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W.P.Nos.17456, 18843, 19151 and 19652 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.07.2023
Pronounced on	31.07.2023

C O R A M

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.17456, 18843, 19151 and 19652 of 2023

W.P.No.17456 of 2023

K.Indulekha

... Petitioner

-VS-

1. The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.

2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.

3. The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India
to call for the records of the respondents in their proceedings in



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Advertisement No.661 and Notification No.12/2023 dated 01.06.2023 and quash the same insofar as imposing the conditions of "*Fresh Law Graduates must have obtained the Bachelors Degree of Law within a period of three years prior to the date of Notification*" as illegal and consequently direct the respondents to consider the case of the petitioner as Fresh Law Graduate due to non-inclusion of Covid-19 Pandemic situation period in the present notification by respondents.

For Petitioner : Mr.E.V.Chandru

For Respondents : Mr.R.Bharanidharan

W.P.No.18843 of 2023

V.Suriyanarayanan

... Petitioner

-VS-

1. The Registrar General,
Madras High Court,
Chennai-600 104.
2. The Registrar (Recruitment),
Madras High Court,
Chennai-600 104.
3. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.
4. The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, directing the respondents to permit the petitioner to make application and process the application of the petitioner for the post of Civil Judge (Direct Recruitment) vide Notification No.12/2023 dated 01.06.2023 issued by the Tamil Nadu Public Service Commission (TNPSC).

For Petitioner : Mr.S.P.Harikrishnan
For R1 & R2 : Mr.B.Vijay
For R3 & R4 : Mr.R.Bharanidharan

W.P.No.19151 of 2023

J.Kesavalakshmi

... Petitioner

-VS-

1. The Registrar General,
Madras High Court,
Chennai-600 104.
2. The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.
3. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, directing the 2nd and 3rd Respondent Commission to consider the petitioner's representation dated 14.06.2023 and permit her to participate as an eligible candidate in the direct recruitment to the post of Civil Judge in



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the Tamil Nadu State Judicial Service notified on 01.06.2023 vide Advertisement No.661 Notification No 12 / 2023, as a Special extraordinary case in view of the the delay in enrolment with the Bar Council of Tamil Nadu and Puducherry caused by the COVID -19 Pandemic induced lock down .

For Petitioner : Ms.D.Geetha
For R1 : Mr.B.Vijay
For R2 & R3 : Mr.R.Bharanidharan

W.P.No.19652 of 2023

K.Sathiyamoorthy

... Petitioner

-VS-

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Home Department, Fort St.George,
Chennai-9.

2. Tamil Nadu Public Service Commission,
620, Frazer Bridge Road, Esplanade,
George Town, Chennai-600 001.
Tamil Nadu.

3. The Registrar General,
High Court of Madras,
Chennai-104.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to call for records from the 2nd respondent pertaining to the impugned Notification No.12/2023 and Advertisement No. 661 dated 01.06.2023 and quash the same in respect of Sl.No. 4(A) Age Limit (as on 01.07.2023) and



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consequently to direct the respondents to relax the age limit of the petitioner as qua.

For Petitioner : Mr.P.Vijendran
For R1 : Mr.B.Vijay
For R2 & R3 : Mr.R.Bharanidharan

J U D G M E N T

(Common Judgment of the Court was made by **S.VAIDYANATHAN, J.**)

These Writ Petitions have been filed, seeking for quashment and direction in respect of Advertisement No.661 and Notification No.12 of 2023 dated 01.06.2023, relating to the selection process of Civil Judge issued by the Tamil Nadu Public Service Commission.

2. The issue involved in all these Writ Petitions is identical and therefore, we have taken up the matters together for hearing and disposal. We feel it appropriate to narrate the facts involved in each case separately for better understanding. For the sake of brevity, the petitioners are referred to by their names.

W.P.No.17456 of 2023:

3. The petitioner / Indulekha, who had completed Law Degree in June, 2019 and enrolled as an Advocate with Karnataka State Bar Council



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on 23.08.2019. She had thereafter joined LLM course and completed the same in July, 2020 and after Corona pandemic, she joined as a Guest Faculty in a Private Law College. Subsequently, she was selected as Research Assistant on adhoc basis in the Tamil Nadu State Judicial Academy (TNSJA) attached to Madras High Court and paid a consolidated pay, pursuant to which she had to suspend her practice temporarily;

3.1. There was no recruitment taken place for the post of Civil Judge in Tamil Nadu after the year 2018 and a Notification has now been issued by the Tamil Nadu Public Service Commission (TNPSC) vide No.12 of 2023 dated 01.06.2023 for the post of Civil Judge. Though she was much eager to apply for the post, on perusal of the Notification, it was made ineligible to apply for the said post under the category Fresh Law Graduate. Relevant portion of the Notification is extracted hereunder:

