

(2017) 04 MAD CK 0071
MADRAS HIGH COURT
Case No: 2455, 4574, 4960 of 2017

A.Rajakumar

APPELLANT

Vs

Tamil Nadu
Uniformed Services
Recruitment Board

RESPONDENT

Date of Decision: April 25, 2017

Acts Referred:

- Tamil Nadu Government Servants (Conditions of Service) Act, 2016, Section 20(6)(a)

Hon'ble Judges: S.S.Sundar

Bench: SINGLE BENCH

Advocate: S.S.Sundar

Judgement

1. In all the Writ Petitions, the petitioners have challenged the recruitment notification insofar as the cut-off date fixing 01.07.2017 as cut-off date

for calculation of minimum and maximum age limit. Consequently, the petitioners in all the Writ Petitions have prayed for a direction directing the

respondents to permit the petitioners to participate in the common recruitment for the post of Grade II Police Constables, proposed to be

conducted on 21.05.2017 and other selection process. In all the cases, the petitioners have challenged the fixation of cut-off date as 01.07.2017

for calculation of maximum age limit as highly arbitrary, illegal and against the well settled principles of law. The other points urged by the

petitioners are as follows:

a) Since the recruitment notification itself was issued on 23.01.2017 and the last date for application is fixed as 22.02.2017, it is not just and

necessary on the part of the respondents to fix the cut-off date long after the last date for submission of application.

(b) The cut-off date specified in the impugned notification has restricted the participation of several persons who are otherwise qualified.

(c) Fixing the cut-off date as 01.07.2017 is an unreasonable restriction and hence, violative of Articles 14, 16 and 19 of the Constitution of India.

(d) The respondents while fixing the date as 01.07.2017 failed to follow the humane approach theory. The petitioners in all the cases are eligible as

on the date of recruitment notification, however, they were prevented from participating the recruitment process because of the age limit being fixed

with reference to the date namely 01.07.2017. For the past five years, the respondents have not chosen to conduct the selection. The respondents

have decided to conduct the selection process even in the year 2016, however, due to some administrative delay, they have issued the notification

in January, 2017 prescribing the age limit with reference to the date 01.07.2017.

(e) The respondents have fixed the age limit with reference to a future date and the same is highly arbitrary and against the fundamental rights

guaranteed by the Constitution of India.

2. Though the facts of the individual cases are not relevant in the present context in which the arguments were advanced, it is relevant to point out

the stand taken by the first respondent in all these cases by referring to the counter affidavit filed in W.P.(MD)No.2455 of 2017. The counter

affidavit filed by the first respondent refers to the following aspects:

(i) It is not in dispute that the age criteria have been enumerated in paragraph XI of the notification as detailed below:

Category Minimum Age as on 01.07.2017 Upper Age limit as on 01.07.2017 DOB criteria
OC 18 years 24 years Candidates born after

01.07.1993 to 01.07.1999 BC/MBC/DNC 18 years 26 years Candidates born after
01.07.1991 SC/ST 18 years 29 years Candidates born

after 01.07.1988 Ex-servicemen -- 45 years Candidates born after 01.07.1972
Destitute Widow -- 35 years Candidates born after 01.07.1982

(ii) The age eligibility criteria to participate in the selection process for the recruitment of the year 2017 is fixed as per Rule 14(1), Annexure II of

the Tamil Nadu Police Subordinate Service Rules which prescribes that the age limit specified in Annexure II to these Rules shall be applied with

reference to the first day of July of the year in which the selection for appointment is made.

(iii) It is further stated in the counter affidavit that the date 1st July of the year in which the vacancies notified is valid through out Tamil Nadu State

including Tamil Nadu Public Service Commission based on Section 20(6)(a) of the Tamil Nadu Government Servants (Conditions of Service) Act,

2016 which stipulates that no person shall be eligible for appointment to any service by direct recruitment, unless he has completed 18 years of age

on the 1st July of the year in which the vacancy is notified. It is also stated in the counter affidavit that the age norms for the common recruitment is

fixed based on the amendment issued in both the Police Subordinate Service Rules and Special Police Subordinate Service Rules. Vide

G.O.Ms.No.247, Home (Police VI) Department, dated 03.03.2010 and G.O.Ms.No.154, Home (Police IX), Department, dated 25.02.2002 to

the effect that the Tamil Nadu Uniformed Services Recruitment Board shall conduct common recruitment to the posts of Police Constables / Jail

Warders / Firemen by following the norms prescribed for Police Constables.

