
(2013) 04 MAD CK 0162
In the Madras High Court
Case No : Writ Petition No. 35457 of 2007

R. Shivakumar

APPELLANT

Vs

The Member Secretary and The Secretary

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 5 MLJ 364

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Vijay Shankar, for the Appellant; A. Kumar for R1 and Mrs. M.S. Ramesh, Additional Govt. Pleader for R2, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The petitioner entered the services of the second respondent as Planning Assistant Grade IV. He possessed a Postgraduate degree and is also a Member of Indian Town and Country Planning Institute as he has successfully completed the course, which according to him, is equivalent to Master of Town Planning prescribed for the post of Assistant Planner. Two ways of recruitment have been prescribed: one by promotion and the other by way of direct recruitment. The petitioner, being the Planning Assistant Grade III, is not eligible to be promoted to the post of Assistant Planner, since Planning Assistant Grade I alone is the feeder category for the said post to be filled up by way of promotion. So far as the posts earmarked for direct recruitment are concerned, the past experience shows that the number of vacancies earmarked for direct recruitment was on the increase and the number of candidates found in the list submitted by the Employment Exchange fell short of the number of vacancies with the result that several vacancies were left unfilled year by year. Though the petitioner is not in the zone of consideration for promotion, since he has got the qualification to be appointed as the Assistant Planner directly, he also applied to the first respondent praying that his name should be considered for direct

recruitment to the post of Assistant Planner. However, his application was rejected on the premise that he has crossed the upper age limit for appointment as Assistant Planner through direct recruitment. Even the representation made by the petitioner that, being a departmental candidate already employed in the very same organisation, the condition regarding upper age limit could be relaxed and he should be considered for appointment as Assistant Planner, was rejected. His request for permitting him to attend the test/interview along with the other candidates for direct recruitment was turned down by the impugned order of the first respondent dated 03.04.2007 bearing Memo No. E2/4672/2007. Aggrieved by the same, the petitioner has approached this Court praying for the issuance of a writ of certiorarified mandamus for the quashing of the said order of the first respondent dated 03.04.2007 and a consequent direction directing the respondents to consider the name of the petitioner for appointment as Assistant Planner under direct recruitment category by relaxing the upper age limit in terms of the service regulations contained in G.O.Ms. No. 210 dated 26.02.1980. Learned counsel for the petitioner has contended that long back in 2001 itself the alarming situation of ever increasing vacancies in the post of Assistant Planner without getting sufficient number of candidates sponsored from the Employment Exchange was discussed in the Board of the Chennai Metropolitan Development Authority and it was resolved that when persons with same or higher qualifications as prescribed for direct recruitment posts are available within the organisation, they might be considered for direct recruitment provided, they would compete with the other candidates sponsored for direct recruitment either in the test or in the interview and that in view of such a resolution, a number of persons employed in the Chennai Metropolitan Development Authority in the lower categories were allowed to compete with the candidates sponsored by the Employment exchange not only for the post of Assistant Planner but also for other posts and in such cases the first respondent appointed them relaxing upper age limit even though the selected departmental candidates had crossed the upper age limit. It is the further contention of the learned counsel for the petitioner that when a power was conferred on the first respondent to relax the age limit in respect of the departmental candidates for being considered for direct recruitment, such power cannot be exercised arbitrarily, that too, by showing discrimination by adopting pick and choose method. Learned counsel for the petitioner submitted that the first respondent, having relaxed the upper age limit in respect of other candidates on previous occasions, surprisingly declined the request of the petitioner to relax the upper age limit in the case of the petitioner for being appointed as Assistant Planner by direct recruitment and that the said procedure adopted by the first respondent is discriminatory offending the equality clause and equal protection clause enshrined in article 14 of the Constitution of India.

2. The learned standing counsel for the Chennai Metropolitan Development Authority has made an attempt to contend that the resolution dated 22.01.2001 simply permitted the authority to consider persons within the organization

possessing same or higher qualification as prescribed for direct recruitment, provided they also compete with the other candidates sponsored for direct recruitment either in the test or in the interview and that the resolution does not contemplate relaxation of upper age limit.

3. The said contention of the learned standing counsel for the Chennai Metropolitan Development Authority is refuted by the learned counsel for the petitioner pointing out the fact that such a power is available to the first respondent by virtue of G.O.Ms. No. 210, Housing and Urban Development Department, dated 26.02.1980 by which the draft regulations of the then Madras Metropolitan Development Authority (Now the Chennai Metropolitan Development Authority) came to be approved. A copy of the said Government order has also been produced in the typed-set of papers. In Section II with the Caption "General Regulations", Clause 3 deals with the general conditions relating to appointments. Sub-clause (c)(i) deals with the age limit of the persons to be appointed to the Chennai Metropolitan Development Authority. The first proviso to Sub-clause (c)(i) reads as follows:

Provided that the age limit may be relaxed in specific cases by the Authority in the interests of the Authority

4. Therefore, it cannot be contended that the first respondent does have no power of relaxing the age limit so far as the departmental candidates are concerned who compete for direct recruitment. In addition, the petitioner has furnished particulars of cases in which such relaxation in age limit was made and appointments were made by the first respondent while considering the candidature of the departmental candidates as against the quota for direct recruitment. In the additional affidavit the following particulars have been furnished:

