



W.P.No.14422 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 30.10.2024

ORDER PRONOUNCED ON : 24.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

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Mrs.R.Rohini

... Petitioner

/Vs./

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Tamil Nadu Tourism, Culture and Religious
Endowment Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner,
Tamil Nadu Hindu Religious Charitable Endowment Department,
Nungambakkam,
Chennai – 600 034.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to grant the petitioner promotion to the post of Assistant Commissioner with effect from 2014 to 2015 as per seniority list published by the respondent along with all attendant and consequential benefits including service promotion and other terminal benefits.



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For Petitioner : M/s.P.Jayalakshmi

For Respondents : Mr.S.Ravichandran
Additional Government Pleader (HR&CE)

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ORDER

This writ petition is filed to direct the respondent to grant the petitioner promotion to the post of Assistant Commissioner with effect from 2014 to 2015 as per seniority list published by the respondent along with all attendant and consequential benefits including service promotion and other terminal benefits.

2.The facts in a nut shell are as follows:

The petitioner was appointed as Junior Assistant in the office of Tamil Nadu Hindu Religious Charitable Endowment on 22.05.1985, through Tamil Nadu Public Service Commission. The petitioner was promoted as Assistant in the year 1992 and subsequently as Inspector in the year 1998 and further promoted as Superintendent on 01.04.2010. On 31.05.2015, the petitioner retired on superannuation. According to the petitioner, by virtue of her seniority and qualification she was placed 4th in seniority for the panel year 2013-2014 for appointment to 12 vacant posts of Assistant Commissioner. Due to administrative



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delay, the D.P.C. Meeting was conducted after the expiry of the panel period.

Three persons, who were senior to the petitioner were promoted and appointed by recruitment by transfer to the said post of Assistant Commissioner. Though the petitioner was found fit for promotion for panel year 2013-2014, she was not promoted in the said panel year. In the panel year 2014-2015, the petitioner was ranked first in the seniority list and was eligible for promotion to the post of Assistant Commissioner as she had acquired qualification as well as seniority. The petitioner states that though she was found fit for the panel year 2014-2015, she was not considered for promotion by the Departmental Promotion Committee on the specious ground that she crossed the age of 57 years. The petitioner further states that the denial of promotion was untenable and against G.O.Ms.No.291, Commercial Taxes and Religious Endowment dated 16.03.1986, which introduced the amended Rule 2(A) to Tamil Nadu Hindu Religious Charitable Endowment Administration Service Rules. The said Rule clearly stated that the crucial date for possessing the prescribed qualification for appointment to any of the post in the service by promotion or by recruitment by transfer was first October of each year. According to the petitioner, as per the aforesaid G.O., the process of preparation of panel started from the first of October of the preceding year and ended in March of the succeeding year and thus the crucial date for panel drawal for the year 2014-



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2015 was 01.10.2013, and the panel period started from 19.03.2014 to 18.03.2015.

According to the petitioner, as she had not completed 57 years of age as on 01.07.2013, she fulfilled the required qualifications for promotion, namely, seniority, prescribed qualifications and age criteria and therefore she was eligible for promotion and denial of the same to her was illegal and unsustainable. The petitioner further states that the respondent had on an earlier occasion promoted one L.Thulasingham for the panel year 2008-2009, as Assistant Commissioner on 29.06.2009 (ie) on the eve of his superannuation on 30.06.2009. According to the petitioner, the crucial date for possessing the requisite qualification, age and seniority in the case of the said L.Thulasingham was considered as on 01.10.2007 i.e. the first of October of preceding year. The petitioner states that if the same criteria were applied to her, she would be eligible for promotion for the panel year 2014-2015, as on the crucial date of 01.10.2013, she satisfied all eligibility criteria including age. As the respondents discriminated the petitioner by adopting the cut off date for age as 01.07.2014, the petitioner submitted a representation to the second respondent on 06.04.2014, but no prudent action was taken. Thereafter, the petitioner retired from service on 31.05.2015, and left with no other alternative remedy, the petitioner filed the above writ petition for the aforesaid relief.