II	For Fresh Law Graduates	(i) Must be a fresh Law Graduate possessing a degree in Law from a recognized University as mentioned in Clause-I (i) above, (ii) Must be eligible to be enrolled as an Advocate (iii) Must have secured an overall percentage of marks in acquiring the Bachelor's Degree of Law as below:- (a) 45% Marks in case of Reserved Categories (i.e.SCs, SC(A)s, STs, MBCs/DCs, BCs (OBCMs) and BCMs). (b) 50% Marks in case of Open Category (i.e.Others). (iv) Must have obtained the Bachelor's Degree of Law within a period of three years prior to the date of Notification.
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3.2. It was her grievance that though age relaxation has been given



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for the category of Fresh Law Graduates, no concession was given in respect of year of completion of the Law Degree, which deprived the golden opportunity of participating in the examination. It was her stand that the increase in upper age limit alone is not sufficient and the condition pertaining to the year completion must be extended by another two years, taking note of the previous Government Orders in G.O.Ms.No.91 dated 13.09.2021 and G.O.Ms.No.194 dated 24.04.2023;

3.3. Since the existing Rules with regard to Research Assistants / Research Assistants cum Law Clerks are silent, she may be allowed to write the judicial service examination, as she is not eligible to apply either under the category Fresh Law Graduate nor under "Practising Advocate". Therefore, she prayed for setting aside the relevant clause in the Notification.

W.P.No.18843 of 2023:

4. The petitioner / Suriyanarayanan had completed his Law Degree in the month of December, 2019 and due to Covid-19 restrictions, enrollment had not taken place and was delayed by nine months. He virtually enrolled



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as an Advocate only on 20.09.2020. When he attempted to apply for the Civil Judge examination called for by the TNPSC, citing the eligibility criteria, he was not permitted to apply for the post. On enquiry with TNPSC, it was found that there were fixation of two categories, namely, one is Practising Advocates / Pleaders and Assistant Public Prosecutors and the other one is Fresh Law Graduates with the following prescription of qualifications:

I	For Practising Advocates/Pleaders and Assistant Public Prosecutors	(i) Must possess a Degree in Law of a University in India established or incorporated by or under a Central Act or a State At or an Institution recognised by the University Grants Commission, or any other equivalent qualification and got enrolled in the Bar Council of Tamil Nadu or in the Bar Council of any other State in India and (ii)(a) Must be practising as an Advocate or Pleader in any Court on the date of Notification for recruitment to the post and must have so practised for a period of not less than 3 years on such date. (or) (b) Must be an Assistant Public Prosecutor having not less than 3 years of experience as an Advocate and / or Assistant Public Prosecutor.
II	For Fresh Law Graduates	(i) Must be a fresh Law Graduate possessing a degree in Law from a recognized University as mentioned in Clause-I (i) above, (ii) Must be eligible to be enrolled as an Advocate (iii) Must have secured an overall percentage of marks in acquiring the Bachelor's Degree of Law as below:- (a) 45% Marks in case of Reserved Categories (i.e.SCs, SC(A)s, STs, MBCs/DCs, BCs (OBCMs) and BCMs). (b) 50% Marks in case of Open Category (i.e.Others). (iv) Must have obtained the Bachelor's Degree of Law within a period of three years prior to the date of Notification.

4.1. It was the grievance of the petitioner that he was unable to apply



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for the post either in the category of Fresh Graduate or under Practising Advocate, owing to the delay caused by the Pandemic and his rights to compete with other candidates cannot be curtailed for no fault of him and he cannot be made as a scapegoat due to the delay caused by the Bar Council of Tamil Nadu and Puducherry. Hence, he sought a direction to the respondents to process his application and permit him to write the judicial service examination.

W.P.No.19652 of 2023:

5. The petitioner / Sathiyamoorthy had obtained Law Degree from the Government Law College, Trichy in the year 2010 and enrolled as an Advocate on 23.04.2011 in the Bar Council of Tamil Nadu and Puducherry. When he was aspiring to appear for the judicial service examination, the age relaxation, found in the Notification was against the principle of social equity, as no relaxation was provided for the people belonging to the communal minorities, such as SCs and STs. The age relaxation given in the Notification reads as under:

Sl.No.	Category of Candidates		Minimum age (should have completed)	Maximum age (should not have completed)
(1)	(2)		(3)	(4)



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Sl.No.	Category of Candidates		Minimum age (should have completed)	Maximum age (should not have completed)
1.	For practicing Advocates / Pleaders and Assistant Public Prosecutors	For SCs, SC(A)s, STs, MBCs/DCs, BCs, BCMs and Destitute Widows of all castes	25 years	42 years
		Others	25 years	37 years
2.	For Fresh Law Graduates	(For all Categories)	22 years	29 years

