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W.P.Nos.4226 of 2023 etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2024

PRONOUNCED ON : 30.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.4226, 4229, 4231, 4233, 4239, 4240 & 4245 of 2023
and W.M.P.Nos.4260, 4261, 4267 to 4272, 4277,
4280 to 4282, 4286 & 4288 of 2023

W.P.No.4226 of 2023:-

M.Saraswathy

... Petitioner

-Vs-

The Member Secretary,
Chennai Metropolitan Development
Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 18.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Proc.No.E9/1616/2020-5 dated 31.01.2023 and quash the same and consequently direct the respondent to continue the petitioner service as Messenger under the respondent authority.

In all W.Ps.

For Petitioner : Mr.V.Vijayashankar

For Respondent : Mr.Y.Bhuvanesh Kumar
Standing Counsel



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COMMON ORDER

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These writ petitions have been filed challenging the orders dated 31.01.2023 passed by the respondent, thereby removed the petitioners from service.

2. The petitioners had applied for the post such as Junior Assistant Steno Typist, Typist, Filed Man and Messenger, as per the notifications issued by the respondent dated 08.02.2020. All the petitioners had requisite qualifications for their respective post and they were called for interview and also for certificate verification. Thereafter, they were appointed in their respective posts such as Messenger, Field Man and Junior Assistant. However, they were issued notice dated 25.09.2021 thereby informed that their appointment was not in consonance with the approved service regulations and they had exceeded their upper age limit at the time of their appointment. Though the petitioners were submitted their explanations stating that they possessed more than the requisite qualification of eighth standard and tenth standard and therefore, the age limit will not apply to them. However, their explanations were not considered by the respondent and they were



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removed from service. Aggrieved by the same, the petitioners filed the present writ petitions.

3. The learned counsel appearing for the petitioners submitted that as per the Service Regulations of Madras Metropolitan Development Authority, the age limit is fixed as minimum 18 years and maximum 45 years. Subject to the above age limit in respect of each category of the post may be specified by the authority, provided that the age limit may be relaxed in specific cases by the authority in the interest of the authority. That apart, the age limit prescribed in the special regulation shall not apply to the appointment of a candidate belonging to any of the scheduled castes, scheduled tribes or backward classes to a post included in a service for which the special regulations prescribed a qualification lower than a degree of any university if the candidate possesses a general educational qualification higher than the minimum general educational qualification. Therefore, the respondent ought to have relaxed the age since it is provided under the regulation itself.



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3.1. He further submitted that the age limit would not applicable to the petitioners since all the petitioners are having higher qualification than the minimum required educational qualification. In support of his contention, he relied upon the judgment of this Court in the case of ***R.Shivakumar Vs. The Member Secretary and anr.,*** in ***W.P.No.35457 of 2007*** dated ***23.04.2013***, which held that the regulation provides relaxation of age and as such it cannot be said that the respondent does not have power to relax the age limit who compete for direct recruitment. The said judgment also confirmed by the Hon'ble Division Bench of this Court in ***W.A.395 of 2014*** dated ***01.02.2019***, in which held that the power of relaxation is to be applied with respect to specific cases as such the specific case cannot be restricted to reserved category alone. In the case specific case, the contingency has been created for want of suitable candidate is certainly a factor to be reckoned while exercising the power.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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5. On perusal of the above judgment of the Hon'ble Division Bench of this Court, in that case, nobody was found eligible to the said post. Further while confirming the order passed by the learned Single Judge, the Hon'ble Division Bench categorically held that insofar as the specific cases, the contingency which has been created for want of suitable candidate is certainly a factor to be reckoned while exercising the power. Here there are umpty number of students who applied within the age limit. Therefore, it cannot be said that there is no suitable candidate available to the post of Messenger, Filed man or Junior Assistant.

6. Further, on perusal of the counter filed by the respondent and on the submission made by the learned Standing Counsel revealed that it was proposed to fill up 131 vacancies under direct recruitment for five categories as stated supra. Accordingly, notification was published in the daily newspaper to invite applications through online with uploaded enclosures. After interview, 44 candidates were selected and issued appointment orders including the petitioners. As per the



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notification, the maximum age limit for OC category is 30 years; for BC(M), BC, MBC or DC category is 32 years; for SC & DW category is 35 years, as on 01.07.2019.

