



W.A.(MD) No.1562 of 2023 etc. batch

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Date of Reserving the Judgment	Date of Pronouncing the Judgment
06.11.2023	29.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.A.(MD) Nos.1562, 1563, 1564, 1593, 1594, 1595, 1616, 1617, 1618,
1619, 1620, 1621, 1622, 825, 826, 827, 828, 829 & 1307 of 2023
and
C.M.P.(MD) Nos.12124, 12126, 12127, 12128, 12129, 12130, 12378,
12379, 12380, 12381, 12384, 12385, 12635, 12636, 12637, 12639,
12640, 12641, 12642, 12654, 12655, 12656, 12658, 12660, 12661,
6703, 6704, 6705, 6706, 6707 & 9900 of 2023**

W.A.(MD) No.1562 of 2023:

- 1.The Commissioner
O/o.Adi-Dravidar Welfare Department
Chepauk
Chennai
- 2.The District Collector
Trichy District
Trichy



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W.A.(MD) No.1562 of 2023 etc. batch

3.The District Welfare Officer
O/o.Adi Dravidar & Tribal Welfare Department
Trichy District, Trichy ... Appellants

-VS-

S.Sathish Kumar ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.02.2023, passed in W.P.(MD) No.381 of 2023, on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.N.Satheesh Kumar
Additional Government Pleader

For Respondent : Mr.M.Ajmal Khan, Senior Counsel
assisted by Mr.Mohammed Imran

J U D G M E N T

S.M.SUBRAMANIAM, J.

The present intra-court appeals are directed against the common order dated 06.02.2023, passed in W.P.(MD) No.381 of 2023 etc. batch.



W.A.(MD) No.1562 of 2023 etc. batch

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2. Having aggrieved by the order of the learned Single Judge allowing the writ petitions, the State has preferred the present writ appeals.

3. Background of the case:

3.1. A recruitment notification was published by the Adi Dravidar and Tribal Welfare Department on 09.09.2020 and 18.09.2020 in the daily newspapers inviting applications from the eligible candidates for selection and appointment to the post of Cook. The recruitment notification was affixed in the Notice Board of the said Office also. It was proposed to fill up 135 vacancies in the cadre of Cook. The educational qualification prescribed as per the recruitment notification was that the candidates should possess the knowledge of reading and writing Tamil language. The age limit of the candidate should be 18-35 years. Preference would be given to Scheduled Caste and Scheduled Tribe candidates and to the residents of Trichy District.

3.2. All the respondents admittedly submitted their respective applications and participated in the process of selection. The respondents received interview call letters and they attended the interview by producing their original educational and other certificates. Having satisfied with the merits of the candidates, the Competent Authority selected and appointed the



W.A.(MD) No.1562 of 2023 etc. batch

respondents as “Cook” vide proceedings dated 22.01.2021, in the Adi Dravidar and Tribal Students Hostels in Trichy District.

3.3. Having followed the procedures in consonance with the recruitment notification and the Special Rules in force, the Department issued a letter dated 30.04.2022 calling upon the respondents to appear for enquiry on 05.05.2022 along with their appointment orders and the educational qualification certificates. The respondents attended the enquiry proceedings conducted by the Adi Dravidar and Tribal Welfare Department. The enquiry was further conducted on 29.06.2022 and finally on 13.07.2022. On completion of enquiry, orders of termination from service, dated 16.12.2022 were issued cancelling the appointment of the respondents as Cook. Thus, the respondents were constrained to file the writ petitions challenging the orders of termination from service.

3.4. The learned Single Judge, by order dated 06.02.2023, allowed the writ petitions, mainly on the ground that the reason stipulated for cancellation of selection and appointment that the respondents were overqualified is unacceptable. The reliance placed on by the Department that the Commissioner, Adi Dravidar and Tribal Welfare Department, dated



W.A.(MD) No.1562 of 2023 etc. batch

26.05.2020, was not accepted by the learned Single Judge, on the ground that the circular of the Commissioner cannot override the Government Order passed under Article 162 of the Constitution of India. Relying on the order, dated 24.11.2022 passed in W.P.(MD) No.16948 of 2022 etc. batch, the learned Single Judge arrived at a conclusion that over qualification cannot be a ground to cancel the appointment and consequently, set aside the impugned termination orders and allowed the writ petitions. Thus, the Department is before this Court by way of the present writ appeals.