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3.The respondents filed detailed counter admitting that for the panel year 2014-2015, proposal was sent to the Government for preparation of regular panel starting from 19.03.2014 to 18.03.2015, taking into consideration the crucial date as 01.10.2013. The respondents relying on Rule 2(A) of the Tamil nadu Hindu Religious and Charitable Endowments Administration Service Rules, submitted that persons promoted to the cadre of Assistant Commissioner, by recruitment by transfer from among Superintendents and Managers in the Hindu Religious and Charitable Endowments Administration Department, who acted as Inspectors for a period of not less than one year and by recruitment by transfer from among Grade I Executive officers of Religious Institutions, who had not completed or would not complete 57 years of age on the first day July of the year in which the selection for appointment was made were eligible for promotion as Assistant Commissioner. According to the respondents, the petitioner possessed all other prescribed qualifications, but as she had crossed the age of 57 years as on 01.07.2014, i.e. the date of reckoning the age criteria for the panel year 2014-2015, she was not included in the panel year 2014-2015. The respondents though admitted that the petitioner was first in seniority for the panel year 2014-2015 and that she was eligible for promotion on the basis of her qualification, nevertheless stated that as she crossed 57 years on the crucial date (ie) 01.07.2014, she was not considered.



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she was not considered for promotion and therefore the writ petition did not deserve any merit.

4.The learned counsel for the petitioner submitted that it is essential to interpret the term “of the year in which the selection for appointment was made” accurately. According to the learned counsel, if the statutory intent was to ensure that the candidate was below 57 years at the time of appointment, the rule would have read as “of the year in which the appointment was made” i.e. July of the year of appointment would have been taken as the cut off date. According to the learned counsel, in the present case, the Rule reads that First of July of the year of selection would be the crucial date and therefore, the date for age criteria should be 01.07.2013 for the panel year 2014-2015. Moreover as per G.O.Ms.No.291, the crucial date for acquiring the requisite qualification was 01.10.2013 and therefore any delay in the actual commencement of the process did not affect the crucial date for reckoning age. The selection process started from 01.10.2013 and therefore, the relevant date for age criteria logically ought to be 01.07.2013 and not 01.07.2014. According to the learned counsel, cut off date for age criteria was only 01.07.2013 i.e. the year of selection and because of the gross error in interpreting the term 'year of selection' as 'the year of appointment', the petitioner



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was erroneously denied promotion. The learned counsel for the petitioner further submitted that if the age criteria was applied as per the provisions of the Rule, the petitioner would have been promoted as she was otherwise eligible, qualification wise as well as seniority wise. The learned counsel for the petitioner submitted that merely because there was a delay in issuance of the panel, which was made on 30.06.2016, after the petitioner's superannuation the same would not affect the petitioner as she was fully eligible for promotion. The learned counsel therefore submitted that the writ petition deserved to be allowed.

5.The learned Additional Government Pleader for the respondents replicated the submissions made in the counter affidavit and submitted that the Rule was properly applied. The learned Additional Government Pleader submitted that as the petitioner was found to have crossed the age of 57 years as on 01.07.2014, her name was not included in the panel. The learned Additional Government Pleader therefore submitted that the writ petition deserved to be dismissed.

6.I heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and I have perused the materials available on record.



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7. In my view, the case hinges on the interpretation of Rule 3 of the Tamil

Nadu Hindu Religious and Charitable Endowments Administrative Service Rules.