7. As per Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, when the post carries the minimum qualification required is not higher than the minimum general education qualification, the maximum age limit for MBC category shall be increased to 32 years. Whereas, subsequently when the original records were scrutinized, it has been noticed that as on date, all the petitioners were already exceed the maximum age limit. The details of the petitioners are as follows :-

Case W.P.No	Petition er's name	Post	Appointed on	Eligibility as on 01.07.2019 Education minimum a degree			Age of the petitioners (As on 01.07.2019)
				For OC	For BC(M), BC, MBC or DC	For SC, DW	
				Age 30 years	Age 32 years	Age 35 years	
4226/23	Saraswath y	Messen ger	24.02.2021		MBC		2 years 1 month & 28 days (34 years)



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Case W.P.No	Petitioner's name	Post	Appointed on	Eligibility as on 01.07.2019 Education minimum a degree			Age of the petitioners (As on 01.07.2019)
				For OC	For BC(M), BC, MBC or DC	For SC, DW	
				Age 30 years	Age 32 years	Age 35 years	
4229/23	D.Mala	Field man	24.02.2021	OC			9 years 6 days (39 years)
4231/23	Nagarajan	Field man	24.02.2021		BC		6 years 1 month & 21 days (38 years)
4233/23	S.Hema latha	Messen ger	24.02.2021	OC			1 year 6 months & 18 days (31 years)
4239/23	R.Vijaya lakshmi	Messen ger	24.02.2021			DW	3 years, 11 months & 21(38 years)
4240/23	A.Karthic k	Messen ger	24.02.2021			SC	6 months 11 days (35 years)
4245/23	N.Jothees waran	Field man	24.02.2021		MBC		3 years, 11 months & 17 days (35 years)

As stated above, all the petitioners already exceeded the maximum age limit by several months and years. Therefore, the petitioners did not possess requisite age qualification as prescribed under the Tamil Nadu Government Servants (Condition of Service) Act, 2016.



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8. In fact, it is the second round of litigation, since as against the order of removal the petitioner already filed a batch of writ petitions in W.P.No.21523 of 2021 etc., and this Court quashed the order of removal and directed the respondent to issue a fresh show cause notice and after receipt of explanation from the petitioners, and after giving an opportunity of hearing to them, pass appropriate orders on merits and in accordance with law. Accordingly, the petitioners were served with show cause notice and after giving opportunity of hearing, the order impugned in these writ petitions came to be passed.

9. Further there is a statutory appeal remedy is available to the petitioners as per the Regulation 21 of the CMDA Service Regulation, 2022. The petitioners without exhausting the said remedy, directly approached this Court under Article 226 of the Constitution of India. When there is statutory appeal remedy is available, without exhausting the appeal remedy, the writ petitions cannot be maintainable unless the petitioners raised the ground of violation of principles of natural justice with malafide and ulterior motive or passing of impugned order without jurisdiction.



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10. As per Section-III of Special Regulations D of CMDA Planning Subordinate Service in Category-7, the required qualification for age it is mentioned as no person shall be eligible for appointment by direct recruitment to categories if he was completed 26 years of age. As per authority resolution No.53/09, the authority has resolved to follow the enhancement of maximum age limit from 28 years to 30 years for direct recruitment as per G.O.No.112, Personnel and Administrative Reforms (Per. S) Department, dated 27.02.1989. Accordingly, the notification was issued and also stated that the rule of reservation of appointments applies to the post, age relaxation and distribution of vacancies will be as per the government rules in force. The government rules rectify to age qualification should be followed, but it has been flouted without following the rules. Therefore, the petitioners were not qualified and ineligible to be appointed to their respective post.

11. Further as per Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for the post in which the minimum qualification, the age limit prescribed shall be increased by two years in respect of candidate belonging to BC(M), BC, MBC or DC. Therefore, the maximum age limit is 32 years. The learned counsel



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appearing for the petitioners specifically contended that so many persons were appointed by crossing the maximum age and thereafter their ages were relaxed. He also furnished the detailed of the such persons. As directed by this Court, the respondent verified the particulars submitted by the petitioners and found that no one's age was relaxed. The respondent produced all the persons details as mentioned by the petitioners and it shows that no one's age was relaxed at any point of time. Therefore, the relaxation of age for the petitioners cannot be considered, since there are umpty suitable candidates for their respective posts.

12. In view of the above discussions, this Court finds no infirmity or illegality in the orders dated 31.01.2023 passed by the respondent and all the writ petitions are devoid of merits and liable to be dismissed. Accordingly, all the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

30.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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