5.1. It was urged that since the Notification has been issued after a lapse of three years, many number of Advocates might have definitely crossed the prescribed age limit over three years. There was no mention of the maximum age in Rule 5 and Column 3 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 and it stipulates attainment of the age of twenty five years and candidates should not have attained the age of thirty eight years on the 1st July of the year in which the selection for an appointment is made and there was certain amendment in the Rules made by TNPSC in the year 2007, which reads as follows:

"Age: Must not have attained the age of 40 years in case of the reserved categories and 35 years in case of others as on 1st July of the year in which selection for appointment is made."

5.2. It was stated that though the petitioner had sent a representation to the 2nd respondent on 20.06.2023, there was no response received from the 2nd respondent. Since the Notification and Advertisement being



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unconstitutional, illegal and discriminative, both are liable to be quashed and a direction was sought to entertain the application of the petitioner for the post of Civil Judge.

W.P.No.19151 of 2023:

6. The petitioner / Kesavalskhmi, after completion of her Law Degree in July, 2019, applied for enrollment with the Bar Council of Tamil Nadu and Puducherry on 09.09.2019. Though verification of her certificates and Police enquiry were completed as early as on 13.02.2020, consequent to the country-wide lockdown on account of Covid-19, no enrollment ceremony had been conducted by the Bar Council and she enrolled as an Advocate only on 23.09.2020 and started practising in Labour Laws;

7. The time gap between completion of course and enrollment was more than one year, which was not on her fault, as delay had occurred due to the inaction on the part of Bar Council of Tamil Nadu and Puducherry. In an identical issue, the Apex Court in the case of **Deepak Yadav vs. UPSC.** **[W.P.(Civil) Nos.408/2021]** batch took a lenient view and granted relief to the petitioners therein and the same is squarely applicable to her case of the



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petitioner herein. Hence, she prayed for a suitable direction to the respondents for participation in the selection to the post of Civil Judge.

8. Learned counsel for Indulekha submitted that at the first blush, the Notification issued by the respondent TNPSC was not in accordance with the law laid down by the Supreme Court in the case of **Malik Mazhar Sultan vs. Uttar Pradesh Public Service Commission**, wherein it was held that all High Courts must ensure timely selection and appointment of judicial Officers. In the state of Tamil Nadu, the last recruitment was made only in 2018 and thereafter, there was no Notification with regard to selection and appointment of Judicial Officers, pursuant to which, there was huge backlog of vacancies and justice was denied to ordinary citizens.

8.1. Learned counsel for Indulekha further submitted that the respondents ought to have deducted the Covid-19 period and relaxed the conditions in order to enable Fresh Law Graduates to apply for the post of Civil Judge and deprivation of the petitioner in competing with others, that too for no fault of her, will certainly cause irreparable loss to her career and



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she is forced to miss the golden opportunity this year.

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9. Learned counsel for Suriyanarayanan submitted that the ambition of the petitioner in becoming an Officer in the Judicial service cannot be nipped in the bud on technicalities, especially when the petitioner had fulfilled all other criteria. Mere enrollment in the Bar Council cannot be reckoned for the purpose of fixing a cut off date, as it would have been postponed for various reasons and to the misfortune of the petitioner, Corona lock down made it impossible to enroll as an Advocate and the worldwide misfortune cannot be turned against him to utter that he is not a fresh law graduate.

10. Learned counsel for Sathiyamoorthy vehemently argued that no Notification or Advertisement should be against the welfare legislation brought for upliftment of minority communities. When there was no prescription of upper age limit in the relevant Rules, the fixation of maximum age as 42 years for the whole communal minorities without segregating SC/STs as a separate category is highly unconstitutional and



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contrary to law. He further pointed out that when Shri Ram Jethmalani, a Legend Advocate denied enrollment at the age of 17, he had approached the Chief Justice of Sindh province and got age relaxation to enroll as an Advoate at the age of 18. Of course, there were no separate Bar Council Rules in existence. The present Notification and Advertisement are against the reservation policy of the Government, which is governed by the Statute and the respondent TNPSC threw all the laws in the air and published the notification without application of mind.

