(2010) 12 MAD CK 0142

Madras High Court

Case No: Writ Petition No. 46800 of 2006 (O.A. No. 6854 of 2000)

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

Date of Decision: Dec. 7, 2010

Citation: (2010) 12 MAD CK 0142

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 on13.10.2000, 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. Rule11 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 a son 1st July of the year in which the notification for recruitment is issued. It also provides for general relaxation of agein 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 on17-8-1992. 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 nonmaterial was placed before the High Court asto 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.

...

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