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W.P.No.24862 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.24862 of 2022 and
W.M.P.Nos.23798 & 23799 of 2022

1.B.Manigandan
2.P.Rekha
3.S.Suresh
4.K.Kamaraj
5.S.Mageswari
6.M.Leelavathy
7.Vaishnavi Saravanan

... Petitioners

Versus

1.State of Tamil Nadu, rep. by
Its Secretary to Government,
Human Resources Management Department,
Secretariat, Chennai-600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C Nagar, Park Town,
Chennai-600 003.

3.The Director,
Director of Drugs and Control,
359, DMS Campus,
Chennai-6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, or any other appropriate Writ or Order or Direction, in the nature of Writ, calling for the records pertaining



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to the Rule 5A of the Impugned Notification No 21/2022 dated 23.08.2022 issued by the 2nd respondent in so far as the upper age limit fixed is concerned, and quash the same, and direct the 2nd respondents to receive the online application from the petitioners without insisting age limit and permit the petitioners to take part in the examination of Group-V.A Services pursuant to the Notification No.21/2022 dated 23-08-2022 issued by the 2nd Respondent.

For Petitioner : Mr.P.Ganesan

For R1 : Mr.P.Baladhandayutham,
Special Government Pleader

For R2 : Mrs.G.Hema, Standing Counsel

ORDER

This Writ Petition has been filed to call for the records pertaining to Rule 5A of the Impugned Notification No.21/2022, dated 23.08.2022 issued by the 2nd respondent in so far as the upper age limit fixed is concerned and quash the same and also direct the 2nd respondent to receive online application from the petitioners without insisting age limit and permit them to take part in the examination of Group-V.A Services pursuant to the Notification No.21/2022, dated 23.08.2022.

2.For ready reference, the details of the petitioners are as follows:



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S. No.	Name of the petitioners	Date of Appointment	Appointed as	Community
1	B.Manigandan	21.06.2013	Junior Assistant	BC
2	P.Rekha	19.06.2013	Junior Assistant	BC
3	S.Suresh	19.06.2013	Junior Assistant	MBC
4	K.Kamaraj	01.04.2015	Assistant	BC
5	S.Mageswari	17.12.2012	Assistant	MBC/DNC
6	M.Leelavathy	20.02.2017	Assistant	MBC
7	Vaishnavi Saravanan	28.12.2012	Assistant	SC

3.The case of the Writ Petitioners is that the 2nd respondent invited online application vide Notification No.21/2022, dated 23.08.2022 with Advertisement No.625 for 161 posts included in Group-V.A Services to be made by recruitment by transfer from among the holders of the Junior Assistant or Assistant in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service, wherein the maximum age limit is 35 years. Similar notification was also made in respect of direct recruitment in Notification No.03/2022, dated 23.02.2022 with Advertisement No.605 for the very same post of Assistant Section Officer to the Tamil Nadu Secretariat Service for 34 vacancies, wherein no maximum age limit is fixed for the candidates belong to BC/MBC/SC/ST. According to the petitioners, in the notification pertaining to the recruitment by transfer, there is age



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restriction. Whereas in the notification pertaining to direct recruitment, no age limit is fixed. Hence, the age limit is discriminatory in nature. Therefore, Rule 5A of the impugned notification, dated 23.08.2022 is sought to be quashed.

4.A counter has been filed by the 1st respondent. It is the contention of the 1st respondent that as per Rule 5A of the impugned notification No.21/2022, dated 23.08.2022 issued by the 2nd respondent, the upper age limit is fixed. Taking note of the lifting of the ban, five years age relaxation was given to the unemployed youths who were affected by the ban or direct recruitment without restricting the candidates who are already in service as a policy decision of the Government. Since the petitioners are already in service, no age relaxation is made. As per Rule 5 of the Special Rules of Tamil Nadu Secretariat Service, the appointing authority have powers to fill up the vacancies in the post of Assistant Section Officer under anyone of the three methods, namely, promotion or direct recruitment or recruitment by transfer. As per G.O.Ms.No.91, Human Resources Management (S) Department, dated 13.09.2021, orders were issued granting relaxation of upper age limit by two years over and above the upper age



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limit prescribed in the relevant Recruitment Rules, only for the direct recruitment as a policy decision of the Government so as to give opportunity for the persons aspiring for the competitive exams, who were affected by not conducting of the exams by the Tamil Nadu Public Service Commission during the COVID-19 pandemic times from 2019-2021. As per Rule 13 of the Special Rules for the Tamil Nadu Secretariat Service, the maximum age limit for appointment to the post of Assistant Section Office in the Tamil Nadu Secretariat Service by direct recruitment has been prescribed as 35 years. But as per Section 20(8)(ii) of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016 (Tamil Nadu Act No.14 of 2016) such maximum age limit prescribed for direct recruitment in any special rules shall not apply for the Scheduled Castes/Scheduled Tribes/Backward Classes/Backward Class (Muslims)/Most Backward Classes candidates who possess a degree qualification. Hence, it is the contention that the age relaxation has been made as far as the direct recruitment considering the fact that there are so many unemployed youths. Hence, he opposed this petition.