11. Learned counsel for Kesavalakshmi strenuously submitted that the Bar Council of Tamil Nadu and Puducherry adopted the virtual mode of enrollment only after the introduction by the Bar Council of Kerala and by that time, much water had flown under the bridge and the petitioner herein lost the bar experience and seniority. Learned counsel relied on a judgment of the Supreme Court in the case of Deepak Yadav and others vs. Union Public Service Commission and another (supra) decided on 16.07.2021 in support of her argument that relief should be granted to candidates to alleviate their misfortune. For the sake convenience, the relevant paragraphs



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of the judgment are extracted hereunder:

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"We are dealing with an extraordinary and unparalleled situation because of the pandemic and therefore, keeping in view the facts of the present case, we deem it appropriate to exercise plenary power under Article 142 of the Constitution. Relief and succor are needed and justified to alleviate the misfortune of the candidates who have qualified and come within the consideration zone and merit category. It would be inequitable to deny them an opportunity of participating in the selection process because the pandemic has caused delay in declaration of their results by the concerned University.

Accordingly, we issue direction to UPSC to permit the 5 candidates, as a special case, to participate in the personality test/interview in the respective categories in which they have qualified. The addition of these 5 candidates would not be to the disadvantage of any already empanelled candidate in the published list for personality test/interview in the respective branches/categories. We also clarify that this order should not be treated as a precedent.

With the aforesaid direction, the Writ Petitions are disposed of. Pending applications, if any, also stand disposed of."

11.1. Learned counsel further submitted that on the basis of the efforts taken by some of the aggrieved candidates, who filed a Writ Petition No.9791 of 2020 before this Court for a direction to conduct enrollment, in which the petitioner herein also got impleaded, the Bar Council woke from the slumber and arranged for a virtual enrollment. Even as per their version in the counter affidavit filed in that case, there were more than 346 candidates awaiting enrollment and because of the present Notification, they would have also lost the opportunity of applying for the post. Hence, she pleaded that it is one of the principles of the administration of justice



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that justice should not only be done, but it should be seen to be done and prayed that this Court, by invoking its extraordinary jurisdiction, must render justice to the petitioner by permitted her to apply for the post.

12. Per contra, Mr.Vijay, learned Standing Counsel for Madras High Court contended that Kesavalakshmi enrolled as an Advocate on 23.09.2020 and had a practice of only two years and eight months, thereby she cannot be construed as a Practising Advocate. Insofar as Suriyanarayanan is concerned, his date of enrollment was 20.09.2020 and would fall short of four months to term him a Practising Advocate. In the case of Sathiyamoorthy, his date of birth was 10.12.1979 and he has already crossed the maximum age limit of 42 years as on the date of notification. In respect of Indulekha, though she had completed the Law Degree in the year 2019, her practice was suspended on account of her temporary engagement as Research Law Assistant in the Tamil Nadu State Judicial Academy attached to this Court for about one year.

12.1. He further contended that there is no express provision for relaxation of Rules in respect of any qualification and already age



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relaxation was granted in these cases. By relying upon the judgment of the Apex Court in the case of Hirandra Kumar vs. High Court of Allahabad, reported in (2020) 17 SCC 401, he stated that not only the age relaxation, but also any other educational qualification cannot be granted, as it is for the legitimate right of an Authority to decide and the Court, in exercise of judicial review cannot usurp that power. The relevant paragraphs of the judgment are extracted hereunder:

“21 The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.

22 Several decisions of this Court have dealt with the issue. In Dr Ami Lal Bhat v. State of Rajasthan¹¹, a two judge Bench of this Court dealt with the provisions contained in the Rajasthan Medical Services (Collegiate Branch) Rules, 1962. Rule 11(1) prescribed that a candidate for direct recruitment should not have attained the age of 35 years on the first day of January following the last date fixed for the receipt of



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applications. Rejecting the contention that the cut-off was arbitrary, this Court held that the fixation of a cut-off 11 (1997) 6 SCC 614 prescribing maximum or minimum age requirements for a post is in the discretion of the rule making authority. The Court held thus:

“5.In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the employer as the case may be. One must accept that such a cut-off cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable.” The same view has been adopted in other decisions, including those in (i) *State of Bihar v Ramjee Prasad*¹² (“Ramjee Prasad”); (ii) *Union of India v Sudheer Kumar Jaiswal*¹³ (“Sudheer Kumar Jaiswal”); (iii) *Union of India v Shivbachan Rai*¹⁴ (“Shivbachan Rai”); and (iv) *Council of Scientific and Industrial Research v Ramesh Chandra Agarwal*¹⁵ (“Ramesh Chandra Agarwal”).