SI. No

Post to which appointments were made

Age limit fixed

Extension in view of ban in post

Age Limit taking into account the extension

The persons appointed

Age of the person

1

Planning Assistant Grade I

30 Years

5 Years

35 Years

R. Manoharan

46 Years

2

Planning Assistant Grade I

30 Years

5 Years

35 Years

R. Saravanan

41 Years

3

Assistant Planner

30 Years

5 Years

35 Years

R. Magudapthy

38 Years

4

Assistant Planner

30 Years

5 Years

35 Years

Paneerselvam

45 Years

5. The above particulars furnished by the petitioner are not disputed. In addition, the petitioner has also obtained copies of note files leading to the appointment orders issued to the above said persons and the appointment orders and produced them in the additional typed-set of papers. The said particulars go to show that by virtue of the power available to the first respondent, the first respondent had been relaxing the upper age limit in respect of the candidates who were already in the service of the Chennai Metropolitan Development Authority and made appointments to the posts of Planning Assistant Grade I and

Assistant Planners as against the direct recruitment turn. Of course, in all such cases, the departmental candidates also competed with the other candidates and by way of selection process they were appointed. However, in the case of petitioner alone, the first respondent has failed to use the power of relaxation in respect of upper age limit. Learned counsel for the petitioner submits that now the petitioner is in the cadre of Planning Assistant Grade III and he is the only person possessing requisite qualification for appointment as Assistant Planner and still he is denied the opportunity of competing for the post of Assistant Planner towards the direct recruitment turn.

6. In this regard, learned counsel for the petitioner drew the attention of the Court to a Judgment of a learned Single Judge of this Court in *P. Dhanajeyam Vs. The Vice Chancellor and The Registrar, University of Madras*, wherein denial of permission to a clause IV employee appointed on compassionate ground on the ground that he had not acquired the prescribed qualification of Diploma in computer application whereas 12 other persons in the said category who also did not possess such a qualification of Diploma in Computer application were promoted. In the said judgment, it was held that similarly situated persons were entitled to be treated alike and denial of promotion to the petitioner therein when the other 12 similarly situated persons were given promotion was arbitrary and discriminatory. Learned counsel for the petitioner for the petitioner also relied on a judgment of a Division Bench of this Court in *A. Francis Vs. The State of Tamil Nadu* wherein it was held that when power is vested with the authority to relax the requirement of possessing professional qualification to promote a person, the denial of promotion relaxing such qualification taking into account the vast experience was arbitrary.

7. Of course, the second case cited by the counsel for the petitioner may not be directly applicable to the case on hand since the petitioner does not seek relaxation in respect of qualification. The ratio decided by the learned single Judge in *P. Dhanajeyam Vs. The Vice Chancellor and The Registrar, University of Madras*, which in turn was based on the ratio decided by the Hon"ble Supreme Court in *Union of India (UOI) and Another Vs. International Trading Co. and Another*, squarely applies to the petitioner. In the above judgment of the Hon"ble Supreme Court, it has been observed as follows:

... The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case....

The learned Single Judge also relied on the observations made by the Hon"ble Supreme Court in another case in *Hari Ram and Another Vs. State of Haryana*

and Others, , wherein the Hon"ble Supreme Court has held as follows:

The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power u/s 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory. More so, it is not even the case of the respondents that release of land from acquisition in favour of various landowners, as noticed above, was in violation of any statutory provision or actuated with ulterior motive or done due to some mistake or contrary to any public interest. As a matter of fact, vide order dated August 19, 2008, this Court gave an opportunity to the State Government to consider the representations of the appellants for release of their land and pass appropriate order but the State Government considered their representations in light of the policy dated October 26, 2007 ignoring and overlooking the fact that for none of the landowners whose lands have been released from acquisition, the policy dated October 26, 2007 was applied. The State Government has sought to set up make believe grounds to justify its action that development planning has been kept into consideration and that the appellants have been offered developed plots of double the area of construction while the fact of the matter is that in some cases where the plots were vacant and had no construction, the entire plot has been released from acquisition and also the cases where one room or two rooms construction was existing, the whole of plot has been released. While releasing land of more than 40 landowners having plots of size from 150 sq. yards to 1500 sq. yards, if development plan did not get materially disturbed in the opinion of the State Government, the same opinion must hold good for the appellants' lands as well. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law.

The ratio decided in the above said case is clearly attracted to the facts of the case on hand. In this case, no doubt Planning Assistant Grade I alone had been made a feeder category for promotion to the cadre of Assistant Planner. But, so far as the direct recruitment for the post of Assistant Planner is concerned, the resolution dated 22.01.2001 permits the persons who are available in the organization to compete for appointment as Assistant Planner towards the direct recruitment turns, provided they also compete with the other candidates in the test/interview. In fact, the petitioner did apply for such consideration. But he was

denied permission to appear for the test/interview. At the same time, as indicated supra, on several occasions, Chennai Metropolitan Development Authority permitted the departmental candidates to appear for direct recruitment to the higher posts relaxing the upper age limit. Only in case of the petitioner, permission was refused on the ground that he had crossed the upper age limit. The failure to exercise the power of relaxation of upper age limit in case of petitioner, as rightly contended by the learned counsel for the petitioner, is not only arbitrary but also discriminatory. Relying on the judgment of the Hon''ble Supreme Court, which was also followed by the learned Single Judge of this Court, this Court comes to the conclusion that the impugned order of the first respondent dated 03.04.2007 made in Memo No. E2/4672/2007 is liable to be quashed as arbitrary and discriminatory offending Article 14 of the Constitution of India.

Accordingly, the writ petition is allowed, impugned order of the first respondent dated 03.04.2007 made in Memo No. E2/4672/2007 is quashed and the first respondent is directed to consider the petitioner's application for appointment to the post of Assistant Planner in the direct recruitment turn relaxing the age limit using the power conferred on the first respondent. No costs.