



W.A.(MD) No.416 of 2023 etc. batch

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
22.11.2023	29.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.A.(MD) Nos.416, 1405, 1719, 1810, 1936, 1937, 1938, 1939, 1940,
1941 & 1942 of 2023**

and

**C.M.P.(MD) Nos.4524, 10970, 13157, 13770, 15044, 15046, 15049,
15051, 15052, 15053 & 15055 of 2023**

W.A.(MD) No.416 of 2023:

- 1.The State of Tamil Nadu
rep.by the Additional Chief Secretary to Government
Scheduled Caste & Scheduled Tribes
Welfare Department
Secretariat, Chennai
- 2.The Commissioner
Commissionarate of Adi-Dravidar Welfare
Chepauk, Chennai-5
- 3.The District Collector
Tirunelveli District
Tirunelveli



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4.The District Collector
Tenkasi District
Tenkasi

5.The District Scheduled Caste &
Scheduled Tribes Welfare Officer
Office of the District Scheduled Caste &
Scheduled Tribes Welfare Officer
Tirunelveli, Tirunelveli District

... Appellants

-vs-

K.Parvathy

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 24.11.2022, passed in W.P.(MD) No.15743 of 2022, on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Lingadurai
Special Government Pleader

For Respondent : Mr.H.Mohammed Imran
for M/s.Ajmal Associates



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COMMON JUDGMENT

S.M.SUBRAMANIAM, J.

The present intra-court appeals are directed against the orders dated 24.11.2022, 07.02.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023 & 30.03.2023, passed in W.P.(MD) Nos.15743, 29235, 23709, 23717, 23718, 23719, 23720, 23721, 23722, 23723 & 25306 of 2022 respectively.

2. Having aggrieved by the orders of the learned Single Judge allowing the writ petitions, the State has preferred the present writ appeals.

3. Background of the case:

3.1. A recruitment notification was published by the Adi Dravidar and Tribal Welfare Department in the daily newspapers inviting applications from the eligible candidates for selection and appointment to the post of Cook. The recruitment notification was affixed in the Notice Board of the said Office



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WEB COPY also. The educational qualification prescribed as per the recruitment notification was that the candidates should possess the knowledge of reading and writing Tamil language. The age limit of the candidate should be 18-35 years. Preference would be given to Scheduled Caste and Scheduled Tribe candidates and to the residents of the concerned locality.

3.2. All the respondents admittedly submitted their respective applications and participated in the process of selection. The respondents received interview call letters and they attended the interview by producing their original educational and other certificates. Having satisfied with the merits of the candidates, the Competent Authority selected and appointed the respondents as “Cook”, in the Adi Dravidar and Tribal Students Hostels.

3.3. Having followed the procedures in consonance with the recruitment notification and the Special Rules in force, the Department issued a letter calling upon the respondents to appear for enquiry along with their appointment orders and the educational qualification certificates. The respondents attended the enquiry proceedings conducted by the Adi Dravidar and Tribal Welfare Department. On completion of enquiry, orders of termination from service were issued cancelling the appointment of the



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respondents as Cook. Thus, the respondents were constrained to file the writ petitions challenging the orders of termination from service.

3.4. The learned Single Judge, by the impugned orders allowed the writ petitions by setting aside the orders of cancellation of appointment. The writ petitions were allowed mainly on the ground that overqualification is not a disqualification under the recruitment notification and therefore, the appointment cannot be said to be illegal or irregular. Secondly, the maximum age limit of 35 years fixed under the recruitment notification is violative of the proviso to Section 20(8)(ii) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter, referred to as “2016 Act”) and held that the maximum age limit for appointment should be 40 years for the candidates belonging to Scheduled Caste or Scheduled Tribe community. Thus, the selection made within the maximum age limit of 40 years is held to be valid.

3.5. A set of selected candidates filed writ petitions on the ground that overqualification is not a disqualification for appointment to the post of Cook. Another set of candidates stating that the maximum age limit as per the General Rules and under the proviso to Section 20(8)(ii) of the 2016 Act is 40 years and they were appointed within the age of 40 years and therefore,



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there is no illegality or irregularity in selection and appointment. In the present set of writ appeals, we are called upon to decide the issue relating to maximum age limit for appointment to the post of Cook with reference to the Service Rules in force applicable to the respondents. The respective learned counsels for the respondents contended that this batch of writ appeals are confined with regard to the issue relating to the maximum age limit as per the Rules.