27....The petitioners and the appellant desire that this Court should roll-back the date with reference to which attainment of the upper age limit of 48 years should be considered. Such an exercise is impermissible. In order to indicate the fallacy in the submission, it is significant to note that Rule 12 prescribes a minimum age of 35 years and an upper age limit of 45 years (48 years for reserved candidates belonging to the Scheduled Castes and Tribes). Under the Rule, the age limit is prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. If the relevant date were to be rolled back, as desired by the petitioners, to an anterior point in



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time, it is true that some candidates who have crossed the upper age limit under Rule 12 may become eligible. But, interestingly that would affect candidates who on the anterior date may not have attained the minimum age of 35 years but would attain that age under the present Rule. We are adverting to this aspect only to emphasise that the validity of the Rule cannot be made to depend on cases of individual hardship which inevitably arise in applying a principle of general application. Essentially, the determination of cut-off dates lies in the realm of policy. **A court in the exercise of the power of judicial review does not take over that function for itself. Plainly, it is for the rule making authority to discharge that function while framing the Rules.**

12.2. He also contended with reference to the qualifications regarding age limit that taking note of the covid period, the maximum age was increased from 27 to 29 years for Fresh Law Graduates and 40 to 42 years for Practising Advocates of minority categories. Relaxation of age and prescription of particular age cannot be demanded as a matter of right. In support of his contention, he has referred to a judgment of the Division Bench of this Court in the case of N.S.Sivakumar vs. Additional Chief Secretary to the Government of Tamil Nadu, Chennai and others, reported in 2020 (2) CTC 241, wherein it has been held as under: (pg.102)

"29. At the outset, we may clarify that the issue of reservation cannot be mixed up with the question of relaxation of age, inasmuch as reservation is provided in terms of Article 16 of the Constitution of India to enable the fulfillment of the constitutional goal of equitable representation of the oppressed classes. Reservation in matters of employment is a constitutional mandate, which is a policy or a concept for keeping a fixed number of jobs protected, and to the



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exclusion of others, for a certain class of people. It is to carve out a determined number or a percentage out of the whole by setting it aside and limiting its utilization for a particular class, caste or community, that is not to be given to or meant for others. Relaxation is an act or exercise of authority that renders a rule or some form of control or prescription, less strict or severe. It is an act that brings about some sort of partial remission by lessening the stiffness or intensity by bending it to a certain extent. The former, in terms of the Indian Constitution and in the present context partakes the nature of a fundamental constitutional right. The latter is a prescription of statutory procedure to meet a certain exigency at the option of the authority to exercise such power. The power to relax is not a fundamental right of reservation to be enforced under Part III of the Indian Constitution. It is in cases of hostile discrimination or manifest arbitrariness that can a challenge be raised upon exercise of such power. Reservation and relaxation have therefore to be understood as two separate concepts and hence, relaxation is not a synonym for reservation. It is nobody's case that reservation has not been granted to the Backward Classes, to the contrary the notification and the impugned advertisement dated 12.12.2019 clearly specify the number of vacancies that are reserved for these category of candidates. The issue, therefore, is only of an additional relaxation in the upper age limit being granted to the reserved category candidates."

12.3. He pointed out that the Hon'ble Supreme Court in the case of

High Court of Delhi vs Devina Sharma, reported in **(2022) 4 SCC 643**

granted some concession in order to obviate any further litigation and uncertainty, by observing as follows:

"28 During the course of the hearing, this Court has been apprised of the fact that several applicants for the higher judicial service examination would have qualified in terms of the upper age limit of 45 years in 2020 or, as the case may be, 2021. As a matter of fact, Mr A D N Rao indicates that he has instructions to the effect that some of those candidates may already have or would be in the process of moving



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petitions before the High Court. The reasons which have weighed with this Court in allowing the High Court, as a one-time measure, to permit candidates for the DJS examination who had qualified in terms of the upper age limit of 32 years during the recruitment years 2020 and 2021, should on a parity of reasoning be extended to candidates for the DHJS examination who would have qualified in terms of the upper age limit of 45 years during the recruitment years 2020 and 2021 during which no examinations could take place for the reasons which have been noticed earlier.

29 In order to obviate any further litigation and uncertainty, we permit the High Court as a one-time measure to allow those candidates who were within the age cut-off of 45 years during the recruitment years 2020 and 2021 to participate in the ensuing DHJS examinations."

When the aforesaid judgment was sought to be relied upon before the Allahabad High Court, it was negative, stating that it was a concession given to those candidates based on the submission of the recruitment body and the same cannot be taken as a precedent in other cases. The relevant paragraph is extracted as under:

"18. In Devina Sharma (Supra), age was relaxed on basis of submission of the recruitment body, therefore, it cannot be treated to be a precedent. In the present case, State has fixed the cut off date and being a policy matter not be disturbed or interfered not being to be 1.7.2022, which has followed earlier pattern arbitrarily. Similarly reckoning date is fixed according to year to recruitment and year of advertisement such as in recruitment process for Uttar Pradesh Police Constable and Head Constable (Advertisement dated 14.1.2018) and the reckoning date was 1 July, 2008.