4. Appellants' submissions:

4.1. Learned Additional Advocate General appearing for the appellants mainly contended that the educational qualification contemplated under the Special Rules for recruitment to the post of Cook was pass in 8th Standard and fail in 10th Standard. Therefore, the candidates, who were selected and appointed and possessing educational qualification of pass in 10th Standard or higher qualification, are not entitled for appointment to the post of Cook. Appointing over qualified candidates would deprive the chances of the qualified candidates belonging to SC & ST community for a particular post. In the event of considering the candidature of the overqualified candidates, the qualified candidates, as per the recruitment notification, are



W.A.(MD) No.1562 of 2023 etc. batch

denied equal opportunity and they cannot secure public employment at any circumstances. Therefore, appointing overqualified candidates is not preferable and the rule contemplating pass in 8th Standard and fail in 10th Standard is to be taken into consideration. Therefore, the candidates, who possess pass in 8th Standard and fail in 10th Standard, alone must be considered for selection and appointment to the post of Cook in the Adi Dravidar and Tribal Welfare Department. But, in the present case, the candidates, who possess higher educational qualification, were selected and appointed as Cook depriving the opportunity of the candidates, who possess the actual educational qualification as per the recruitment notification and therefore, the Department has chosen to file the present appeals.

4.2. The second limb of the argument advanced by the learned Additional Advocate General is that the overaged candidates were selected and appointed. However, the learned Single Judge has erroneously interpreted the Rules and extended the age limit fixed by the Department in its recruitment notification. As per the Rules and the recruitment notification, the age limit fixed for General Category is 30 years and five years relaxation was granted to SC & ST candidates upto 35 years. The age limit fixed in the recruitment notification was in accordance with the Special Rules in force. Further, the



W.A.(MD) No.1562 of 2023 etc. batch

WEB CORN

learned Single Judge relied on the State and Subordinate Service Rules and extended the age limit from 35 years to 40 years and thereby granted age relaxation of ten years for SC & ST candidates, which is beyond the scope of the rules and thus, the findings of the learned Single Judge are liable to be set aside.

4.3. In support of his contentions, learned Additional Advocate General relied upon the following decisions of the Honourable Supreme Court as well as this Court:

(i) ***Jyoti K.K. vs. Kerala Public Service Commission***

[(2010) 15 SCC 596], wherein, the Apex Court has held as follows:

“9.In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with



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W.A.(MD) No.1562 of 2023 etc. batch

the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public.”

(ii) **State of Punjab vs. Anita [(2015) 2 SCC 170]**, wherein, the Apex Court has held as follows:

“Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the private respondents, based on the government instructions dated 20.12.1995, we are of the view, that the private respondents do not satisfy the pre-condition of valid appointment expressed therein, inasmuch as, it was imperative for the Selection Committee, in the first instance, to consider only those candidates who possessed the qualification of JBT/ETT, and thereupon, posts that remained unfilled could be filled up with persons possessing higher qualifications, i.e., graduate/post graduate qualifications along with B.Ed.. That was not the procedure which came to be adopted in the present controversy. Therefore per se, no



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W.A.(MD) No.1562 of 2023 etc. batch

benefit can flow to the private respondents, from the government instructions relied upon by the learned counsel. Be that as it may, it needs to be emphasised, that para 6 of the Government Instructions dated 20.12.1995, are in clear violation of the statutory process of selection and appointment postulated under the 1981 Rules. Even if the above Government Instructions would have bestowed validity on the selection process, through which the private respondents came to be appointed, the same could not have been acceded to, since Government Instructions in violation of the statutory rules, are a nullity in law. In view of the foregoing reasons, it is not possible for us to bestow legitimacy/legality to the appointment of the respondents as JBT/ETT teachers.”

(iii) ***Punjab National Bank vs. Anit Kumar Das [(2021)***

12 SCC 80], wherein, the Apex Court has held as follows:

“17. Even otherwise, prescribing the eligibility criteria/educational qualification that a graduate shall not be eligible to apply was a conscious decision taken by the Bank and the sas as per Circular letter No.25 of 2008 dated 6-11-2008. In J.Ranga Swamy v. State of A.P., [(1990) 1 SCC 288], it is observed and held by this Court that it is not for the court to consider the relevance of qualifications prescribed for various posts.”



