

(2011) 04 MAD CK 0208
In the Madras High Court
Case No : Writ Petition No. 13471 of 2008

G. Gunasekaran

APPELLANT

Vs

The District Employment Exchange Officer, C. Vijaya and
Block Development Officer

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0208

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; Lita Srinivasan, GA for R1 and R3,
for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition is directed against the impugned order dated 25.02.2008 passed by the 1st Respondent disqualifying the Petitioner on the ground that he has crossed the age limit of 40 years on 01.07.2008 for the post of Overseer.

2. Learned Counsel appearing for the Petitioner placed three fold submissions.

Firstly, he contended that even before the Petitioner could cross the age of 40 years on 01.07.2008, the 1st Respondent passed the impugned order dated 25.02.2008 disqualifying the Petitioner for the post of Overseer without any basis and such exercise is legally unsustainable.

Secondly, it was contended that when the G.O. Ms. No. 96 itself was passed on 06.06.2008 stating that 40 years is the age qualification, disqualifying the Petitioner much before the said GO came into force on 06.06.2008, is beyond the authority of the 1st Respondent, therefore, the impugned order passed by the 1st Respondent is liable to be set aside.

Thirdly, he supported the prayer on the basis of the relaxation given by the G.O.

Ms. No. 98, dated 17.07.2006, whereby the Government has directed that the upper age limit for entering into Government service shall be relaxed by five years to enable the unemployed youth affected by the ban order on recruitment to apply for Government jobs. Therefore, the G.O. Ms. No. 98, dated 17.07.2006 is squarely applied to the case of the Petitioner to get the post of Overseer.

Since all the aforesaid points were not considered, he sought for setting aside the impugned order.

3. Opposing the said prayer, the learned Counsel appearing for the Respondents 1 and 3 submitted that the Petitioner was admittedly born on 03.03.1968, therefore, on reaching the date 02.03.2008, the Petitioner has crossed the age of 40 years and on that score, in view of G.O. Ms. No. 41, dated 21.03.2007 stating that notwithstanding anything contained in Rule 12(d) of the General Rules, no person shall be appointed if he has completed the age of 40 years ($35+5=40$) on the first day of July of the year in which the selection for appointment to the post of Overseer is made, the impugned order passed by the 1st Respondent is absolutely unchallengeable.

Secondly, it was contended that when the Petitioner has not mentioned the qualification including the age of the 2nd Respondent, it is not open to the learned Counsel for the Petitioner to make an allegation that the 2nd Respondent is appointed, who is junior to the Petitioner, without any basis and on that basis, she sought for dismissal of the present writ petition.

4. Heard the learned Counsel appearing on either side and perused the materials available on record.

5. The Petitioner was admittedly born on 03.03.1968. When the requisite age limit has been fixed as 35, the Petitioner has already crossed the age of 40 years on 02.03.2008. When he has already crossed the age limit, though the impugned order dated 25.02.2008 has mentioned that the Petitioner is disqualified on reaching the age on 01.07.2008, it does not give any rights to the Petitioner to say that G.O. Ms. No. 96, dated 06.06.2008 will not be made applicable, since it has come into force only on 06.06.2008, but the Petitioner admittedly has crossed the age limit on 02.03.2008.

6. Secondly, when the Petitioner challenges the appointment of the 2nd Respondent on the ground that the 2nd Respondent was junior to the Petitioner, he should have properly furnished the details with regard to the age and qualification, so that the Respondent would be in a position to reply properly and this Court is also able to appreciate the contention of both sides. But, in the present case, the learned Counsel for the Petitioner has not mentioned anywhere in the affidavit about the date of birth of the 2nd Respondent. Therefore, I do not find any substances in the arguments advanced by the Petitioner. Thirdly, G.O. Ms. No. 98, dated 17.07.2006, while providing for age relaxation, does not specify as to whether the same could be made applicable to the case of the Petitioner. Even if it is made applicable, it cannot be fit in to the case of the

Petitioner, since as on today, he has crossed the age limit of 40 years, as his date of birth is 03.03.1968.

7. Therefore, in view of the above reasons, I do not find any merit in the present writ petition and accordingly, the same is dismissed. No Costs.