19. It is settled proposition that due to inaction on the part of the State Government in not filing the posts year-wise. The candidates cannot get a right to participate in the selection process being over aged and that no body can claim as a matter of right that recruitment on any post should be made every year. State has taken a decision which cannot be interfered except it is arbitrary which the



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petitioners have failed to make out a substantial case."

12.4. Thus, it was vehemently contended that the last date for

submission of application was over by 30.06.2023 and if the relief sought for by the petitioners is allowed, it will open a Pandora box and the entire selection process would be ruined. Hence, it was prayed that there was no justification on the part of the petitioners in demanding relaxation of Rules as a matter of right and all these Writ Petitions are liable to be dismissed *in limine*.

13. Mr.R.Bharanidharan, learned counsel for TNPSC, while reiterating the contentions of the learned Standing Counsel for the Madras High Court, emphasized that all the process including scrutiny of applications were over and hall tickets are going to be issued shortly for the conduct of examinations on 19.08.2023. At this moment, if the recruitment process is stalled, the efforts taken by the TNPSC to fill up vacancies would turn to be a futile exercise and there would be no end to finalize the selection process.

14. Heard the learned counsel for the respective parties and perused



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the material documents available on record.

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15. The main grievance of the petitioners was that even though they fall well within the cut off age relaxation prescribed in the notification dated 01.06.2023, they have been deprived of their rights in submission of on-line applications on the ground that they do not come within the purview of eligibility. According to the petitioners, they have not questioned the Rules, but challenged only the notification issued in terms of the Rules and the Covid period needs to be excluded in the light of the judgment of the Apex Court in **High Court of Delhi vs Devina Sharma** (supra). According to them, when the Supreme Court relaxed the limit in that case, taking into consideration the Covid pandemic period and granted the relief, the same yardstick is applicable to the case of the petitioners herein. There was a delay in conduct of enrollment ceremony during Corona period, due to which, they fall short of three years of practice in order to fulfill the conditions of Clause 4 (B) (I & II). For example, the petitioner / Suriyanarayanan was permitted to enroll as an Advocate only on 20.09.2020, whereas he had completed his graduation as early as on



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December, 2019. Had he been allowed to enroll immediately, he would have definitely come within the zone of consideration.

16. It is true that the Apex Court in **High Court of Delhi vs Devina Sharma** (supra) relaxed the age limit and in the very same judgment, it was held that prescription of rule providing for minimum / maximum age for entry into service is essentially a policy matter. In the cases on hand, the Government, based on the recommendation of the High Court, had already increased the maximum upper age limit by two years by G.O.Ms.No.194 dated 24.04.2023. Moreover, the concession granted by the Apex Court was one time measure, as rightly held by the Allahabad High Court and the same cannot be taken advantage of by the petitioners herein.

17. Let us analyze the case of the petitioners individually regarding their entitlement in applying for the judicial service examinations. The case of the petitioner / Indulekha was that she had completed Law Degree in June, 2019 and enrolled as an Advocate with Karnataka State Bar Council on 23.08.2019. Subsequently, she joined as Research Assistant in the Tamil Nadu State Judicial Academy (TNSJA) attached to Madras High Court. In



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terms of the guidelines issued by TNSJA as amended in pursuance of the resolution of the Hon'ble Governing Body of TNSJA dated 24.10.2017, it is very clear that Research Assistant shall not be entitled to practise in the light of Clause-12, which is extracted below:

"12. Bar to practice as Advocate or taking up employment:-

(i) No Research Fellow and Research Assistant during the currency of their assignment shall be entitled to practice as an Advocate in any Court of Law or Tribunal or Authority and it will be obligatory for them, after accepting the assignment as Research Fellow / Research Assistant, to inform the Bar Council concerned, in writing, that he/she shall not practise as an Advocate as long as he/she continues with the assignment as Research Fellow/Research Assistant."

The petitioner / Indulekha, after taking up the task of Research Assistant, had suspended her practice from 01.07.2021 to 30.06.2023, which is evident from her affidavit filed in support of her petitioner. In view of the same, she does not have experience of three years to term her as a practising Advocate for the reason that she had only two years and one month practice as on the date of notification. Though she has stated that the period of Research Assistant must be taken into account for the purpose of practice, as per the resolution / guidelines of TNSJA and in addition to the fact that she had voluntarily suspended her practice and given a letter to that effect,



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her application cannot be entertained and she is ineligible to apply for the post.

