

N. Meenakshi Vs The District Employment Officer, The Joint Director of Health Services and The Dean

Court: Madras High Court

Date of Decision: Dec. 7, 2010

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: R. Murali, G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner filed O.A. No. 6854 of 2000 before the Tamil Nadu Administrative Tribunal, seeking for a direction to the

first Respondent to sponsor her name for appointment to the post of pharmacist without reference to the age limit prescribed for the said post and

for a consequential direction to Respondents 2 and 3 to consider her case for appointment to the said post.

2. When the matter came up before the Tribunal on 13.10.2000, the Tribunal directed her case to be considered with other candidates for the

interview, but the result of the interview was directed to be withheld.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 46800 of 2006.

4. The prayer of the Petitioner cannot be countenanced by this Court for more than one reason. With reference to the prescription of age and

challenge being made to such prescription, it is necessary to refer to the judgment of the Supreme Court in Tirumala Tirupati Devasthanams Vs. K.

Jotheeswara Pillai (D) by LRs. and Others, . The following passages found in paragraphs 6,7, 9 and 10 may be usefully extracted below:

6. Rule 4 gives a long list of rules made by the Government of Andhra Pradesh in respect of the employees of the State Government which have

been made applicable to Tirumala Tirupathi Deva sthanams employees, which includes the Fundamental Rules and the Subsidiary Rules issued

there under, the Andhra Pradesh Civil Services (Conduct) Rules, 1964, the Andhra Pradesh Civil Services (Classification, Control and Appeal)

Rules, 1963, etc. Rule 11 of the Rules clearly provides that no person shall be eligible for appointment to the service by direct recruitment to any

post in the service of Tirumala Tirupathi Devasthanams in Annexure II if he has completed the age of 28 years or the age prescribed therefore in

the said annexure as on 1st July of the year in which the notification for recruitment is issued. It also provides for general relaxation of age in

accordance with the orders issued by the Government and also in respect of persons belonging to reserved categories such as Scheduled Castes

and Scheduled Tribes and backward classes. Thus the Rules make complete provisions regarding qualification and age for direct recruitment and

also in respect of category of persons to whom relaxation can be granted which would be in accordance with the government orders. The Rules do

not mention anywhere that while making direct recruitment any services rendered as an NMR employee has to be taken into consideration or some

relaxation in age is to be granted on its basis. The writ Petitioners had worked for a brief period as NMR employees in 1984-86. It was after a

gap of more than six years that they were appointed by way of direct recruitment on 17-8-1992. Under the Rules they were clearly ineligible for

being given any appointment as admittedly they were overage.

7. Learned Single Judge allowed the writ petition mainly on the ground that on two earlier occasions the Appellant had granted exemption from age

and qualifications and non-material was placed before the High Court as to why such a discretion could not be exercised by the Appellant in favour

of the employees concerned, namely, the Petitioners. The learned Single Judge has also issued a writ of mandamus to the Appellant to consider

whether Writ Petitioner 5 was entitled for exemption from the requirement of age-limit having regard to certain G Os issued by the Revenue

Department of the State Government.

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9. The learned Single Judge has also issued a writ of mandamus directing the Appellant to consider the case of Writ Petitioner 5 as to whether he

was entitled for exemption from age qualification. As already mentioned the Rules do not make any provision for granting exemption except to the

limited extent as provided in the second para of Rule 11. The principles, on which a writ of mandamus can be issued, are well settled and we will

refer to only one decision rendered in Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh where this Court observed as under:

(SCC p.152, para15)

[A] writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the

part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute

and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that

mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the

aggrieved party has a legal right under the statute to enforce its performance.

10. There being no statutory provision or rule providing for exemption from eligibility criterion, the learned Single Judge clearly erred in issuing a

writ of mandamus against the Appellant directing into consider the case of Writ Petitioner 5 for granting him exemption from the rule providing for

upper age-limit for fresh appointment.

5. The Supreme Court in *Man Singh Vs. Commissioner, Garhwal Mandal, Pauri and Others*, in paragraphs 12 and 13 held as follows;

12. The Respondent had filled up the vacancies in terms of the Rules. Furthermore, the Appellant's name wasn't sponsored by the employment

exchange. He might have got himself registered in the employment exchange but in absence of any proof that his name was sponsored by the

employment exchange, the same could not have been considered.

13. The employment exchange sponsors the names of the candidates in terms of the provisions laid down in the employment exchange manual. The

employment exchange authorities are bound to sponsor the names in accordance with seniority. Names of a candidate can be sponsored only

when his turn comes and not prior thereto. (See *Arun Tewari and Others Vs. Zila Mansavi Shikshak Sangh and Others*, and *Avtar Singh Hit Vs.*

Delhi Sikh Gurdwara Management Committee and Others,

6. In the light of the above, there is no case made out by the Petitioner. Hence, the writ petition stands dismissed. No costs.