(iv) It is the specific case of the respondents that the age criteria was fixed as per the Statutory Rule. Since there is no provision to relax the age

norms in the rules governing the recruitment of Grade II Police Constables / Grade II Jail Warders / Firemen, the respondents contended that the

prayer of the petitioners to relax the age norms cannot be considered. When eligibility norms are prescribed in a Rule and are uniformly applicable,

it is contended by the respondents that the age relaxation is impermissible. It is further stated in the counter affidavit that in order to avoid

uncertainty in respect of maximum, minimum age of a candidate which may arise if such an age is linked to the process of selection which may take

an uncertain time, it is desirable that a cut-off date should be fixed. The date of written examination has no correlation with the cutoff date namely

1st July and the cut-off date namely the 1st July will remain the same for every notification issued from 1st July to 31st December of the year by

any of the recruiting agency in Tamil Nadu State including Tamil Nadu Public Service Commission as per the rules. Hence, there is no arbitrariness

in prescribing the cut-off date as 1st July for the recruitment in 2017.

(v) Since there are decided cases, referring to the judgment of the Hon"ble Division Bench of this Court in W.P.No. 28740 of 2015 in the case of

N.Balaraman v. Union of India and five others, the first respondent further contended that the Courts cannot issue any direction to the appointing

authority to grant any relaxation of age, contrary to the recruitment rules in which the maximum age is prescribed. The first respondent also referred

to the judgment of the Hon"ble Division Bench of this Court in W.P.No.6189 of 2015 wherein the Hon"ble Division Bench in its order dated

15.10.2015 has passed the following order:

4.It must be noticed that wherever any cut-off is provided for, there is always an element of abstract arbitrariness, as some people will fall on one

side of cut-off, while others will fall on the other side of cut-off. In the wisdom of the respondent-authorities, they kept the cut-off relatable to the

date 01.07.2015 and there could be no compulsion to keep the date for such cut-off as same that of the date of Notification.

(vi) Finally, it was stated in the counter affidavit that fixation of age norms being the policy of the Government, judicial review is not permissible.

Merely because some inconvenience or hardship is caused to some individuals, that cannot be a reason to challenge the age limit or cut-off date

unless the cut-off date is fixed in an arbitrary fashion or irrational, whimsical and capricious.

3. Mr.M.Farhathullah, learned counsel for the petitioner in W.P.(MD)No.4960 of 2017 submitted written arguments and relied upon an

unreported judgment of this Court by a learned Single Judge dated 11.10.2012 in a batch of cases (W.P.No.11104 of 2012 and batch) in the

case of P.Pandiarajan v. The General Manager, Tamil Nadu State Transport Corporation. In the said judgment, the eligibility of the petitioners

therein for age relaxation was considered. In the said case, the State Government issued G.O.Ms.No.98, Personnel and Administrative Reforms

(S) Department, dated 17.07.2006 relaxing upper age limit by five years to enable the unemployed youth affected by the ban order to recruitment,

to apply for Government jobs. By taking note of the policy decision taken by the Government and the subsequent directions to the effect that the age relaxation is applicable for employees of the State agencies, this Court has allowed the Writ Petitions wherein the petitioners therein prayed for a mandamus to direct the Tamil Nadu State Transport Corporation to provide five years age relaxation to the petitioners in the recruitment for the post of Conductor. In the written submission filed in W.P.(MD)No.4960 of 2017, the grounds raised in the Writ Petition were reiterated with special reference to the petitioner's ambition and disappointment as the petitioner is over-aged just by two months because of the crucial date being 01.07.2017.

4. It is a well settled principle and the law is well settled as regards the scope of judicial review in the matter of administrative board of Executive authorities especially with regard to the eligibility criteria and norms fixed for recruitment. The Hon"ble Supreme Court in the case of Government of Andhra Pradesh v. N.Subbarayadu reported in (2008) 14 SCC 702 has held as follows:

7. There may be various considerations in the mind of the executive authorities due to which a particular cut off date has been fixed. These considerations can be financial, administrative or other considerations. The Court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut off date. The Government must be left with some leeway and free play at the joints in this connection.

5. It has been repeatedly held by the Hon"ble Supreme Court that fixing a cut-off date for determining the maximum or minimum age is the discretion of the employer and judicial review is not permissible unless the fixation of cut-off date is so capricious or whimsical. The Hon"ble Supreme Court in the case of Dr. Ami Lal Bhat v. State of Rajasthan and others reported in (1997) 6 SCC 614 has held as follows:

5. This contention, in our view, is not sustainable. In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a

post, is in the discretion of the rule making authority or the employer as the case may be. One must accept that such a cut-off date cannot be fixed

with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date is fixed there will

be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut-off date. That cannot

make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make it wholly unreasonable. This view was expressed

by this Court in *Union of India v. Parameswaran Match Works* and has been reiterated in subsequent cases. In the case of *A.P. Public Service*

Commission v. B. Sarat Chandra the relevant service rule stipulated that the candidate should not have completed the age of 26 years on the 1st

day of July of the year in which the selection is made. Such a cut-off date was challenged. This Court considered the various steps required in the

process of selection and said,

when such are the different steps in the process of selection the minimum or maximum age of 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 themselves eliminated at the final stage for no fault of theirs. 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 the recruiting

agency to scrutinise the applications".