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W.A.(MD) No.1562 of 2023 etc. batch

(iv) W.P.(MD) No.13468 of 2013, dated 07.12.2020

[M.Vijayalakshmi vs. The General Manager (HR), Chennai Metro Rail Limited and others], wherein, one of us (S.M.S., J) has considered the issue relating to selection and appointment of overqualified candidates and the its consequences with reference to the constitutional perspective. The relevant paragraphs are as under:

“13. It is needless to state that the process of selection and recruitment is to be conducted strictly in accordance with the Rules in force and the terms and conditions notified in the Notification. Equal opportunity being a Constitutional mandate. The Authorities Competent are bound to follow the Rules as well as the terms and conditions of the Recruitment scrupulously. The Hon'ble Supreme Court of India in a recent case, decided on 03.11.2020 in Civil Appeal No.3602 of 2020 held that the prescription of educational qualifications and eligibility criteria are the prerogative of the employers, however, the employer must keep in mind the various factors and implications, while prescribing such educational qualifications as well as the eligibility criteria. Suitability and eligibility being a prime factors to be considered for a selection, the job responsibility, attached with a particular post, is also a consideration to be shown, while prescribing the terms and conditions as well as the educational qualifications. Such an exercise is expected to be done in



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W.A.(MD) No.1562 of 2023 etc. batch

consonance with the Constitutional Principles. Every employer is obligated to ensure that equal opportunity as well as the efficient Public Administration ensured under the Constitution is met with, while undertaking the process of recruitment to public post.

14. In another recent decision, in case of Zahoor Ahmad Rather, the Apex Court has distinguished another decision in the case of Jyoti K.K. Vs. Kerala Public Service Commission reported in (2010 (15 SCC 596), taking the view that “in a case where lower qualification is prescribed, if a person has acquired higher qualifications, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the posts”. In the said decision, the Apex Court also took note of another decision in the case of State of Punjab Vs. Anita reported in (2015 (2) SCC 170), in which case, the Supreme Court on facts distinguished the position in the case of Jyoti K.K. (cited supra). While distinguishing the decision in the case of Jyoti KK., it is observed in paragraphs 25 to 27, as under:-

“25. The decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] has been considered in a judgment of two learned Judges in State of Punjab v. Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]. In that case, applications were invited for JBT/ETT qualified teachers. Under the rules, the



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W.A.(MD) No.1562 of 2023 etc. batch

prescribed qualification for a JBT teacher included a Matric with a two years' course in JBT training and knowledge of Punjabi and Hindi of the Matriculation standard or its equivalent. This Court held that none of the respondents held the prescribed qualification and an MA, MSc or MCom could not be treated as a “higher qualification”. Adverting to the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , this Court noted that Rule 10(a)(ii) in that case clearly stipulated that the possession of a higher qualification can presuppose the acquisition of a lower qualification prescribed for the post. In the absence of such a stipulation, it was held that such a hypothesis could not be deduced: (Anita case [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] , SCC p. 177, para 15) “15.It was sought to be asserted on the basis of the aforesaid observations, that since the private respondents possess higher qualifications, then the qualification of JBT/ETT, they should be treated as having fulfilled the qualification stipulated for the posts of JBT/ETT Teachers. It is not possible for us to accept the aforesaid submission of the learned counsel for the private respondents,



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W.A.(MD) No.1562 of 2023 etc. batch

because the statutory rules which were taken into consideration by this Court while recording the aforesaid observations in Jyoti K.K. case [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] , permitted the aforesaid course. The statutory rule, in the decision relied on by the learned counsel for the private respondents, is extracted hereunder: (SCC p. 598, para 6) ‘6. Rule 10(a)(ii) reads as follows: 10. (a)(ii) Notwithstanding anything contained in these Rules or in the Special Rules, the qualifications recognised by executive orders or Standing Orders of Government as equivalent to a qualification specified for a post in the Special Rules [Ed.: The matter between two asterisks has been emphasised in original.] and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for the post shall also be sufficient for the post.’ (emphasis supplied) A perusal of the Rule clearly reveals that the possession of higher qualification would presuppose the acquisition of the lower qualification prescribed for the posts. Insofar as the present controversy is concerned, there is no similar statutory provision authorising the appointment of persons with higher



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W.A.(MD) No.1562 of 2023 etc. batch

qualifications.” (emphasis supplied) 26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* in the subsequent decision in *Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]*. The decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned on the provisions of Rule 10(a) (ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in



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W.A.(MD) No.1562 of 2023 etc. batch

Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12102017 (J&K)] of the High Court was justified in reversing the judgment [Zahoor Ahmad Rather v. State of J&K, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [Imtiyaz Ahmad v. Zahoor Ahmad Rather, LPA (SW) No. 135 of 2017, decided on 12102017 (J&K)] of the Division Bench.” That thereafter it is observed in para 27 as under: 27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State



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W.A.(MD) No.1562 of 2023 etc. batch

is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned.”

