



WEB COPY



WP No.19685 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.19685 of 2021

S.Tirugnanasambandam

... Petitioner

versus

1. The Central Administrative Tribunal,
Chennai Bench
Represented by its Registrar,
High Court Buildings,
Chennai- 104.
- 2.Union of India,
Union Territory of Puducherry,
Represented by the Secretary to Government,
Department of Education,
Government of Puducherry, Puducherry.
- 3.The Director of School Education,
Directorate of School Education,
Government of Puducherry,
Puducherry.



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- 4.K.Thennagathamizhan
 - 5.P.Maheswary
 - 6.V.Tharanidaran
 - 7.R.Velavan
 - 8.S.Sudandiram
 - 9.P.Shalini
 - 10.M.Vinothini
 - 11.M.Bharathiraja
 - 12.P.Santhiya
 - 13.B.Illavarasi
 14. N.Pushparaj
 15. S.Kowsalya
 - 16.P.Nandini
 - 17.P.Prabakaran
 - 18.G.Sivamathi
 - 19.S.Parameswari
 - 20.R.Devendiran
 - 21.I.Illavarasan
 - 22.A.Sadheesh
 - 23.N.Mouttougichenin Ramesh
 - 24.M.Vijayakumar
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus to call for the records relating to (i) the Notification bearing No.36518/DSE/Estt.III/C/2014/(B) dated 07.12.2015, (ii) the select panel contained therein and the Notification bearing No.36518/DSE/Estt.III/C/2014/(B) dated 11.12.2015, (iii) the Wait List contained therein on the file of the third respondent and the Order dated 29.10.2019 made in OA No.310/97/2016 on the file of the first respondent Tribunal and quash the same and consequently, direct the third respondent



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Tribunal to give age relaxations to him under Government servant & Employment Exchange Registration categories or under Rule-6 of the Government of Puducherry, Directorate of School Education, Group-B (Non-Gazetted) Post of Physical Education Teacher Recruitment Rules 2010 and recruit him on merits to the 30 posts of Physical Education Teacher i.e. to the 11th post reserved for the General Category or to the 2nd post reserved for the OBC category.

For the Petitioners	:Mr.T.P.Manoharan Senior Counsel
For the Respondents	:Mr.Syed Mustafa Special Government Pleader for respondent Nos.2 and 3 R1- Tribunal Respondent Nos.4 to 24-No appearance

ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

The Writ Petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records relating to:

- (i) the Notification bearing No.36518/DSE/Estt.III/C/2014/(B) dated 07.12.2015,
- (ii) the select panel contained therein and the Notification bearing No.36518/DSE/Estt.III/C/2014/(B) dated 11.12.2015,

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(iii) the Wait List contained therein on the file of the third respondent and the Order dated 29.10.2019 made in OA No.310/97/2016 on the file of the first respondent Tribunal and quash the same and consequently, direct the third respondent to give age relaxation to him under Government servant & Employment Exchange Registration categories or under Rule-6 of the Government of Puducherry, Directorate of School Education, Group-B (Non-Gazetted) Post of Physical Education Teacher Recruitment Rules 2010 and recruit him on merits to the 30 posts of Physical Education Teacher i.e. to the 11th post reserved for the General Category or to the 2nd post reserved for the OBC category.

2. Brief facts of the case:

2.1. The petitioner was directly recruited by the Government of Puducherry and posted as a Police Constable in its Police Department. Thereafter, he was promoted to the post of Head Constable (Selection Grade) and he is working in the said post till date. In February, 2010, the third respondent has published a notification dated 10.02.2010 inviting applications from the residents of Union Territory of Puducherry for



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recruitment to 18 vacancies in the post of Trainee Physical Education Teacher in the Directorate of School Education on contract basis for a period of three years. As the petitioner is possessing the qualification and eligible for recruitment to the said post, he has submitted his application dated 26.02.2010 under the MBC category and also under meritorious sports person category through proper channel viz. the Police Department, Government of Puducherry. However the third respondent cancelled the said selection process.

2.2. Subsequently, the third respondent published a notification for recruitment to the post of 22 physical education teacher-2015 dated 31.12.2014, inviting applications from the residents of Union Territory of Puducherry in the Directorate of School Education, Puducherry under the Recruitment Rules 1988. In the said notification, it is stated that those who had already applied for recruitment to the post of Physical Education Teacher pursuant to the Notification dated 10.02.2010 and 26.04.2010 are also required to apply afresh and if selected, they will be considered for age relaxation. On the same day, the third respondent has also published another



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notification for recruitment to the post of Physical Education Teacher 2015 dated 31.12.2014, inviting applications from the residents of Union Territory of Puducherry for recruitment to 30 posts of physical Education Teachers in the Directorate of School Education, Puducherry under the Recruitment Rules, 2010.