18. The petitioner / Sathiyamoorthy seeks relaxation of age by excluding the Covid period. Even though Sathiyamoorthy has sufficient years of practice as on the date of notification, his date of birth was 10.12.1979, thereby he crossed the maximum upper age provided in the notification, as the maximum upper age limit prescribed for SC/ST in terms of 4(A) was 42 years. Sathiyamoorthy stated that the age relaxation fixed for reserved candidates should be different and it cannot be applied uniformly along with other communal categories. Admittedly, Rules have not been questioned and in the absence of express provision to relax the rules, as pointed out by the learned Standing Counsel for the Madras High Court, no leniency can be shown to petitioner / Sathiyamoorthy. Moreover, the judgment of the Apex Court in **High Court of Delhi vs Devina Sharma** (supra) may not be applicable to the facts of this case, because pursuant to the concession given by the Government before the Supreme Court, two years' relaxation have been given and secondly, outer age limit has been



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increased by two years, namely, 40 to 42 years by amending the Rules as stated supra.

19. It is to be noted that while relying on a judgment, if it is found that the factual situation totally differs, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion, as held by the Hon'ble Supreme Court in the case of **Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others**, reported in **(2002) 3 SCC 533**, as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

20. The decision of the Apex Court was considered by the Allahabad High Court (extracted above) and held that it cannot be treated as a precedent. The contention that erstwhile recruitment did not take place and candidatures should not be put hardship cannot be accepted. In this case,



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last recruitment took place in 2018 and on account of Covid intervention, no recruitment was conducted. Moreover, the Government, taking note of the pitiable condition of candidates, amended the Rules by extending two years and the decision taken by the State cannot be interfered with, unless there is arbitrariness.

21. Mr.B.Vijay, learned counsel stated that when Shri Ram Jethmalani was allowed to practise at the age of 17 by the Chief Justice of Sindh province, as stated by the learned counsel for the petitioner, there was no Bar Council Rules in existence at that point of time and now, Rules are framed and no discretion can be exercised in the present situation by simply relaxing the Rules without adhering to relevant provisions.

22. Insofar as the petitioners Suriyanarayanan and Kesavalakshmi are concerned, they fall short of four months to bring them under the ambit of Practising Advocate. In terms of the judgment of the Apex Court in **Hirandra Kumar vs. High Court of Allahabad** (supra), the principles governing a recruitment process with regard to determination of a cut-off are well settled and it is for the Authority to fix the cut-off date or age limit



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in accordance with the Rules. It is worthwhile to refer the judgment of the

Supreme Court in the case of **Rachna and others vs. Union of India and**

another, reported in **(2021) 5 SCC 638**, wherein the difference between

judicial review of a policy decision and issuance of mandamus to frame

policy in a particular manner was clearly set out, by holding as under:

"45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Service Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right."

23. From the above judgment, it is very clear that unless the public policy is capricious and totally arbitrary, the Court cannot blindly stall the selection process, which is within the realm of the executive, as it would



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affect the smooth function of better administration. That apart, in Paragraph No.38 of the said judgment extracted below, the Apex Court distinctly and explicitly delineated that the consideration of concession was on account of Covid-19 pandemic and such relaxation cannot be demanded as a matter of right.

"38.We do find substance in what being urged by learned counsel for the petitioners *inter se* in questioning the decision placed by 1st respondent for our consideration. If an additional attempt remains restricted to the last attemptees for the reason that they had suffered during Covid 19 pandemic, all attemptees irrespective of the nature of attempt (i.e. 1st, 2nd etc.) who appeared in Examination 2020 must have faced the same consequences as being faced by the writ petitioners and each one of them have suffered in one way or the other during the Covid-19 pandemic. At the same time, this reasoning would equally apply to those who have crossed the upper age barrier. More so, when no discretion is left with the 1st respondent to grant relaxation in the age bracket to the candidates other than provided under Rule 6 of the scheme of Rules 2020 which indeed the present petitioners are not entitled to claim as a matter of right and that apart, those who have withdrawn their forms either because of lack of preparation or because of some personal reasons but have crossed the upper age limit to appear in CSE 2021, they would also be equally entitled to claim and no distinction could be made whether the candidate has appeared in the Examination 2020 and availed the last attempt or attempts is still available at his disposal or has crossed the upper age limit."

24. Thus, it is apparent that no relaxation can be granted in the present case on hand, as there was no infringement of fundamental rights guaranteed by the Constitution or Statutory Rules warranting interference



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by this Court. As discussed supra, due to Covid pandemic, no selection process to the judicial service had taken place and if the plea of the petitioners is accepted, it would amount to opening a Pandora box and several other similarly candidates would start knocking at the doors of this Court with the similar demand and in that case, recruitment will turn out to be a never ending process as the examination is scheduled on 19.08.2023. In the absence of any arbitrariness, infringement and fickleness, the petitioners are not entitled to any relief and we do not want to bring the selection process to a standstill, in view of the fact that vacancies (almost 300) in the Subordinate Judiciary in the cadre of Civil Judges is a disturbing one, on account of which there is a deprivation of promotion to eligible Civil Judges as Sub-Judges and Sub-Judges to District Judges.