15. In unambiguous terms, the Supreme Court emphasized that it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale



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W.A.(MD) No.1562 of 2023 etc. batch

behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment, as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. Prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed Diploma in Civil Engineering is justified and as observed, it is a conscious decision taken by the respondents and therefore, this Court is of the considered opinion that there is no perversity as such in the matter of prescribing the qualifications and imposing a condition that higher qualification is disqualification.

4.4. Relying on the above Judgments, learned Additional Advocate General reiterated that appointment of overqualified candidates, at no circumstances, be permitted, which would affect the basic rights of the candidates, who possess the actual qualification as per the service rules and the recruitment notification. Thus, the order of the learned Single Judge is perverse.



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W.A.(MD) No.1562 of 2023 etc. batch

5. Respondents' submissions:

5.1. Learned Senior Counsel appearing for the respondents / writ petitioners mainly contended that no show cause, as required under law, was issued to the respondents. Thus, the orders of termination from service are in violation of the principles of natural justice. The recruitment notification was issued by stating that the candidates, who possess the knowledge of reading and writing Tamil language, are eligible to the post of Cook in the Adi Dravidar and Tribal Welfare Department and the age limit fixed was 18 – 35 years, which is in accordance with the Tamil Nadu Basic Service Rules and therefore, the Circular, which was subsequently issued by the Commissioner, Adi Dravidar and Tribal Welfare Department, is contrary to the provisions of the Tamil Nadu Basic Service Rules and the conditions stipulated in the recruitment notification, which is not binding on the candidates, who participated in the process of selection and were appointed as Cook.

5.2. Learned Senior Counsel further contended that the learned Single Judge emphasized that over qualification is not a bar under the Service Rules. When the maximum educational qualification has not been fixed in the recruitment notification, the appointing authority is estopped from imposing the said condition after appointing the candidates and therefore, the orders of



W.A.(MD) No.1562 of 2023 etc. batch

termination from service is against all canons of justice. The learned Single Judge relied on the State and Subordinate Service Rules for the purpose of extending the age limit of SC & ST candidates, which cannot be construed as erroneous. As per the Special Rules, the educational qualification fixed is pass in 8th Standard and maximum educational qualification has not been contemplated under the Rules and therefore, the circular of the Commissioner Adi Dravidar and Tribal Welfare Department and the consequential orders of termination from service are in violation of Tamil Nadu Basic Service Rules and therefore, the learned Single Judge is right in allowing the writ petitions and the appeals are liable to be rejected.

DISCUSSIONS:

6. Heard the learned counsel on either side and perused the materials available on record.

7. Let us now look into the Special Rules for Tamil Nadu Basic Service.

8. Category-2, Class-IV, Rule 2 of Section 19 of the Special Rules for Tamil Nadu Basic Service denotes the cadre “Cooks”. Rule 5(1) of the Special Rules contemplates “age” as follows:



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W.A.(MD) No.1562 of 2023 etc. batch

“(1) Age: Candidates for appointment by direct recruitment to any of the posts other than those in Classes I and II must not have completed 30 years of age on the date of appointment.

Explanation:-

For the purpose of the sub-rule, the age limit, in the case of candidate appointed through Employment Exchange, be reckoned from the date of sponsoring of the candidate by the Employment Exchange concerned for appointment to the post.

Provided that a candidate belonging to the Scheduled Caste or the Scheduled Tribe shall be eligible for appointment to the above classes if he has not completed 35 years of age on the date of appointment.”

9. Sub-Rule (2) to Rule 5 of the Special Rules contemplates educational qualification, which reads as under:

“a) No person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III unless he has passed the III form or the VIII Standard or the E.S.L.C) of a recognized school (i.e.) a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by



W.A.(MD) No.1562 of 2023 etc. batch

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the Director of School Education under the Educational Rules of the State.

aa) Candidates for appointment by direct recruitment to any of the categories in class IV must be able to read and writ in Tamil.”