2.3. As per Recruitment Rules 2010 and Notification dated 31.12.2014, issued by the third respondent for recruitment to 30 posts of Physical Education Teacher, the upper age limit prescribed is 30 years. The petitioner is 38 years 10 months and 29 days as on the crucial date viz. 03.02.2015. As per Clause 7 of the Schedule to the Recruitment Rules 2010 which reads as follows *“Relaxable for Government Servants up to five years in accordance with instructions or orders issued by the Central Government from time to time”* he is entitled for the upper age relaxation under (i) Government Servant (ii) OBC (iii) Meritorious Sports Person & (iv) Employment Exchange Registration categories i.e. for 5 years, 3 years, 5 years & 5 years respectively. The petitioner has submitted an application dated 10.01.2015 through proper channel namely the Police Department,



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Government of Puducherry for recruitment to the notification dated 31.12.2014. As per the mode of recruitment and method of computation given in the prospectus, the third respondent has awarded the petitioner the percentage marks of 65.271. Therefore, in the recruitment to the 30 posts of physical education notified, the third respondent has to place him at Rank No.5 in the common merit list for all categories and at rank no.2 in the merit list for the OBC category and select him for recruitment to the 2nd post reserved for the OBC category and recruit him to the post of Physical Education Teacher. However, the third respondent has treated the petitioner differently and brushed aside the Recruitment Rules 2010 and the Government Orders providing upper age relaxation and the upper age relaxation available to him under (a) Government Servant (b) OBC (c) Meritorious Sports Person (d) Employment Exchange Registration Categories and prepared a Select Panel and published the same through Notification dated 07.12.2015 and wait list and published through notification dated 11.12.2015.



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2.4. Aggrieved by the same, the petitioner has filed an original application in OA No.310/97/2016 challenging the Select panel dated 07.12.2015 and notification dated 11.12.2015 and wait list contained therein on the file of the second respondent and for a direction to the second respondent to select the petitioner and place him at Rank No.2 in the OBC category for recruitment to the 30 posts of physical education teacher, prepare a fresh select panel and make recruitment to the posts. The Tribunal, by order dated 29.10.2019, dismissed the said OA by holding as follows:

The lowest cut off marks for MBC in the select list (for 22 posts) was 68.675 and in the OBC category was 73.770. So there is no merit in the contention put forward by him. The D.o.P.&T Order No.1512/2/2010-Estt (D) dated 27.03.2012 clearly shows that all government servants coming from different departments will not get age relaxation. Sl. No.12 dealing with age relaxation of Group B Government Servants clearly state that 5 years relaxation in age can be given only if the Government servant comes from same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for efficient discharge of duties of post. Here the applicant was working as a



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Police Head Constable and no relationship can be seen between the two posts involved in this case. It was argued that the Govt.OM.S.No.12 is restricting a right given to the Government Servant as per rules and it is against the said rules. On a reading, we find that S.No.12 is only defining the scope of the rule and not restrictive in nature. So, the respondents had rightly denied the age relaxation on this ground. Further, the employment exchange had not recommended his name for the 30 posts and he is not entitled to get age relaxation on that count also. The respondents had given age relaxation of five years on the basis of meritorious sports quota and 3 years on the basis that he is belonging to OBC community. Even then, he is overaged on the crucial date fixed in the notification. The applicant has applied for the post under MBC category and there is no reservation for MBC provided in the notification for 30 posts published by the respondents in this case. He cannot be considered in the general quota also as he is overaged.” Aggrieved by the said order, the petitioner has filed the present writ petition with the aforesaid prayer.



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3. Learned Senior Counsel for the petitioner submits that even though the petitioner has scored higher marks than the selected candidates, he was not selected for the reason that he was over aged, whereas similarly placed persons viz. respondents 23 and 24 have been selected based on the age relaxation granted by the competent authority namely the Lieutenant Governor. He further submits that similarly placed person one G.Bharath, who was also Head Constable in Police Department was selected to the post of physical education teacher by granting age relaxation of 11 months and 10 days and the said person is working in the said post and discharging his duties efficiently.