5.The main contention of the petitioner in this Writ Petition is that in the Notification invited through online application by recruitment by



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transfer, there is restriction for age. Whereas in the Notification in respect of direct recruitment, the age limit is relaxed. According to the learned counsel for the petitioner, it is so discriminatory in nature, therefore, the entire Rule 5A of the impugned Notification No.21/2022, dated 23.08.2022 has to be quashed.

6.On perusal of Rule 13 of the Special Rules for the Tamil Nadu Secretariat Service, it is not in dispute that the notification No.21/2022, dated 23.08.2022 has been issued in respect of recruitment by transfer among the holder of the post of Junior Assistants or Assistants in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service. The maximum age limit for Scheduled Castes/Scheduled Castes (Arunthathiyars) and Scheduled Tribes is 40 years and Most Backward Classes/Denotified Communities, Backward Classes (Other than Backward Classes Muslims) and Backward Classes (Muslims) is 35 years, are fixed. However, in the notification, dated 23.02.2022 pertaining to direct recruitment, no maximum age limit is prescribed. According to the learned counsel for the petitioners, it is discriminatory in nature, therefore, Rule 5A of the impugned Notification No.21/2022 dated 23.08.2022 has to be



quashed.

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7.It is relevant to extract Rule 13 of the Special Rules for the Tamil Nadu Secretariat Rules, which is as follows:-

*“13. Qualifications:-Age:- No person shall be eligible for appointment to the category of Assistant Section Officer, Assistant Section Officer (Translation), Assistant Reception Officer, Tamil Nadu House, New Delhi, *Assistants in the Departments of Secretariat including Law and Finance, Assistant (Translation), Personal Clerk, Typist or Telephone Operator by direct recruitment or to the category of Assistant by recruitment by transfer from the category of Junior Assistant or Assistant in the Tamil Nadu Ministerial Service or in the Tamil Nadu Judicial Ministerial Service, if he has completed or will complete the age of thirty years on the 1st day of July of the year in which the selection for appointment is made.*

**[G.O.Ms.No.220, Personnel and Administrative Reforms (D) Department, dated 29-11-1999 w.e.f. 19-08-1999]*

Provided that a person who has been practicing as an advocate of the Madras High Court for a period of not less than five years shall be eligible for appointment to



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the category of Assistant Section Officers by direct recruitment in the Law Department, if he has not completed or will not complete 30 years of age on the 1st day of July of the year in which the selection for appointment is made.

Provided further that the candidates belonging to Scheduled Castes and Scheduled Tribes shall be eligible for appointment as Assistant by recruitment by transfer, if they have not completed or will not complete 35 years of age on the 1st day of July of the year in which the selection for appointment is made.

*** (inserted in G.O.Ms.No.243, Personnel and Administrative Reforms (D) Department, dated 07-10-1998, w.e.f. 15-10-1996) ”*

8.Further, in G.O.Ms.No.91, Human Resources Management (S) Department, dated 13.09.2021, orders were issued granting relaxation of upper age limit by two years over and above the upper age limit prescribed in the relevant Recruitment Rules, only for the direct recruitment as a policy decision of the Government so as to give opportunity for the persons aspiring for the competitive exams who were affected by not conducting of the exams by the Tamil Nadu Public Service Commission during the COVID-19 pandemic times 2019-2021.



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9.It is well settled that as far as the age relaxation is concerned, the interference by the Court and Tribunal must be very slow. When it is purely on administrative action and policy decision, the Court and Tribunal cannot interfere in such matter. Since the age relaxation has been given on the basis of the policy decision of the Government, the petitioners, who are already in service, cannot complain that there is discrimination with regard to age relaxation. The very counter itself indicates that the age relaxation has been made taking note of the unemployed youth and employment ban for several years.

10.In such view of the matter, the person, who is already in service and enjoying the status of the Government service and his service has been secured, cannot claim as a matter of right as similar relaxation which has extended to the unemployed youth for direct recruitment.

11.In the light of the above discussions, I do not find any merit in this Writ Petition. Accordingly, the Writ Petition stands dismissed.



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12. At this stage, the learned counsel for the petitioner seeks the petitioner's representation pending before the Government may be considered. Let the Government may consider the representation of the petitioner on merits within a period of one month. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes
Speaking Order/Non-Speaking Order

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To

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State of Tamil Nadu,
Human Resources Management Department,
Secretariat, Chennai-600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C Nagar, Park Town,
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359, DMS Campus,
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N.SATHISH KUMAR, J.
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