This Court, therefore, held that in order to avoid uncertainty in respect of minimum or maximum age of a candidate, which may arise if such an age

is linked to the process of selection which may take uncertain time, it is desirable that such a cut-off date should be with reference to a fixed date.

Therefore, fixing an independent cut-off date, far from being arbitrary, makes for certainty in determining the maximum age.

6. In the case of *Union of India and Anr. v. Sudhir Kumar Jaiswal* (1994 4 SCC 212) the date for determining the age of eligibility was fixed at 1st

of August of the year in which the examination was to be held. At the time when this cut off date was fixed, there used to be only one examination

for recruitment. Later on, a preliminary examination was also introduced. Yet the cut off date was not modified. The Tribunal held that after the introduction of the preliminary examination the cut off date had become arbitrary. Negating this view of the Tribunal and allowing the appeal. This Court Cited with approval the decision of this Court in Parmeshwar Match Works case (supra) and said that fixing of the cut off date can be considered as arbitrary only if it can be looked upon as so capricious or whimsical as to invite judicial interference. Unless the date is grossly unreasonable, the court would be reluctant to strike down such a cut off date.

6. In the case of Shankar k. Mandal and others v. State of Bihar and others reported in (2003) 9 SCC 519, the Hon"ble Supreme Court has made the position clear after taking support from earlier judgment in the following lines:

What happens when a cut off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of

any non-prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court (See Ashok

Kumar Sharma and Ors.v. Chander Shekhar and Anr. (1997 (4) SCC 18, Bhupinderpal Singh v. State of Punjab (2000 (5) SCC 262 and Jasbir

Rani and ors. v. State of Punjab and Anr. (2002 (1) SCC 124) are as follows:

(1) The cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date

appointed by the relevant service rules;

(2) If there is no cut off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for

applications; and

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications

were to be received by the competent authority.

7. In another judgment of the Hon"ble Supreme Court in the case of A.P. Public Service Commission, Hyderabad and another v. B.Sarat Chandra

and others reported in (1990) 2 SCC 669 similar issue arose for consideration. Recruitment to the post of Deputy Superintendent of Police in the

State of Andhra Pradesh where Rule 5 of Andhra Pradesh Police Service Rules which is similar to the Rule in Tamil Nadu as regards

qualifications, a candidate who was not qualified as on the date of 1st July of the year of recruitment claimed that the relevant date ought to be the

date of preparation of list of selected candidates. Though the Tribunal accepted the contention of the candidates, the Hon"ble Supreme Court

allowed the Civil Appeal and held as follows: ""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 themselves eliminated at the final stage for

no fault of theirs. 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."" Though the above case is

relating to the minimum age, the principles of law laid down in the above judgment is applicable to the present case.

8. In the case of Mohd. Sartaj v. State of U.P. reported in AIR 2006 SC 3492 it has been held that eligibility/minimum qualification should be

fulfilled on the date of recruitment. In the case before the Hon"ble Supreme Court no other date was fixed or prescribed by the Rules.

9. In the case of State of Rajasthan v. Hitendra Kumar Bhatt reported in AIR 1998 SC 91 the Hon"ble Supreme Court has held as follows:

A cut-off date by which all the requirements relating to qualifications have to be met, cannot be ignored in an individual case. There may be other persons who would have applied had they known that the date of acquiring qualifications was flexible. They may not have applied because they did not possess the requisite qualification on the prescribed date. Relaxing the prescribed requirements in the case of one individual may, therefore, cause injustice to others.

10. In view of the principles of law reiterated by the Hon"ble Supreme Court and the Rule 14(1) and Annexure II of Tamil Nadu Police

Subordinate Service Rules, this Court is not inclined to accept the case of the petitioners. As pointed out by the Hon"ble Supreme Court and this

Court earlier, when it is a policy decision of the Government and the Recruitment Agency to fix the cut-off date having regard to the various

considerations, the Court is expected to observe judicial restraint and cannot interfere casually merely because some inconvenience is caused to

individuals. Hence, all the Writ Petitions are dismissed. However, there is no order as to costs. Consequently, connected W.M.P.(MD)Nos.2078

& 2079, 3652 & 3553 and 3998 to 4000 of 2017 are closed.