4. Learned Senior Counsel further submits that as the petitioner is having weighted average percentage marks of 65.271, the third respondent has to place him at Sl.No.11 in the general category and at SL.No.2 in the OBC category. and therefore, the Tribunal without considering the case in a proper prospective has dismissed the said OA.



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5. Learned Special Government Pleader appearing for respondents 2 and 3 strongly objected by stating that nothing warrants to interfere with the impugned order of the Tribunal. So far as the specific allegation of the petitioner that respondents No. 23 and 24 though over aged persons have been selected and age relaxation was granted by the competent authority, an additional counter is filed by the third respondent, explaining the reason for granting such relaxation by the competent authority namely the Lieutenant Governor of Puducherry. According to the third respondent, the 23rd respondent/N.Moultokichenin was given age relaxation by 14 years 3 months and one day for the reason that he was an Ex-serviceman and Sainik Welfare sponsored candidate and the 24th respondent/M. Vijayakumar was granted age relaxation by 5 years 7 months and 13 days as he belonged to OBC category and thereby eligible for age relaxation of 3 years and further he was an Employment Exchange Sponsored candidate and thus eligible for age relaxation of 5 years and thus he was eligible for age relaxation of eight years. The 24th respondent/Vijayakumar was 35 years 7 months and 10 days as on the last date prescribed for receipt of application and hence he was considered under OBC category.



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6. Learned Special Government Pleader further submits that in the additional counter affidavit, the third respondent has explained the reasons for allegation of the petitioner that the third-respondent/Directorate of School Education has granted age relaxation to one G. Bharath by granting age relaxation of 11 months and 10 days and therefore he is working as Physical Education Teacher presently. In the case of G. Bharath, since he is an employment sponsored candidate, he was first in the wait list of the general category and was considered due to the resignation of one Jothipriya, who was selected under General Category. As per G.O.Ms.No.129 dated 10.12.2007, with the sanction of the Lieutenant Governor, Puducherry, age relaxation can be accorded. Since, he was an overaged candidate, age relaxation from competent Authority, namely the Lieutenant Government was obtained and subsequently offer of appointment was issued to the said Bharath. It is further stated in the counter-affidavit that there is no reservation earmarked for MSP to the 30 posts of physical education teacher. Hence the petitioner was eligible only upto the age of 33 years(30+3(OBC)). At the time of submission of application, (age as on 03.02.2015), the petitioner was aged 38 years 10

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months and 29 days. He was over aged for more than 5 years and hence his application was rejected due to overage for the 30 posts of Physical Education Teacher in the year 2015. It is further stated that there is no provision for cumulative relaxation to MSPs who are also Government servant for considering their candidature for direct recruitment to Central Government jobs. Age relaxation in such cases shall be admissible either as a MSP or as a Central Government employee, whichever is more beneficial. Further, age relaxation for MSP is available only for appointment under sports quota. Therefore, the petitioner is not entitled for multiple relaxations for recruitment to the 30 posts of Physical Education Teacher. Therefore, the petitioner's application dated 10.01.2015 was not considered.

7. Learned Special Government Pleader further submits that petitioner's application was not considered since there is no age relaxation granted by the Lieutenant Governor of Puducherry, whereas in case of other candidates, age relaxation was granted by the Lieutenant Governor of Puducherry and therefore, those candidates were considered for selection and appointment order has been issued by the Department.

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8. At this juncture, learned Senior Counsel appearing for the petitioner has submitted that the application submitted by the petitioner on 10.01.2015 is still pending with the third-respondent and no orders have been passed. He submits that as per the Official Memorandum No. 15012/2/2010-Estt.(D), dated 27.03.2012, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), the petitioner's case will have to be considered under Serial No.2 for granting age relaxation for a period of three years under OBC category and under Serial No.12 for granting age relaxation up to 40 years of age for Departmental Candidates with three years continuous service in Central Government and 5 years age relaxation for posts, which are in the same line or allied cadres. The relevant portion of the above office Memorandum is extracted below:

<i>S.No.</i>	<i>Categories of persons to whom age concession is admissible and O.M./Notification No.</i>	<i>Categories of posts to which the age concession is admissible</i>	<i>Extent of Age Concession</i>
2	Other Backward Class O.M.No.43013/2/95- Estt.(SCT) dated 25.01.1955 O.M.No.36012/22/93- Estt.(SCT) dated 22.10.1993	All posts filled by Direct Recruitment	3 years



