



W.P.No.9846 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.9846 of 2023

K.Nithyashree

.. Petitioner

Vs.

1. Union of India
Rep. by Secretary to Government
Law Department
Government of Puducherry
Chief Secretariat
Puducherry 605 001.

2. The Registrar General
High Court of Judicature at Madras
Chennai 600 001.

.. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Declaration declaring column (4) against Clause (iii) in column (3) in the Annexure to Rule 8 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008 as amended vide G.O.Ms.16/2016/LD dated 03.08.2016 as ultra vires the Constitution



W.P.No.9846 of 2023

WEB COPY

and hence, null and void to the extent that they prescribe attainment of the age of 35 years as an eligibility to be appointed as District Judge (Entry Level) by direct recruitment.

For the Petitioner : Mr.P.V.S.Giridhar, Sr. Advocate
For Ms.Akshayaa Benjamin

For the Respondents : Mr.V.Vasanthakumar
Addl. Govt. Pleader (Pondy)
for Respondent-1

Mr.B.Vijay
for Respondent-2

ORDER

(Made by the Hon'ble Acting Chief Justice)

The petitioner, a law Graduate and enrolled as an Advocate on the rolls of the Bar Council of Tamil Nadu & Puducherry on 06.09.2014, has filed this writ petition seeking a writ of Declaration declaring column (4) against Clause (iii) in column (3) in the Annexure to Rule 8 of the Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008 as amended vide G.O.Ms.16/2016/LD dated 03.08.2016 as ultra vires the Constitution and hence, it is null and void to the extent that they prescribe attainment of the age of 35 years as an eligibility to be appointed as District Judge (Entry Level) by direct recruitment.



W.P.No.9846 of 2023

WEB COPY

2. The second respondent, vide Notification No.41/2023 dated 08.03.2023, invited applications for the post of District Judge (Entry Level) Direct Recruitment for Puducherry Judicial Service. As per the said notification, a candidate shall be recruited as a District Judge upon qualifying a preliminary examination, main examination and viva voce. But, as per Item 2 of the notification titled "Qualification", a person shall be eligible to apply for being recruited as a District Judge, if he/she has attained the age of 35 years, possesses a Degree in Law of a University in India, enrolled as an Advocate in the Bar Council of Tamil Nadu or in any other State, must be practising as an Advocate on the date of publication of the notification and must have so practised for a period of not less than seven years as on such date.

3. Though the petitioner has got eight years and six months of practise as an Advocate and there are vacancies in the post of District Judge in the Union Territory of Puducherry vide Notification No.41/23 dated 08.03.2023 issued by the second respondent, she could not apply for the same in view of the prescription of attainment of the age



W.P.No.9846 of 2023

WEB COPY

of 35 years as eligibility for the appointment as per the Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008. Hence, challenging the said provision, the petitioner has come up with this writ petition.

4. Learned counsel for the petitioner submitted that the prescription of attainment of the age of 35 years for the appointment of District Judge (Entry Level) by direct recruitment is violative of Article 14 of the Constitution of India.

5. Referring to Article 233(2) of the Constitution of India, learned counsel for the petitioner submitted that when the Constitution of India mandates that a person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate, the petitioner having practised for more than seven years as an Advocate, could not apply for the post of District Judge in view of the prescription of the age of 35 years and therefore, the said provision is ultra vires.



W.P.No.9846 of 2023

WEB COPY

6. Learned counsel further submitted that the prescription of age limit as 35 years for the appointment of District Judge (Entry Level) has no rationale and is violative of the petitioner's right to equality enshrined under Article 14 of the Constitution of India and it creates inconsistency and that the Puducherry Judicial Service (Cadre and Recruitment) Rules, 2008 framed by exercising the power conferred under Article 309 of the Constitution of India read with the Notification No.30/1676/Jus. dated 31.08.1979 issued by the Government of India, Ministry of Law, Justice and Company Affairs (Department of Justice), cannot override the provision under Article 14 of the Constitution of India.

7. Drawing our attention to the judgment of the Apex Court in the case of ***High Court of Delhi v. Devina Sharma [(2022) 4 SCC 643]***, learned senior counsel fairly stated that though the Apex Court has considered one of the issues raised by the petitioner, it does not foreclose the case of the petitioner as the issue of inconsistency, namely when the petitioner has qualified with seven years of practise in the Bar, the prescription of age limit of 35 years for appointment as



W.P.No.9846 of 2023

WEB COPY

a District Judge (Entry Level) by direct recruitment, cannot non suit the petitioner, has not been considered.

8. Learned counsel further submitted that the rule making power vested under Article 309 of the Constitution of India cannot whittle down the power of the High Court to make Rule under Article 233 and that the powers under Article 309 cannot override the provisions of Article 233 and thus, there is a direct conflict between Articles 233 and 309. In support of his submission, learned counsel referred to the decision of the Apex Court in ***Chandra Mohan v. State of U.P. [AIR 1966 SC 1987]***, wherein, it is held that Article 233 is a self-contained provision regarding the appointment of District Judges. Therefore, the High Court alone can frame relevant Rules exercising the power under Article 233.