The said Rule reads as follows:

3. Assistant Commissioners including Additional Personal Assistant to the Commissioner (and verification officers) ***	(I) By recruitment by transfer from among Superintendents and Managers in the Hindu Religious and Charitable Endowments Administration Department who have acted as Inspectors for a period of not less than one year and by recruitment by transfer from among Grade I Executive Officers of Religious Institutions.	** (i) Must possess \$ (a) the minimum general educational qualification; \$ (b) a pass in the Civil and Criminal Judicial Test (Parts I and III) for the members of the Judicial Department and (ii) Must not have completed or will not complete 57 years of age on the first day of July of the year in which the selection for appointment is made
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8. Let me examine what is meant by the phrase 'Year in which the selection for appointment is made'. Does it refer to the final list of candidates selected for appointment? If it does, then, the respondents may be right, but, in the present case, it is seen that there are several steps to the process of selection of candidates for appointment as stipulated in G.O.(Ms.)No.291, C T & R E Department, dated



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26.03.1986, which is extracted below:

1.Date on which the annual list of approved candidates for appointment by recruitment by transfer for the post of Assistant Commissioner should be prepared.	1 st October of every year (on this date the candidates should possess the prescribed qualification for consideration)
2.Date of receipt of estimate	1 st November of every year
3.Date of receipt of proposals 1 st December of by the Tamil nadu Public every year Service Commission	1 st December of every year
4.Date by which the list 1 st March of the should be communicated succeeding year, to the concerned by the Commissioner.	1 st March of the succeeding year

It is pertinent to refer herein to Rule 2A also: Rule 2A reads as follows:

"2A. The crucial date for possession of the prescribed qualification for appointment to any of the posts in the service by promotion or by recruitment by transfer shall be 1st of October of each year".

As per the above, the cut-off date for possessing prescribed qualification for approved candidates is 1st October of every year, the date of receipt of estimate is 1st November of every year, for receipt of proposal by the Tamilnadu Public Service Commission it is 1st December of every year and by 1st March of succeeding year the list should be communicated to the authorities concerned.



9. According to the respondents, the cut-off date of 01.10.2013, is only for acquiring the requisite qualification, but, for age criteria the cut-off date is the succeeding year (ie) the year in which the appointment is made. It is to be noted that the selection process commences from 1st of October of preceding year and the process of selection of candidates for inclusion in the annual list of approved candidate for selection involves various steps like scrutiny of the candidates' application for determining their eligibility, approval of eligible candidates, rejection of ineligible candidates estimate of proposals, receipt of proposals by TNPSC etc. The selection process admittedly starts on 1st October of the previous year and therefore, modifying the cut-off date to the year of appointment for purpose of age criteria could undermine the fairness and intent of the Rule. Therefore, a balanced approach is necessary to ensure justice and uphold the intent of the Rule.

9(i) From a bare reading of the Rule, it is clear that it is not the year of appointment but the year in which selection for appointment is made that is relevant year for reckoning the age criteria. As the selection process commences from 1st of October of the preceding year, in my view, the cut-off date of 1st July for reckoning the age criteria, should also relate to the preceding year and not the



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succeeding year in which the final act of selecting the candidates for appointment is made. More over, when a candidate is found fit in all aspects when the annual list of approved candidates is prepared, the said candidate could be thrown out just because there was a delay in approving the final list for appointment. The Rule stipulates the 1st of July of the year in which the selection for appointment is made as the relevant date. In my view, the phrase 'year of selection for appointment is made' does not merely refer to the final list of candidates selected for appointment, but includes the various steps for selection. Further, if the legislature was of the opinion that the age criteria should be determined on the basis of the year in which the appointment was made, then, it would not have used the phrase 'year in which the selection for appointment is made', it would have straight away said 'year of appointment'. The fact that the term "selection for appointment is made" was used establishes that it is not the final act of preparing the final list for appointment, but includes the entire process of selection, which culminates in the final list for appointment. The interpretation sought to be placed by the respondents, in my view, would result in injustice to persons, who though found fit in all aspects when the annual list of approved candidates is prepared are thrown out merely because on the date of preparation of the final list for appointment, they are found to be age barred. The present case is a typical example of the above. Admittedly, on the date



