



W.P.No.19921 of 2017

**IN THE HIGH COURT AT JUDICATURE AT MADRAS**

**DATED: 30.10.2024**

**CORUM**

**THE HON'BLE MRS.JUSTICE N.MALA**

**W.P.No.19921 of 2017**

**and**

**WMP.No.18395 of 2018**

U.Tamilmani

...Petitioner

Vs.

1. The State of Tamil Nadu,  
Represented by the Secretary to Government Backward Class,  
Most Backward Class and Minority Welfare Department,  
Secretariat, Fort Sr.George, Madras- 600 009.

2.The Commissioner of Most Backward Classes and  
Denotified Communities Welfare,  
Chepauk, Chennai- 600 005.

3.District Backward Class and Minority Welfare Officers,  
Ariyalur Post and District.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records of 3<sup>rd</sup> respondent pertaining to his proceedings in Se.Mu.No.Pa1/1549/13 dated 09.07.2015, quash the same and to direct the respondents to reappoint the petitioner by way of promotion as driver in office of the 3<sup>rd</sup> respondent with all monetary benefits.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.R.Kumaravel

Additional Government Pleader  
for RR1 & 2



W.P.No.19921 of 2017

## **ORDER**

The petitioner aggrieved by his demotion from the post of driver to the post of security/assistant vide impugned order dated 09.07.2015 has filed the above writ petition.

2. The petitioner was appointed as a cook on temporary basis under the 3<sup>rd</sup> respondent on 28.11.2007. By proceedings dated 08.06.2012, the 3<sup>rd</sup> respondent regularised the services of the petitioner from the date of his appointment. The petitioner was absorbed as temporary driver vide proceedings dated 30.11.2012, and thereafter was promoted to the post of driver by the 3<sup>rd</sup> respondent on 06.08.2014, with immediate effect. While so, vide the impugned proceedings dated 09.07.2015, the promotion order of the petitioner was cancelled and the petitioner was demoted to the post of security/assistant on the ground that the petitioner had crossed 40 years of age and therefore ineligible for promotion as per clause (ii) of Rule 5(a) of Tamil Nadu Backward Classes Welfare Subordinate Service Rules, 2014. Aggrieved by the impugned order



W.P.No.19921 of 2017

dated 09.07.2015, the petitioner has filed the above writ petition.

WEB COPY

3. The respondents filed detail counter stating *inter alia*, that the petitioner was appointed as jeep driver on 06.08.2014, by relying on Rule 3 of the Ad-hoc rules in G.O.Ms.No.46, Backward Classes, Most Backward Classes and Minorities Welfare Department, dated 01.08.2014. According to the respondents, the petitioner was found ineligible under Rule 5(a) (ii) of the said G.O, as he completed 40 years of age and hence his promotion as a driver was cancelled and he was demoted to the post of security/assistant. The respondents further stated that petitioner on 08.07.2015, voluntarily quit the driver post, expressing his willingness to work as watchman cum servant at Government School Boys Hostel, Ponparappi. Based on the petitioner's representation and in compliance with the Ad-hoc rules for the post of jeep driver, the 3<sup>rd</sup> respondent reverted the petitioner vide impugned order dated 09.07.2015, from the post of driver to security/assistant.



W.P.No.19921 of 2017

WEB COPY

4. Learned counsel for the petitioner submitted that the impugned order was based on rule 5(a)(ii) of the Ad-hoc rules framed under G.O (Ms) No.46, Backward Classes, Most Backward Classes & Minorities Welfare (MWRU) Department, dated 01.08.2014. Learned counsel submitted that the said rules were challenged before the Division Bench (Madurai) of this court in W.P. (MD).No.3209 of 2015. Learned counsel submitted that the Division Bench order squarely applies to the present writ petition and therefore writ petition deserved to be allowed.

5. Learned Additional Government Pleader for the respondents on the other hand did not dispute the order passed by the Division Bench (Madurai) of this court on 23.03.2017, but merely stated that the petitioner was found ineligible as per G.O (Ms).No.46, dated 01.08.2014 and therefore as per clause 5(a)(ii) of the said G.O, the impugned order was passed and hence the same could not be faulted. Learned Additional Government Pleader further submitted that as the petitioner voluntarily relinquished the driver post and joined duty as



W.P.No.19921 of 2017

watchman cum servant at Government School Boys hostel vide letter dated 08.07.2015, he was estopped from challenging the impugned order. Learned Additional Government Pleader submitted that there were no merits in the writ petition and the same deserved to be dismissed.

6. I have heard both the learned counsels and perused the records.

7. It is seen from the impugned order that the same was passed on the premise that the petitioner had crossed the age limit provided under the Ad-hoc rules, framed under G.O(Ms). No.46, Backward Classes, Most Backward Classes & Minorities Welfare (MWRU) Department, dated 01.08.2014. It is also seen that the said rule was challenged before the Division Bench (Madurai) of this court in W.P.(MD).No.3209 of 2015 and this court vide order dated 23.03.2017 held as follows:

*“21. While framing adhoc rules vide G.O.Ms.No.46, the Government stated that the post of Drivers to the Jeeps with*