10. The above Special Rule unambiguously stipulates that the candidate, who passed 8th Standard from any recognized school, is eligible for appointment to the post of Cook. Further, the candidates for appointment by direct recruitment must be able to read and writ Tamil. These two are the educational qualifications prescribed under the Special Rules for Tamil Nadu Basic Service.

11. The recruitment notification issued by the Adi Dravidar and Tribal Welfare Department also indicates that the applicants must be able to read and writ Tamil language. Preference will be given to the candidates belonging to SC & ST community and further priority will be given to the applicants, who all are residing in Trichy District. These are all the conditions stipulated in the recruitment notification.



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W.A.(MD) No.1562 of 2023 etc. batch

12. As far as the age limit is concerned, the recruitment notification stipulates that the candidates in between 18-35 years are eligible to submit applications. G.O.(Ms) No.53, Adi Dravidar and Tribal Welfare Department, dated 14.08.2023, stipulates that the candidates must possess the knowledge of reading and writing Tamil. The experience in the field of Cook will also be taken into consideration and priority will be given. Preference will be given to the candidates, who all are sponsored by the District Employment Exchange. The age limit is to be fixed as per the rules in force. Thus, the age limit was fixed as per the rules in force.

13. The Special Rules will prevail over the General Rules. When the Special Rules contemplate educational qualification and other criteria for selection and appointment, the Special Rules alone will be applicable for the purpose of recruitment to a particular post / category. Therefore, the reliance placed on by the learned Single Judge that the provisions of the State and Subordinate Service Rules will be applicable in the matter of extending the age limit is not correct. The provisions of the State and Subordinate Service is not applicable to the posts / cadres falling under the Tamil Nadu Basic Services. When the Special Rules for Tamil Nadu Basic Services contemplate



W.A.(MD) No.1562 of 2023 etc. batch

educational qualifications, age limit, reservation and the procedures for selection, the learned Single Judge has erred in adopting the age limit fixed under the Tamil Nadu State and Subordinate Service Manual, since the category for which the selection process had been undertaken is falling under the Special Rules for the Tamil Nadu Basic Services. More so, the age limit was prescribed in the recruitment notification and the same remained unchallenged by the candidates, who participated in the selection process. After participating in the selection process and admitting the conditions stipulated in the recruitment notification, the candidates cannot turn around and claim that the age limit fixed in the recruitment notification is erroneous. Once the conditions for selection are stipulated, those conditions are binding on the candidates and the Selection Committee and that being the legal position, extending the age limit from 35 to 40 years for SC & ST candidates by the learned Single Judge in exercise of the power of judicial review is beyond its scope and thus, the argument advanced by the learned Additional Advocate General in this context is to be considered in favour of the State.

14. As far as the selection process is concerned, no irregularity or illegality was established. The selection process was conducted in accordance with the recruitment notification and the rules in force. Regarding the ground



W.A.(MD) No.1562 of 2023 etc. batch

relating to selection of overqualified candidates raised by the appellants, we are of the opinion that there is no maximum educational qualification fixed either under the Special Rules or in the recruitment notification and therefore, their selection and appointment cannot be termed as illegal. Thus, the overqualified candidates cannot be terminated from service in the present case.

15. As far as the overaged candidates are concerned, their selection and appointment is directly in violation of the recruitment notification and therefore, the view taken by the learned Single is running counter to the rules and the recruitment notification and therefore, those overaged candidates are liable to be terminated from service, since their selection was not in consonance with the recruitment notification issued.

16. The Court in exercise of the power of judicial review cannot extend the age limit contemplated under the recruitment notification issued by the Department. Further, the Court cannot introduce any new Rules for age relaxation for the candidates that too after the completion of selection process and appointment by the Department. Thus, the overaged candidates appointed in violation of the age criteria prescribed in the recruitment



W.A.(MD) No.1562 of 2023 etc. batch

notification are liable to be terminated from service and their termination is held to be legal.

17. The Special Rules unambiguously stipulate that the maximum age limit fixed for the General Category candidates is 30 years and five years extension is granted to the SC/ST candidates (35 years). That being so, the question arises, whether further extension of five years of age limit upto 40 years is permissible or not.

18. Let us now consider the applicability of the General Rules relied on by the learned counsels appearing for the respective respondents and Section 20(8)(i) & (ii) of the 2016 Act.

