(iv) A person who had appeared and passed the X standard Government Examination conducted by the Board of Open School, Tamil Nadu shall be deemed to have passed S.S.L.C. Public Examination.”

The petitioner has passed the S.S.L.C examination held by the State Board of School Examination, Tamil Nadu in March 2003. The petitioner had enclosed the Transfer Certificate issued by the Government Higher Secondary School, Kannivadi, Dindigul District dated 25.05.2005 in the typed set of papers. It is seen therefrom that the petitioner had studied up to 12th standard. In other words, he must be considered as a person having the qualification (12th standard



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discontinued). This is above the general educational qualification prescribed in Schedule III. I bear in mind the fact that the petitioner had worked as a Driver for the Department though on outsourcing basis since 2009. In view of the fact that he is possessing a qualification higher than the X standard which is minimum general educational qualification, I hold that the age limit criteria will not apply to the writ petitioner. The respondents are directed to permit the petitioner to participate in the recruitment process. This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

10.10.2022

Index : Yes / No
Internet : Yes/ No
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Note: Issue Order Copy on 10.10.2022.

To

- 1.The Chief Secretary, Department of Rural Development and Panchayats,
Saint George Fort, Chennai.
- 2.The Commissioner, Department of Rural Development and Panchayats,
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- 3.The District Collector, Dindigul District, Dindigul.



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G.R.SWAMINATHAN, J.

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