



WP.No.35328 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.35328 of 2012
and M.P.Nos.1 & 2 of 2012

K.Ganesan

...Petitioner

Vs.

- 1.The State of Tamilnadu represented
by its Secretary to Government,
Municipal Administration and
Water Supplies Department,
Fort St. George Chennai 600 009
- 2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk,
Chennai-5

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in BP MS No 3 (TWAD-Estt (Per) (Wing) dated 13.01.2011 and quash the same as



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illegal unjust arbitrary, discriminatory and unconstitutional and direct the respondents to consider the case of the petitioner for an appointment to the post of Assistant Engineer in the respondent Board in accordance with law.

For Petitioner : M/s.S.Saravanakumar

For Respondents : Mr.S.Rajesh for R1

Mr.S.Silambanan, Senior Counsel
for Mr.S.Mekhala for R2

ORDER

The petitioner herein, belonging to Scheduled Caste Community approached this Court by filing the present writ petition questioning the BP Ms.No.3(TWAD-Estt(Per) Wing), dated 13.01.2011, whereby the Tamil Nadu Water Supply and Drainage Board Service Regulations 1972 were amended, fixing upper age limit of 35 years for the post of Assistant Engineer, Junior Engineer and Draftsman. The petitioner herein who was aged 45 years, claiming to be eligible candidate for the post of Assistant Engineer, duly got registered with the Employment Exchange concerned, claimed for consideration of his case for being appointed to the post of Assistant Engineer which is sought to be filled



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up by the 2nd respondent / Board. As the case of the petitioner was not considered by virtue of the impugned amendment made to the National Service Act, 1972, the petitioner approached this Court by filing the present writ petition duly challenging the amendments carried out to the impugned BP Ms.No.3(TWAD-Estt(Per) Wing) dated 13.01.2011. Through the impugned proceedings the upper age limit for the post of Assistant Engineer is fixed at 35 years, by duly exempting the concession that was provided under Rule 17 (c) and (e) of the said Regulations, 1972.

2.The learned counsel for the petitioner contended that in terms of Article 15(4), Article 16 (4)(a) and Article 335 of the Constitution of India, certain concessions were provided in favour of Schedule Caste and Schedule Tribe candidates and in terms of the said provisions the Regulations 1972, of the 2nd respondent provides concession in favour of Schedule Caste and Schedule Tribes candidates by duly relaxing the upper age limit, thereby not specifying any upper age limit, for recruitment for all the posts in respondent / Board. But, by virtue of the impugned amendment made to the Regulations, the said concession that



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was extended in favour of the Schedule Caste and Schedule Tribes candidates in terms of the Constitutional provisions is sought to be taken away thereby depriving the petitioner from being considered for appointment to the post of Assistant Engineer in the 2nd respondent / Board.

3.The 2nd Respondent / Board filed a counter affidavit contending that, in case persons aged more than 35 years is being appointed to the post of Assistant Engineer, Junior Engineer and Drafts man, they are not able to cope up with the work, as most of the works in the 2nd respondent / Board are in connection with under-ground drainage with specific target to complete within the time frame and therefore, it necessitated the 2nd respondent / Board to make amendments to the said Regulations, thereby fixing upper age limit at 35 years in respect of post of the Assistant Engineer, Junior Engineer and Drafts Man, which are physical jobs and requires hard work. The justification that is given by the 2nd respondent / Board for fixing the upper age limit in respect to the above Posts, cannot be doubted and nothing is placed before this Court to show that the amendment made through the impugned Board proceedings, is



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arbitrary, unfair or inconsistent with Article 14 of Constitution of India.

No doubt, Articles 15 and 16 of the Constitution of India enable the state to provide certain concessions in favour of Schedule Caste and Schedule Tribe candidates, but that does not confer any absolute right on Schedule Caste and Schedule Tribes candidates. The 2nd respondent / Board consciously took a decision to fix the upper age limit in respect of some of the posts taking into consideration the nature of duties that are to be performed by the persons holding the said posts and the same cannot be said to be arbitrary or illegal.

4.The learned Senior Counsel appearing for the 2nd respondent / Board, while justifying the action of the 2nd respondent / Board in making amendment to the Regulations reiterated the contentions raised in the counter affidavit and placed reliance in the decision of the Delhi High Court in W.P.(C) No.1701/2014 ***Gaurav Mehta Vs. High Court of Delhi*** wherein the Division Bench of the Delhi High Court considered the similar aspect and held as under :

"11. Whenever the age limit or cut-off date is fixed under the recruitment Rules, some



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inconvenience or hardship is invariably caused. However, the age limit or cut off date cannot be challenged for violation of Article 14 of the Constitution of India as it adversely affects some candidates, unless it is per se arbitrary or illogical. Cut off dates do not offend Article 14 because there cannot be mathematical or logical formula to fix cut off date or age limit. Cut off date or age limits can be challenged if they are irrational, whimsical or capricious. (See: Ramarao v. All India Backward Class Bank Employees Welfare Association, (2004) 2 SCC 76).

12. Recruitment Rules by the very nature are required to fix lower and the upper age limit for eligible candidates and also fix the time or date for computing the lower and the upper age limit. It is in this context that the Supreme Court in University Grants Commission v. Sadhana Chaudhary, (1996) 10 SCC 536, observed as under:-

"21..... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no



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particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark. (See: Union of India v. Parameswaran Match Works (1975) 1 SCC 305 at p. 579 and Sushma Sharma (Dr) v. State of Rajasthan 1985 Supp SCC 45 at p. 269.)....."

13. Similarly in State of Bihar v. Bihar Pensioners Saraaj, (2006) 5 SCC 65, it has been observed, though in a slightly different context, as under:-

"17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the



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respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration."

14. Applying the said test and legal ratio to Rule 14 (c) which stipulates a candidate should not be more than 32 years of age as on the first January following the date of commencement of the examination, it has to be held that the stipulation is not violative of Article 14. The cut off date and the age fixed is not arbitrary, irrational or whimsical. Thirty two is a fairly advance age for a person to join the District Judiciary. The reason for fixing first



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day of January following the date of commencement of the examination as cut off point is obvious. Examinations under the Rules, 1970 are conducted in three stages and take time."

5. Thus, from the above, it is clear that the age limit or cut off date fixed cannot be challenged on the ground of violation of Article 14 of Constitution of India as the same is adversely affecting some of the candidates, unless it is *per se* arbitrary or illogical. In the instant case, nothing is brought to the notice of this Court that the upper age limit being 35 years is illogical and arbitrary, and merely because the petitioner cannot get qualified in terms of the amendment, the amendment cannot be said to be illegal or arbitrary, or unconstitutional.

6. As already noted above, the petitioner is aged about 45 years as on the date of filing of the present writ petition, by now, the petitioner is 57 years old. In the said circumstances, this Court does not see any arbitrariness or illegality in the impugned amendment issued through BP Ms.No.3(TWAD-Estt(Per) Wing) dated 13.01.2011 and this Court does



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not find any reason to interfere in the matter.

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7.In the result, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

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vsn

Index:Yes/No

Speaking/Yes/No

Neutral case citation: Yes/No

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