9. Learned counsel, thus, submitted that once the respondents have fixed seven years of standing in the Bar as an eligibility for a person to become directly appointed as District Judge, they cannot again fix 35 years of age limit, as it would completely negate the



W.P.No.9846 of 2023

fixation of seven years experience in the Bar and this aspect has not been considered by the respondents while fixing the age limit and therefore, the said provision has to be declared as ultra vires and null and void.

10. In reply, learned Standing Counsel appearing for the second respondent, referring to the judgment of this Court in ***S.Murugan v. State of Tamil Nadu [W.P.No.49 of 2020 dated 06.01.2020]***, submitted that an identical issue was already raised before this Court with similar prayer, namely to declare amendment to column (4) against Clause (iii) in column 3 in the Schedule to Rule 5 of the Tamil Nadu Judicial Service (Cadre and Recruitment) Rules, 2007 vide G.O.Ms.No.877, Home (Courts-I) dated 24.11.2017, published in the Gazette of Tamil Nadu on 24.11.2017 as ultra vires the Constitution and hence null and void to the extent that they prescribed the attainment of age of 35 years as an eligibility to be appointed as District Judge, and the same was rejected, nothing survives in this writ petition.



W.P.No.9846 of 2023

WEB COPY

11. Learned counsel further submitted that the petitioner raises the issue that has already been resolved by an authoritative pronouncement on the basis of the ratio laid down by the Apex Court in the case of ***Hirandra Kumar v. High Court of Judicature at Allahabad [2019 (2) Allahabad Weekly Cases 1507 (SC)]***, wherein, the Apex Court has dealt with the same issue relating to the prescription of age limit that has been questioned on the ground that there is no rational nexus for the prescription of minimum age of 35 years as it clearly discriminates between those who have completed seven years of practice, but have not completed 35 years of age and those who have completed seven years of practice and have also completed 35 years of age and rejected the prayer made therein.

12. Learned counsel also referred to yet another judgment of the Apex Court in ***High Court of Delhi v. Devina Sharma*** supra, wherein, the Apex Court has held that the post of a District Judge is at a senior level in the cadre and therefore, the age is not extraneous to the acquisition of maturity and experience, especially in judicial institutions which handle real problems and confront challenges to



W.P.No.9846 of 2023

WEB COPY

liberty and justice and that the High Courts are well within their domain in prescribing a requirement to ensure that a candidate with sufficient maturity enter the fold of the higher judiciary and that the requirement of 35 years for recruitment to the post of District Judge (Entry Level) is a matter of policy.

13. Learned counsel, therefore, submitted that since the issue raised by the petitioner has been decided by this Court in ***S.Murugan v. State of Tamil Nadu [W.P.No.49 of 2020 dated 06.01.2020]*** and the said judgment binds the petitioner, there is nothing more to be adjudicated in the present writ petition.

14. Learned counsel appearing for the first respondent adopts the arguments of learned counsel appearing for the second respondent.

15. After hearing learned counsel for both the parties, we find merit in the submission made by learned counsel for the second respondent.



W.P.No.9846 of 2023

WEB COPY

16. Admittedly, in **S.Murugan v. State of Tamil Nadu** **[W.P.No.49 of 2020 dated 06.01.2020]** where similar issued was raised for consideration, this Court has held as under:

"3. We have considered the submissions raised and in view of the answer given by the Apex Court to the prescription of age lime, we may further add that 35 years of minimum age to us appears to have been fixed keeping in view the stage of maturity of mind of the person who has to occupy the office of the District Judge (Entry Level).

4. In such circumstances, we find no legal infirmity in the light of the judgment of the Apex Court referred to above or any rational infirmity in view of the reasons given above for interfering in the matter of prescription of either minimum or maximum age.

5. To us, there is no such discrimination as pointed out by learned counsel for the petitioner, the age prescription being a matter of policy."

17. The other contention raised by learned Senior Counsel is that as per Article 233, it is only the High Court which has powers to frame



W.P.No.9846 of 2023

the Rules and in the instant case, the offending Rule has been framed by the Lt. Governor of Puducherry in exercise of powers under the proviso to Article 309 of the Constitution of India. However, the said contention is factually incorrect as the Rule in question was framed by the High Court and at the request of our High Court only it was notified by the Government. The preamble portion of the Rules makes it clear. The communication of the High Court is specifically mentioned in the reference. The same is the case while amending the minimum age limit also.

18. As the issue has already been decided by this Court, we do not see any merit in this writ petition. Thus, the writ petition fails and accordingly, it is dismissed. There will be no order as to costs. Consequently, WMP No.9922 of 2023 is also dismissed.

(T.R., ACJ.) (D.B.C., J.)
30.03.2023

Index : Yes/No
Neutral Citation : Yes/No

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W.P.No.9846 of 2023

WEB COPY

To

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Chief Secretariat
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2. The Registrar General
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W.P.No.9846 of 2023

T.RAJA, ACJ,
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D.BHARATHA CHAKRAVARTHY,J

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W.P.No.9846 of 2023

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