19. The adhoc rules issued in the year 1986 cannot be applied in view of the Special Rules, which is in force and applicable to the post of Cook. The reliance placed on by the learned counsels appearing for the respondents that the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules are to be applied is also incorrect. Pertinently, the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules are not applicable to the post of “Cook”, which is falling under the Special Rules for Tamil Nadu Basic Service. The Tamil Nadu



W.A.(MD) No.1562 of 2023 etc. batch

Adi-Dravidar Welfare Subordinate Service Rules deal with various other categories, including Headmasters of Adi Dravidar Schools etc. The post of “Cook” is not falling under the said Rules. Therefore, the arguments advanced on behalf of the respondents that the provisions of the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules are to be applied to the case on hand is unacceptable and it is rejected.

20. Section 20(8)(i) of the 2016 Act denotes that the maximum age limit prescribed in the Special Rules shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes, Backward Class Muslims, Most Backward Classes and De-notified Communities or of destitute widows of all castes to a post included in a service for which the Special Rules prescribe a qualification lower than a degree of any University recognized by the University Grants Commission, if such candidate possesses a general educational qualification, which is higher than that referred to in sub-section (1) and he is otherwise qualified for appointment.

21. Section 20(8)(ii) of the 2016 Act stipulates that to the appointment to a post included in a service of a candidate belonging to any of



W.A.(MD) No.1562 of 2023 etc. batch

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the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Most Backward Classes and De-notified Communities or of destitute widows of all castes who holds a degree of any University recognised by the University Grants Commission if the degree he holds is not lower than the degree prescribed in the special rules for appointment to such post and if he is otherwise qualified for appointment. Provided that for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by five years in respect of candidates belonging to Scheduled Castes or Scheduled Tribes or in respect of destitute widows of all castes, who do not possess a general educational qualification, which is higher than the minimum general educational qualification. Provided further that for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by two years in respect of candidates belonging to Backward Classes, Backward Classes Muslims, Most Backward Classes and De-notified Communities who do not possess a general educational qualification, which is higher than the minimum general educational qualification.



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W.A.(MD) No.1562 of 2023 etc. batch

22. In the above context, we have to consider Rule 68 of the 2016 Act, which provides overriding effect of special rules as under:

“65. Overriding Effect of special rules.-If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act.”

23. With reference to Sections 20(8) and 68 of the 2016 Act, interpretation of inconsistency is to be taken note of. The 2016 Act speaks about the general service conditions such as general qualifications, such as age and education, recruitment, commencement of probation, declaration of probation, etc. But the special rules governing the particular post to which recruitment is to be made will speak about the specific age and educational qualifications, method of appointment and specific period of probation, etc., for that post. However, for appointment to a post, both the provisions in this Act and special rules governing the particular post have to be applied. While doing so, inconsistency may arise. **We may see as to how the inconsistency as contemplated in this Act will arise. The following hypothetical illustration will explain such inconsistency:**



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W.A.(MD) No.1562 of 2023 etc. batch

24. “A” belongs to Scheduled Caste Community has applied for the post of Deputy Collector which has been classified in the special rules for the Tamil Nadu Civil Service. His age is 36 years at the time of applying for the post. The Specific Rule for the Tamil Nadu Civil Service specifically states that for appointment to the post of Deputy Collector, one should not have attained more than 35 years of age.

25. But, Section 20(8) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 stipulates that the maximum age limit prescribed in any special rules or in this Act shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities and Destitute Widows.

26. “A” in the above illustration is 36 years old and over aged as per the Special Rule for the Tamil Nadu Civil Services governing the post of Deputy Collector vis-a-vis the provisions under Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The inconsistency in respect of age is cropped up in this case. **In such**



W.A.(MD) No.1562 of 2023 etc. batch

circumstances, the provisions in the special rule for the Tamil Nadu Civil Service will prevail over the provisions in the above Act. As such “A” is not eligible for appointment to the post of Deputy Collector as per the provisions of the Special Rules for the Tamil Nadu Civil Service on account of over age.

27. The legal position is that the Special Rules will prevail over the General Rules in the matter of appointment. In the event of inconsistency, the rule is to be interpreted holistically to understand that no discrimination is caused upon amongst the candidates, who all are aspiring to secure public employment. In the present case, age relaxation of five years for the SC/ST candidates has already been granted under the Special Rules for Tamil Nadu Basic Service and in the recruitment notification. Thus, the question of extending the age limit further would not arise at all. When the Special Rules contemplate age limit specifically by providing extension of five years to the candidates belonging to Scheduled Caste and Scheduled Tribe communities, further extension of five years of age limit under the General Rules is impermissible and the General Rules, in such circumstances, would have no application.