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S.No.	Categories of persons to whom age concession is admissible and O.M./Notification No.	Categories of posts to which the age concession is admissible	Extent of Age Concession
12	Departmental Candidates with three years continuous service in Central Government O.M.No.15012/1/88-Estt.(D) dated 30.01.1980 O.M.No.15012/1/88-Estt.(D) dated 20.05.1988 O.M.No.15012/87-Estt.(D) dated 15.10.1987 O.M.No.35014/4/79-Estt.(D) dated 24.10.1985	For appointment to Group 'C' and erstwhile 'D' (now MTS posts) by direct recruitment which are in the same line or allied cadres Group A and Group B posts filled through UPSC (other than those filled on the basis of competitive examination) and posts which are exempted from purview of UPSC (where recruitment is made by organization themselves)	Up to 40 years of age (45 years for SC/ST) 5 years (for posts which are in the same line or allied cadres and where a relationship could be established that the service already rendered in a particular post will be useful for the efficient discharge of the duties of post)

9. Learned Senior Counsel for the petitioner submits that the third-respondent has not passed any order on the application dated 10.01.2015 of the petitioner. If the third respondent considers the said application of the petitioner, by applying the age relaxation referred to in the aforesaid Office Memorandum dated 27.03.2012, the petitioner being the eligible candidate having secured higher marks than the selected candidates, he will get



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recruitment in the Education Department. Therefore, he seeks a direction to the third respondent to consider the said representation in the light of Serial No.2 and Serial No.12 in the Office Memorandum dated 27.03.2012,

10. Learned Special Government Pleader for the respondents 2 and 3 submitted that Lieutenant Governor of Puducherry is the competent authority to grant relaxation of age and therefore, the said application has to be forwarded to the Lieutenant Governor/Administrator for getting appropriate orders.

11. Heard the Learned counsel for both the parties and perused the materials available on record.

12. In the light of the above, and considering the submission of the parties and particularly the request made by the learned Senior Counsel for the petitioner, we are of the view that the representation of the petitioner dated 10.01.2015, which is said to be lying with the third-respondent has to be dealt with appropriately and, subject to eligibility, the petitioner to be



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granted age relaxation as per Serial Nos. 2 and 12 of the Office Memorandum dated 27.03.2012. If such is application forwarded by the respondents 3 and 2 to the Lieutenant Governor/ Administrator, Puducherry then it is for the Lieutenant Governor to take appropriate decision on the said application dated 10.01.2015 by considering the request of the petitioner for granting age relaxation for selection of the petitioner to the post of Physical Education Teacher in the third-respondent Department. We make it clear that we are not expressing any opinion on merits of the case. We are only passing a direction to the Administrator to consider the said request of the petitioner in the light of the aforesaid Office Memorandum dated 27.03.2012.

13. In view of the above, we are inclined to pass orders as follows:

(i) The petitioner shall submit a copy of the application dated 10.01.2015 along with a copy of this order to the third respondent, within a period of one week from the date of receipt of a copy of this order.

(ii) The third respondent is directed to forward the application of the petitioner dated 10.01.2015 to the second respondent and the second



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respondent, on receipt of the same, shall forward it to the Lieutenant Governor of Puducherry, within a period of eight weeks thereafter.

(iii) The Lieutenant Governor/Administrator, on receipt of the said application from the second respondent, shall consider the same without being influenced by any of the observations made in this order, and pass orders at the earliest.

(iv) We make it clear that the third respondent shall scrutinize the application of the petitioner and if it is found that the petitioner is eligible under Serial No. 2 and Serial No.12 namely 3 years and 5 years age relaxation respectively, as per the Office Memorandum dated 27.03.2012, then the said application of the petitioner, through the second-respondent, shall be forwarded to the Lieutenant Governor/Administrator for getting appropriate orders; otherwise the third respondent may pass appropriate orders on the said application and the same shall be communicated to the petitioner.



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14. With the above directions, the Writ Petition stands disposed of.

There will be no order as to costs.

[D.K.K., J.] [P.D.B., J.]
12.10.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn

To

1.The Secretary to Government,
Union of India,
Government of Puducherry,
Chief Secretariat,
Puducherry -605 001.

2.The Secretary to Government,
Department of Personnel and Administrative Reforms,
Personnel Wing,
Chief Secretariat,
Puducherry -605 001.

3.The Under Secretary to Government,
Department of Personnel and Administrative Reforms,
Personnel Wing,
Chief Secretariat,
Puducherry -605 001.



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D.KRISHNAKUMAR, J.
and
P. DHANABAL, J.
(mrn)

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