



W.P.(MD)No.23836 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 23836 of 2019

and

W.M.P(MD)No. 20456 of 2019

S.Pitchaikani

... Petitioner

Vs.

**1. The District Collector,
Tirunelveli District,
Tirunelveli.**

**2. The Revenue Divisional Officer,
Tirunelveli,
Tirunelveli District.**

**3. The Tahsildar,
Sankarankovil Taluk,
Sankarankovil,
Tirunelveli District.**

**4. The Additional Chief Secretary to Government,
Revenue Department,
Secretariat, Fort Saint George,
Chennai – 600 009.**

.... Respondents

[The 4th respondent was impleaded as per order of this Court, dated 25.01.2023]



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records pertaining to the impugned order, dated 07.06.2019 made in Ni.Mu.A4/34686/2017 passed by the 1st respondent and quash the same.

For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondents : Mr.C.M.Mari Chellaprabhu
Additional Government Pleader

ORDER

This Writ Petition is filed to quash the impugned order, dated 07.06.2019, passed by the 1st respondent in Ni.Mu.A4/34686/2017.

2. The petitioner's father died on 14.07.2017. The petitioner has submitted an application on 12.01.2018, seeking compassionate appointment. The 3rd respondent, vide proceedings, dated 12.01.2018 sent a recommendation to the 2nd respondent. Having considered the recommendation of the 3rd respondent and other relevant documents, the 2nd respondent has passed an order, dated 05.02.2018 and the same has been forwarded to the 1st respondent, thereby recommending the petitioner for appointing under compassionate ground.



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Thereafter, 1st respondent has passed the impugned order, rejecting the claim under compassionate appointment, by stating that the petitioner was over aged. The contention of the petitioner the said reason is against the letter, dated 24.11.1982 issued by the Government, whereby it has relaxed the age for the candidate belong to Scheduled Caste community.

3. The learned counsel appearing for the petitioner submitted that the petitioner belongs to SC/ST candidates and hence the petitioner is eligible for further relaxation of five years. But, the said relaxation was not considered by the respondents. Hence the petitioner is before this Court.

4. The learned Additional Government Pleader appearing for the respondents submitted that the said letter cannot be relied on, because subsequently, several Government orders were passed, where the age relaxation was not granted. The impugned order is passed based on the G.O.Ms.No.9, Labour and Employment (Rt) Department (Q1), dated 19.01.1998. But the said G.O. was superseded after issuance of G.O.Ms.No.18, Labour and Employment Department dated 23.01.2020. Moreover, the age limit was fixed as 35 in the



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Conditions of Service Act, 2016, which came into effect from 15.09.2016. The same issue was considered by the Hon'ble First Bench of this Court in Principal Secretary Vs Karunakaran in W.A.No.881 of 2020 reported in 2020 SCC OnLine Mad 4792, wherein it is stated that the legal heir is not entitled to consider for compassionate appointment, since the Conditions of Service Act, has already came into force on 15.09.2016. The petitioner's application is subsequent to the amendment in the Conditions of Service Act. The upper age limit is 35 as per the Act, but the petitioner is 37 years in the year 2017 i.e. at the time of filing this writ petition. Therefore, relying on the order of the Hon'ble Division Bench, the respondents have submitted that the petitioner's claim cannot be accepted. The respondents further submitted that the G.O.Ms.No.18, cannot be made applicable, since it was issued much later and the said issue was also considered by the Hon'ble Division Bench of this Court. The Learned Additional Government Pleader submitted for the said two reasons, the petitioner's claim cannot be considered.

5. Heard Mr.C.Mayilvahana Rajendran, learned Counsel appearing for the petitioner and Mr.C.M.Mari Chellaprabhu, learned Additional



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Government Pleader, appearing for the respondents. Perused the material documents available on record.

6. The Hon'ble Division Bench has not taken into account of the fact that there is a general direction of further relaxation of age for five years in the case of SC/ST candidates under the Government of Tamil Nadu, Labour and Employment Department, by letter No.46571/N1/82-3 dated 24.11.1982, clarified the question of age relaxation in the case of Scheduled caste and Scheduled Tribe as under:

"2. The Government have examined the above points and issued the clarifications as follows:

(i) The dependants of deceased Governments servants (belonging to Scheduled Caste / Scheduled Tribe) can be appointed on compassionate grounds in relaxation of age rule, even if they exceed the age limit prescribed in the Special Rules, when it is more beneficial to the individual."

The Candidates belonging to Scheduled Caste/Scheduled Tribe category are entitled to 5 years further relaxation in upper age limit and this is being followed both by the Central Government and the State Government. Therefore,



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this Court is of the considered opinion that the petitioner belongs to SC category and hence the petitioner's case ought to be considered under SC category.

7. The petitioner submitted that the G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020, has granted maximum age limit to the son or daughter is 40 years, who is seeking appointment on compassionate ground. However, the Learned Additional Government Pleader submitted that the G.O. is not applicable, since the said G.O. is applicable from 23.01.2020. But the petitioner's case ought to be considered based on the G.O. that was prevailing as in the year 2017. On perusal of G.O.Ms.No.18, it is seen that the earlier G.O. were superseded and none of the earlier G.O. are in existence and hence, G.O.Ms.No.18, Labour and Employment Department, dated 23.01.2020 alone can be invoked. Moreover, the Learned Additional Government Pleader submitted that the Conditions of Service Act would be amended in consonance with G.O.Ms.No.18 and the upper age limit would be increased to 40 years. If that is so, a further relaxation five years for the SC/ST candidates would be available.



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8. Accordingly, the impugned order, dated 07.06.2019 in Ni.Mu.A4/34686/2017 passed by the 1st respondent is hereby quashed. The respondents are directed to consider the petitioner's case under SC category by invoking the age relaxation applicable to the SC/ST candidates and pass appropriate orders within a period of 8 weeks from the date of receipt of the copy of the order.

9. With these observations, this Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
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25.01.2023
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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 23836 of 2019
[2/2]**

25.01.2023