W.A.(MD) No.1562 of 2023 etc. batch

WEB COPY

28. Concession of age limit of five years granted to SC/ST candidates for appointment cannot be further extended to another five years by the Court based on the General Rules, which is otherwise not applicable for appointment to the post of “Cook” under the Tamil Nadu Basic Service.

29. Changes required in the matter of appointment of overqualified candidates and the constitutional perspectives:

29.1. The current position of appointing overqualified candidates in Group-IV Services is resulting in unconstitutionality. To remove the inequality and to provide a level playing field amongst the equals, it is necessary to fix minimum educational qualification and maximum educational qualification for selection and appointment to the Group-IV posts. The candidates possessing minimum educational qualification of E.S.L.C., or S.S.L.C., are permanently deprived of their employment opportunity on account of participation of higher qualified candidates in the process of selection. These lesser qualified candidates cannot compete with the higher qualified candidates in the competitive examinations. Denial of equal opportunity resulting in inequality is infringing the basic rights of the candidates, who all are lesser qualified and longing to secure public employment through open competitive process.



W.A.(MD) No.1562 of 2023 etc. batch

WEB COPY

29.2. Persons with limited qualifications have very few job opportunities. By usurping the opportunity of these people, when overqualified persons are appointed, then the balance under Article 14 of the Constitution of India will definitely be tilted. It is not the opinion of the Court that overqualified persons should not be appointed, but that in the process of giving opportunity to the overqualified graduates, the plight of lakhs of lesser qualified persons, who are largely unemployed in our great Nation and whose only source of livelihood depends on these menial jobs must not be forgotten. Constitutional ideal has always been to provide opportunities to all classes of people without any kind of discrimination. This includes the stage for every citizen in this country and to tap the potential of such citizens. But, our country has still not reached the stage of educational ampleness. We are still work in progress. It is no doubt that we will definitely reach great heights in the forthcoming generations. But the reality today must be the concern. The educational disparity exists and some due to financial, social and geographical conditions, are not able to acquire pinnacles of educational profusion. But, that does not mean that they should be denied their opportunity to work in the Government employment for which minimum educational qualifications are enough to carry out the prescribed tasks.



W.A.(MD) No.1562 of 2023 etc. batch

WEB COPY

29.3. This Court is not suggesting that overqualified persons are ineligible for menial jobs. But, have we achieved the stage where education has reached the nook and corner of every street? We are working towards it and until we show substantial progress where we have reached the point with every person being graduate with skills of his own, this kind of appointments have to be contemplated. Overqualified persons have jobs of their own competence to compete for and to transgress into jobs specifically requiring lesser qualification will directly strike into Article 14 of the Constitution of India.

29.4. Furthermore, the potential of overqualified persons must be tapped in for jobs that are in need for such skilled candidates. When a person is more than qualified for the job he is accommodated in, it is not only discourages him, but, may lead to instances where his potential is not used to the fullest, which can simultaneously institute moral degeneration in him / her. A person pursues higher qualifications to ensure that he / she is fully equipped to increase his social, financial and intellectual standard in the society. But, even after acquiring a higher qualification, if he is employed in a menial job requiring very little of his potential, it will dilute his moral and social spirit and may lead to under-performance in the said job. Such



W.A.(MD) No.1562 of 2023 etc. batch

disheartened performance in the job not only affects the tasks at hand, but also strikes at his right to get an employment, which is equivalent to the qualification acquired by him.

29.5. In a country like India, though the issue of unemployment still persists, misplaced employment will lead to more serious consequences. The right man for the right job can increase the productivity of the job in hand. When highly qualified persons are appointed at unskilled jobs,

- a) the lesser qualified persons loose their opportunity to get a job;
- b) the higher qualified persons may not be able to deliver the job passionately;
- c) the job also may end up being underperformed, and
- d) highly skilled jobs will loose out on these highly qualified candidates.

29.6. The essence of Human Resource Management is not only ensure that human resources are fully utilized, but also to make sure that the employees are guaranteed a healthy workplace environment and justice cannot be done, if the employees are not satisfied in their respective jobs.