W.P.No.19921 of 2017

WEB COPY

*District Backward Classes and Minorities Welfare Officers / Joint Director (Kallar Reclamation), Madurai are being filled up from the Revenue units of the District concerned as the said post was classified as Jeep Drivers engaged in general Revenue administration. Further, it is stated that as the Backward Classes Welfare Department got separated from Adi-dravidar Welfare Department and not from the Revenue administration, the classification of the post of Driver to the Jeeps with District Backward Classes and Minorities Welfare Officers as Jeep Drivers engaged in general Revenue administration requires to be examined. Further, it was noted that in G.O. (Ms) No. 107, dated 22.09.2009, the Government has made a provision to appoint from the holders of the post of Cook and Watchman working in the hostels functioning under the control of the Adi Dravidar Welfare Department to the post of Driver with District Adi Dravidar Welfare Officers by the method of recruitment by transfer. Further, provision for promotion from the holders of the post of Watchman to the post of Driver in the Revenue Department has also been made in the Government Order in G.O. (Ms) No.195, Revenue Department, dated 14.05.2012.*

*22. In the light of the above referred Government orders,*



W.P.No.19921 of 2017

WEB COPY

*the Government considered the representations made by the petitioner and other similarly placed persons and framed Rules.*

*It is not known as to why the Government, while framing the Rules, has introduced the Clause (ii) in Rule 5(a) of the said Rules, when such a rule does not find place in the adhoc Rules framed for Adi Dravidar and Tribal Welfare Department, in G.O.(Ms) No.107, dated 22.09.2009. However, for such a reason alone, the impugned rule cannot be struck down as prescription of age limit for a post, which is a policy decision of the Government. Nevertheless, in the instant case, what is important to note is that the petitioner though presently working in the respondent Department, the respondent Department formed part of Adi Dravidar and Tribal Welfare Department and got separated and formed into a separate Department for administrative convenience. Therefore, similarly placed persons are being treated differently owing to the fact that their Department got bifurcated, which is for administrative convenience. By doing so, the Government will be acting in a discriminatory manner, which will offend Article 14 of the Constitution of India.*

*23. The comparison drawn with the Rules for the Revenue*

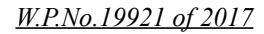


W.P.No.19921 of 2017

WEB COPY

*Department may not merit consideration for more than one reason. Firstly, there is no post of Cook in the Revenue Department and secondly, the Government is free to frame different set of adhoc Rules for different Departments considering the exigencies that may arise in such Departments. However, in the instant case, the petitioner is relying upon the adhoc Rules, which were framed by the Government for his parent Department.*

*24. As mentioned above, the petitioner out of his own volition has not come to the respondent Department, but on account of administrative convenience, the Department was bifurcated and this is admitted in the Government Order in G.O. (Ms) No.46, dated 01.08.2014. Thus, when the respondent Department stood bifurcated from the parent Department, the persons, who are similarly placed, have to be treated at par and any distinction or dichotomy caused between them would offend Article 14 of the Constitution of India. Thus, considering the peculiar facts and circumstances of the case, this Court is inclined to exercise its jurisdiction by reading down the rule instead of striking it down. The impugned rule not only fixes age limit for transfer from any other service for appointment to the*



8. The petitioner in the present case was originally appointed as a cook on temporary basis and subsequently his services were regularised by the 3<sup>rd</sup> respondent on 08.06.2012. The petitioner was absorbed as temporary driver on 01.07.2012, and thereafter promoted as driver by the 3<sup>rd</sup> respondent on 01.07.2012.



W.P.No.19921 of 2017

06.08.2014. The petitioners original appointment was made when the 3<sup>rd</sup> respondent was part of Adhi Dravidar and Tribal Welfare Department.

Subsequently for administrative convenience, the department of Most Backward Classes and Minorities Welfare Department was bifurcated from the Adhi Dravidar and Tribal Welfare Department. After bifurcation, the petitioner continued with the 3<sup>rd</sup> respondent. It is also seen that as far as promotions to the post of driver by the Adhi Dravidar Welfare Department were concerned, in G.O (Ms).No.107, dated 22.09.2009, the Government provided for promotion to the post of driver by way of transfer to cooks and watchmen working in the hostels functioning under the said Department.

9. It is relevant to note here that in the said G.O (Ms).No.107 dated 22.09.2009, the age limit was not prescribed for the said post. It was only when the Ad-hoc rules were framed for the respondent department that the age criteria was included in Clause (ii) in Rule 5(a). In the judgment of the Division Bench referred to above, Clause (ii) in Rule 5(a) was read down to protect the interest



W.P.No.19921 of 2017

of the writ petitioner therein, who was similarly placed as the petitioner herein.

WEB COPY

In view of the facts, I am of the opinion that the Division Bench judgment squarely applies to the facts of this case.

10. The next objection of the learned Additional Government Pleader is that the petitioner is estopped from questioning the impugned order as he voluntarily agreed to work as watchman cum servant at Government School Boys Hostel, Ponparappi. It is seen from the letter produced by the learned Additional Government Pleader that, the petitioner had only requested to be posted as driver and he had not agreed for demotion from the said post. Therefore the respondents contention in this regard is rejected.

In view of the above discussion, the writ petition is allowed and the impugned order dated 09.07.2015, passed by the 3<sup>rd</sup> respondent is set aside. No costs. Consequently, a direction is issued to the respondents to reappoint the petitioner by way of promotion as driver in the 3<sup>rd</sup> respondent office with all



W.P.No.19921 of 2017

monetary benefits within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, connected Writ Miscellaneous Petition is closed.

WEB COPY

30.10.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

dsn

To

1. The Secretary to Government Backward Class,  
Most Backward Class and Minority Welfare Department,  
Secretariat, Fort Sr.George, Madras- 600 009.

2.The Commissioner of Most Backward Classes and  
Denotified Communities Welfare,  
Chepauk, Chennai- 600 005.

3.District Backward Class and Minority Welfare Officers,  
Ariyalur Post and District.



WEB COPY



W.P.No.19921 of 2017

**N.MALA,J.**

dsn

W.P.No.19921 of 2017

30.10.2024