

(2003) 11 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No"s. 18586 and 20771 of 2003 and W.P.M.P. No"s. 23221, 23222, 25866 and 25867 of 2003

R. Ganesan and V.K. Elango

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) WritLR 543

Hon'ble Judges : B. Subhashan Reddy, C.J;K. Govindarajan, J

Bench : Division Bench

Advocate : Rajaram, in W.P. No. 18586/2003, R. Karuppan, in W.P. No. 20771/2003, for the Appellant; V. Raghupathy, Government Pleader for Respondent 1 and Paul Vasanthakumar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—These two writ petitions relate to selection to the post of Civil Judges (Junior Division) in Tamil Nadu Judicial

Service, which is governed by Tamil Nadu Judicial Service (Cadre and Recruitment Rules),1995 (hereinafter referred to as "the Rules"). The

constitutionality of Rule 5 of the above Rules is in question.

2. In both the cases, the complaint is with regard to fixation of the maximum age limit of 38 years. The petitioner in W.P. No.18586 of 2003

belongs to Scheduled Caste community while in the latter writ petition W.P. No. 20771 of 2003, the petitioner is a Vanniyakula Kshatriya, which

is categorised as Most Backward Class.

3. The contention of Mr. R. Karuppan, learned counsel appearing for the MBC candidate as also Mr. Rajaram, learned counsel appearing for the

Scheduled Caste candidate, is that the outer age limit should not have been fixed for the candidates belonging to the reserved categories. They also

pointed out that when the notification was first issued for 31 candidates on 25.2.2003, it was correctly mentioned that the outer age limit is not

applicable to the reserved categories and that in the latest notification dated 3.5.2003, the maximum outer age limit beyond 38 years is fixed with

cut off date as 1.7.2003 and it is unconstitutional and illegal. Mr. R. Karuppan, learned counsel for the petitioner in W.P. No.20771 of 2003, has

relied upon the judgments rendered by the Supreme Court in (i) State of Kerala and Another Vs. N.M. Thomas and Others, , (ii) P.G.

INSTITUTE OF MEDICAL EDUCATION AND RESEARCH V. FACULTY ASSOCIATION AIR 1998 S.C. 1764 (iii) Ajit Singh and

Others Vs. The State of Punjab and Others, and (iv) State of Bihar and Another Vs. Bal Mukund Sah and Others, .

4. The entire adjudication rests upon the interpretation of the constitutional provisions contained in Article 16(4) and the related Articles viz., 14

and 15(4) as every rule has to conform to the said constitutional provisions and the interpretation laid by the Supreme Court, which is the law of

the land under Article 141 of Indian Constitution.

5. On the subject of reservation, there are plethora of precedents and it has been held by the Supreme Court in Indra Sawhney etc. etc Vs. Union

of India and others, etc. etc., that the State is entitled to provide reservation but the same shall not cross beyond 50% and an exception can be

made only in rarest of rare cases. The State of Tamil Nadu has provided for 69% reservation by enacting Tamil Nadu Backward Classes,

Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the

State) Act, 1993 (T.N. Act 45 of 1994) but that is under challenge before the Supreme Court. The said case is still pending. We need not go into

the details of the above reservation aspects including the quantum of reservation provided. We have to decide the only issue as to whether

categorisation of outer age limit for reserved categories can be claimed as of right and whether the rules prescribing the maximum outer age limit of

38 years with no relaxation to reserved candidates, is liable to be struck down as being unconstitutional.

6. When the first notification was issued on 25.2.2003, the number of vacancies mentioned was only 31 as against large number of vacancies to be filled up and when the issue came up, number of vacancies were specified with other directives pointing out the rule where the minimum and maximum age limits were prescribed and that is why in the later notification dated 3.5.2003, every defect was rectified. May be that is the reason why the constitutionality of that portion of the Rule 5 of the Rules prescribing outer age limit of 38 years for all, including the reserved categories, is assailed.

7. Rule 5 of the Rules reads,

5. Method of appointment, Qualification and age. - In respect of each category of posts specified in column (1) of the Schedule below, the method of appointment and the qualifications shall be specified in the corresponding entries in columns (2) and (3) thereof:-

SCHEDULE

Category	Method of Appointment	Qualifications
(1)	(2)	(3)
1...	...	...
2...	...	...
3...	...	...
4. CIVIL JUDGE	By direct	1. ...
(Junior Division/	recruitment on	2. ...
Judicial Magistrate	the basis of	3. Must be attained
First Class)	written examina-	the age of twenty-
tion / and Viva	five years and must	
voce Examina-	not have attained	
tion conducted	the age of thirty-	
by the Tamil	eight years on the	
Nadu Public	1st July of the year	
Service Comm-	in which selection	
ission in accor-	for a appointment	

dance with the is made.

rules specified

in the annexures

to these rules.

8. As seen from the above, there is no relaxation with regard to age limit. But some concession was shown for the reserved categories in

prescribing the minimum marks for selection. The minimum marks for selection are 40 marks for open competition, 35 marks for Backward Class,

32 marks for Most Backward Class and Denotified Community and 30 marks for Scheduled Castes and Scheduled Tribes.

9. The Government, in its wisdom, while framing the Rules, has thought that having regard to the circumstances in the State of Tamil Nadu, the

relaxation of outer age limit for the post concerned is not necessary for any reserved community while providing concessions so far as minimum

marks for selection is concerned. Now the question for consideration is whether there is any imposition on the State to waive the maximum age

limit for the reserved categories. Strong reliance is placed by both the counsel on the decisions cited supra. But, in our considered view, those

decisions do not help to strengthen their arguments and in fact, the ratio decidendi laid down in the above cases runs contra to the submissions

made by the learned counsel for the petitioners.

10. In *STATE OF KERALA v. N.M. THOMAS* (cited (i) supra), the Kerala State and Subordinate Services Rules (1958) provided some

concessions in favour of the S.C. & S.T. candidates and those Rules were challenged as being unconstitutional but they were held as constitutional

by the Supreme Court. In so far as *P.G. INSTITUTE OF MEDICAL EDUCATION & RESEARCH v. FACULTY ASSOCIATION* (cited (ii)

supra) is concerned, the point for consideration is whether the reservation can be provided for a single-post category. It was held in the negative

that such a reservation cannot be made. Analysing Articles 14, 15 and 16 of the Indian Constitution and also referring to several previous

judgments, particularly the judgments rendered by the Constitutional Benches, including *INDRA SAWNEY*'s case (supra), it was held in

paragraph 33 that "Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate

limits" and "in making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of citizens." (emphasis is

ours). In *AJIT SINGH v. STATE OF PUNJAB* (cited (iii) supra), a constitution Bench of the Supreme Court has emphatically held that

reservation provisions contained in sub-Articles 4 and 4-A of Article 16 of the Constitution do not create any constitutional duty and there cannot

be any Mandamus issued to provide for reservation or for relaxation. The decision in *STATE OF BIHAR v. BAL MUKUND SHAH* (cited (iv)

supra) goes a step further in holding that the State cannot provide any reservation unless consented to by the High Court in the process of

consultation provided in Article 234 of Indian Constitution.

11. Going by the above legal principles enunciated by the Apex Court, which is the law of the land under Article 141 of Indian Constitution, we do

not see any merit in the contention that there cannot be any outer age limit fixed for reserved candidates. Hence, we do not see any constitutional

or legal infirmity in Rule 5 of the Tamil Nadu Judicial Service (Cadre and Recruitment Rules), 1995.

12. In the result, both the writ petitions are dismissed. Consequently, all the connected W.P.M.Ps. are closed. No costs.