25. In the notification, which is accordance with the Rules, it has specifically prescribed that a candidate must be a practising advocate on the date of notification. In the present case on hand, the petitioner / Indulekha is not a Practising Advocate. The Hon'ble Supreme Court of India in **All India Judges' Association vs. Union of India [(1993) 4 SCC 288]** categorically



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held that only a practising Advocate who is having experience alone can discharge the duties and functions of judges efficiently with confidence and circumspection. Hence prescribed a period of minimum three years of practice as Advocate as one of the essential qualifications for recruitment as the Judicial Officer at the lowest rung in the judicial hierarchy.

26. Moreover, the petitioners cannot compel the Commission to fix the cut-off date and relax the age in a particular manner they want. A Division Bench of this Court in the case of M.Nandini vs. State of Tamil Nadu and others, reported in MANU/TN/2306/2018 held as follows:

"35. In this regard, the learned senior counsel for the High Court relied on a judgement of the Delhi High Court in W.P.No.(C) No.1701 of 2014 dated 14.03.2014 [Gaurav Mehta vs. High Court of Delhi], wherein the Delhi High Court while taking note of the Division Bench Judgement of High Court of Jharkhand, ultimately held that the petitioner had no right to compel the respondent Commission to hold recruitment examinations especially when there are justifiable and good reasons available for not filling up the vacancies. In para 15 of the judgement, the Delhi High Court has held as follows:-

"15. It is accepted that last Delhi Judicial Services Examination were held in the year 2011 and the written examination were held on 9/10th June, 2012. As per the Petitioners, the examinations were not held in 2012-2013 for want of Court rooms and infrastructure. This factual position is not disputed. The Petitioners have no right to compel the Respondents to hold the examination, when for



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justifiable and good reasons they did not want to fill up the vacancies. In the present case, as per the Petitioners themselves, the Respondents for want of necessary infrastructure and Court rooms, did not hold examinations in year 2012-2013. Now, Notification has been issued in 2014. Reliance placed on the decision of the High Court of Jharkhand in Bhola Nath Rajak (supra) is misconceived. In the said case, it was noticed that the examination were being held after five years. In the special facts and circumstances and after referring to earlier judgement in Sanjiv Kumar Sahay and others vs. State of Jharkhand and others, 2008 (2) JLJR 543 in which it was noticed that selections were being held after seven years, suitable directions were issued. In the present case, examinations have been held from time to time and the last examination was held pursuant Notification dated 20.09.2011. The Petitioners herein, have accepted that they had appeared in 2011 examination but unfortunately did not succeed. Now, Notification dated 18.02.2014 has been issued.

36. In the instant case, ***the respondents fully justified in not conducting the recruitment examination for the last 4 years even though there were vacancies available in the post of Civil Judges. When the respondents have justifiable reasons, in the absence of any allegation of mala fide for not conducting the recruitment examination, the petitioners have no vested right to compel the respondents to conduct the recruitment examination.*** The petitioners are not entitled for any age relaxation on the ground of delay in conducting the recruitment examination. The judgement of the High Court of Jharkhand is distinguishable on the facts of the present case. Apart from that as already held, the impugned notification has been issued only in compliance with the rules and without challenging the validity of the rules, the petitioners cannot maintain these writ petitions to challenge the impugned notification issued by the respondent Commission. Therefore, on this score also, the writ petitions which do not challenge the rules, deserve to be dismissed."

27. In view of what is stated herein-above, we are not inclined to



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grant the relief to the petitioners. Accordingly, *all these Writ Petitions are dismissed as devoid of merits*. No costs. Consequently, connected Miscellaneous Petitions are closed.

28. Before parting with this judgment, we suggest that judicial service examinations shall be conducted every year so as to ensure to minimize the pending litigations, as, of late, it is noticed that certain cases are pending for more than three decades in view of the fact that future vacancies are known on account of retirement of Judicial Officers.

(S.V.N.J.) (K.R.S.J.)
31.07.2023

Speaking order/Non-speaking order
Index: Yes / No
Internet: Yes / No
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To:

1. The Principal Secretary,
Home Department, Fort St.George,
Government of Tamil Nadu,
Chennai-9.
2. The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,

34/36



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Chennai-600 003.

3. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.
4. The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar, Park Town,
Chennai-600 003.
5. The Registrar General,
Madras High Court,
Chennai-600 104.
6. The Registrar (Recruitment),
Madras High Court,
Chennai-600 104.

S.VAIDYANATHAN,J.

and

K.RAJASEKAR,J.

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31.07.2023