WEB COPY

W.A.(MD) No.1562 of 2023 etc. batch

29.7. Prescription of educational qualification for selection is the prerogative of an employer. However, providing equal opportunity in public employment is the constitutional mandate. Level playing field is imminent in the process of selection so as to minimize the inequalities and to provide equal opportunity. The State is duty bound to protect the constitutional rights of the citizens. In the event of appointing overqualified candidates in menial jobs, efficiency in public administration may fall down. The current situation is teaching lessons to the administrators, since they are unable to potentially extract work from the overqualified candidates, who all are appointed in Group-IV posts. Even the High Court administration is facing such issues, since the recent appointments to menial jobs are occupied by overqualified candidates, who all are possessing master degrees and professional degrees. The candidates are either reluctant or evasive or tactical or refusing to perform the duties and responsibilities attached to Group-IV services. The ultimate result would be that the administration cannot provide efficient public administration for the benefit of the people at large, which is the mandate under the Constitution. There is an urgent need to amend the Service Rules in this regard by fixing minimum educational qualifications and maximum educational qualifications for selection and appointment to various posts.



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W.A.(MD) No.1562 of 2023 etc. batch

30. Conclusion:

30.1. In respect of the writ appeals on hand, violations are committed by selecting the overaged candidates with reference to the Special Rules and recruitment notification. The appointed candidates are to be segregated into two categories *viz.*, overqualified candidates and overaged candidates. Regarding appointment of overqualified candidates, their selection and appointment to the post of Cook cannot be termed as illegal, since there is no prescription of maximum educational qualification either in the Special Rules or in the recruitment notification. Thus, the appointment of overqualified candidates in the post of Cook is held to be valid.

30.2. Regarding appointment of overaged candidates, their selection and appointments are directly in violation of Rule 5(1) of the Special Rules for Tamil Nadu Basic Service and the recruitment notification issued by the competent authorities. Once the Special Rules and the recruitment notification unambiguously stipulate that the age limit for general category candidates is 30 years and for SC / ST candidates 35 years, the selection of candidates over and above the age limit fixed under the recruitment notification is directly in violation of the Special Rules and the recruitment



W.A.(MD) No.1562 of 2023 etc. batch

notification and it cannot be sustained. Hence, the selection of overaged candidates in violation of the recruitment notification is illegal.

30.3. Accordingly, we are inclined to pass the following orders in modification of the order passed by the learned Single Judge in the writ petitions:

- (i) The appellants / competent authorities are directed to permit the selected overqualified candidates to join duty to the post of Cook, based on their respective appointment orders, within a period of four weeks from the date of receipt of a copy of this Judgment.
- (ii) The selection and appointment of overaged candidates in violation of Rule 5(1) of the Special Rules for Tamil Nadu Basic Service and the recruitment notification are illegal and these overaged candidates are not entitled to continue in service, as their selection and appointment are illegal.
- (iii) The appellants / Government of Tamil Nadu is directed to consider the spirit of the ratio laid down by this Court in the present Judgment regarding selection and appointment of overqualified candidates to Group-IV Services and amend the



WEB COPY

W.A.(MD) No.1562 of 2023 etc. batch

Rules suitably, by fixing minimum educational qualifications and maximum educational qualifications for the posts falling under the Tamil Nadu Basic Services, at the earliest possible, so as to eliminate discrimination and inequalities and to protect equality clause under the Constitution of India.

30.4. With the above directions, the writ appeals are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[R.K.M., J.]

29.11.2023

Index : Yes / No

Internet : Yes / No

Note to Office:

Mark a copy of this Judgment to the Chief Secretary to Government, Government of Tamil Nadu, for the purpose of considering the direction as mentioned in 18.3(iii) for amending the service rules.

krk

To:

The Chief Secretary,
Government of Tamil Nadu,
Secretariat, St.George Fort,
Chennai-600 009.



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W.A.(MD) No.1562 of 2023 etc. batch

S.M.SUBRAMANIAM, J.
and
R.KALAIMATHI, J.

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PRE-DELIVERY COMMON
JUDGMENT

IN

W.A.(MD) Nos.1562, 1563, 1564,
1593, 1594, 1595, 1616, 1617,
1618, 1619, 1620, 1621, 1622, 825,
826, 827, 828, 829 & 1307 of 2023

and

C.M.P.(MD) Nos.12124, 12126,
12127, 12128, 12129, 12130, 12378,
12379, 12380, 12381, 12384, 12385,
12635, 12636, 12637, 12639, 12640,
12641, 12642, 12654, 12655, 12656,
12658, 12660, 12661, 6703, 6704,
6705, 6706, 6707 & 9900 of 2023

29.11.2023