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of preparation of approved candidates the petitioner was found eligible in all aspect. Only because the final list for appointment was delayed, the petitioner was denied promotion as having crossed the age of 57 years as on 01.07.2014. The petitioner has been eliminated in the final stage for no fault of her's. The word 'selection' cannot be interpreted in a narrow fashion referring only to the preparation of the list of candidates selected for appointment but it involves the entire process of selection was succinctly explained by the Hon'ble Supreme Court in the case of **A.P. Public Service Commission, Hyderabad and Another Vs. B.Sarat Chandra and Others** reported in (1990) 2 SCC 669, while interpreting the term “Selection” under similar Rule of A.P.Police Service Rules, the Court held as follows:

“6. There is no dispute that the eligibility of a candidate as to age for appointment as Deputy Superintendent of Police should be determined according to Rule 5 of the A.P. Police Service Rules. It is, therefore, necessary to look first at that Rule. Rule 5 so far as is relevant provides:

"Rule 5. Qualifications--(A) No person shall be eligible for appointment as a Deputy Superintendent of Police, Category-2 by direct recruitment unless he--



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(i) has completed the age of 21 years and had not completed the age of 26 years on the first day of July of the year in which the selection is made.

7.The Rule prescribes the minimum as well as the maximum age for appointment as Deputy Superintendent of Police. Minimum age is 21 years. The candidate must have completed 21 years on the first day of July of the year in which the selection is made. He should not have also completed 26 years as on that day. The Tribunal while construing this Rule has observed:

"According to the procedure the process of selection begins with the issue of the advertisement and culminates in forwarding the list to the appointing authority. The essence of the process lies in the preparation of the list. A selection can be said to have been done only when the list is prepared. In this view the eligibility of the candidates as to age has to be determined at this stage."

If the word 'selection' is understood in a sense meaning thereby only the final act of selecting candidates with preparation of



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the list for appointment, then the conclusion of the Tribunal

may not be unjustified. But round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to.

The Tribunal in fact does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons, the candidates who are eligible on the date of application may find



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themselves eliminated at the final stage for no fault of theirs.

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The date to attain the minimum or maximum age must, therefore, be specific, and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the Rule making authority.”

10. It is seen from the counter of the respondents that the meeting of the Departmental Promotion Committee was held on 07.05.2015, for the panel year 2014-2015 and the panel was approved by the Government vide G.O.Ms.No.151, Tourism, Culture and Religious Endowments Department on 30.06.2016 and in pursuance of the approval of the panel promotion was given on 24.07.2016 vide G.O.(D).No.107, Tourism, Culture and Religious Endowments Department. According to the respondents, though the Departmental Promotion Committee held its meeting on 07.05.2015, the actual issuance of panel was made only after the date of superannuation of the petitioner. It is therefore clear that only because the panel was prepared well beyond the panel period, the petitioner was deprived of



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11. Applying the above dictum of the Hon'ble Supreme Court to the facts of the case, it can be fairly held that the selection having commenced in the year 2013, the cut off date for reckoning the age criteria would be first of July of the year of selection (i.e.) 2013 and not 01.07.2014 (year of preparing final list for appointment).

12. Therefore, I am of the view that the interpretation placed on Rule 2(A) of the Tamil nadu Hindu Religious and Charitable Endowments Administrative Service Rules, by the respondents as referring to the concluding act of preparing the final list for appointment cannot be countenanced as the respondents have misconstrued the statutory intent. Therefore, I find merit in the writ petition and hence the same is allowed. A direction is issued to the respondents to grant promotion to the petitioner to the post of Assistant Commissioner in the panel year 2014-2015, with all attendant and consequential benefits including service promotion and other terminal benefits, within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.



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24.01.2025

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

1.The Secretary to Government,
Tamil Nadu Tourism, Culture and Religious
Endowment Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner,
Tamil Nadu Hindu Religious Charitable Endowment Department,
Nungambakkam,
Chennai – 600 034.

N.MALA, J.

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**PRE-DELIVERY ORDER IN
W.P.No.14422 of 2016**

24.01.2025