4. Appellants' submissions:

4.1. Learned Additional Advocate General appearing for the appellants mainly contended that the post of Cook is falling under the Special Rules for Tamil Nadu Basic Service. Category-2, Class-IV, Rule 2 of Section 9 of the Special Rules for Tamil Nadu Basic Service denotes the cadre “Cooks”. The Special Rules applicable to the post of “Cook” prescribe qualification and age limit for appointment by direct recruitment. Rule 5(1) of the Special Rules provide age limit for appointment to the post of Cook. As per Special Rules, for the post of Cook, the candidate must not have completed 35 years of age on the date of appointment. However, the Rule 5(1) of the Special Rules contemplates that a candidate belonging to Scheduled Caste or Scheduled Tribe shall be eligible for appointment, if he has not completed 35 years of age



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on the date of appointment. The proviso to Rule 5(1) unambiguously stipulates that other than those in Classes I and II must not have completed 35 years are eligible for appointment. In the present case, the post of Cook falls under Class IV and therefore, the age limit fixed for the General Category candidates is 30 years on the date of appointment and 35 years for SC & ST candidates.

4.2. Learned Additional Advocate General drew our attention with reference to Section 68 of the 2016 Act, which stipulates overriding effect of The Special Rules. Under Section 68 of the 2016 Act, if any provision of the said Act is inconsistent with any provision of the Special Rules applicable to any particular service, the Special Rules shall, in respect of that service, prevail over the provisions of the 2016 Act. Relying on the said provision, it is contended that the Special Rules applicable to the Tamil Nadu Basic Service is relevant as far as the selection and appointment to the post of “Cook” is concerned, which has been scrupulously followed by the appellants and therefore, the learned Single Judge is erred in extending the age limit from 35 years to 40 years, which would result in discrimination in respect of the other eligible candidates, who all are also aspiring to secure public employment under the constitutional schemes.



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4.3. It is further contended that the reliance placed on by the learned Single Judge that Section 20(8)(ii) of the 2016 Act is based on misinterpretation and the said provision is not applicable with reference to the post of Cook, which is falling under Category-2, Class-IV, Rule 2 of Section 19 of the Special Rules.

5. Respondents' submissions:

5.1. Learned counsels appearing for the respective respondents relied on the Adhoc Rules issued by the Government in G.O.Ms.No.2342, Social Welfare Department, dated 04.09.1986. As per the said adhoc rules, the maximum age limit of 33 years was fixed for the candidates belonging to Adi Dravidars and Scheduled Tribes and for the candidates belonging to General Category, the age limit of 28 years was fixed. Pointing out the contradictions with reference to the Special Rules for the Tamil Nadu Basic Service and the Adhoc Rules, learned counsels appearing for the respondents solicited our attention with reference to Section 20(8)(i) of the 2016 Act. Section 20(8)(i) of the 2016 Act provides extension of age limit for five years and therefore, the maximum age limit fixed under the Special Rules i.e. 35 years is to be extended upto 40 years for the purpose of selection and appointment to the post of Cook.



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5.2. Learned counsels for the respondents made a submission that the reliance placed on by the learned Single Judge that Section 20(8)(ii) of the 2016 Act is not applicable and the findings of the learned Single Judge in this regard are erroneous and Section 20(8)(i) of the 2016 Act alone would be applicable for extension of five years of age for the candidates belonging to Scheduled Caste or Schedule Tribe community.

5.3. Further, learned counsels for the respective respondents relied on Section 18 of the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules, wherein the first proviso to Rule 5(a) states that the maximum age limit specified in the said Rules in respect of the posts to which the minimum general educational qualification or any lower qualification has been prescribed, shall be increased by five years in the case of candidates belonging to the Scheduled Castes and the Scheduled Tribes. Relying on the said provision, learned counsels for the respective respondents contended that five years of age relaxation is to be granted for appointment to the post of Cook for SC/ST candidates. Thus, the relief granted by the learned Single Judge is in consonance with the Rules applicable to the post of Cook and therefore, the writ appeals are to be rejected.



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5.4. Learned counsels for the respective respondents relied on the order of this Court dated 27.11.2014 in W.P.No.27862 of 2011 [***P.Aндиappan vs. The District Collector, Ariyalur District, Ariyalur and others***], wherein erstwhile Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules was relied upon for extension of age limit to the candidates. The findings in the said decision is that the maximum age limit will not apply in view of Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules.

6. Discussions:

6.1. The Act and the Rules applicable for appointment to the post of Cook are to be considered at the first instance.

6.2. Category-2, Class-IV, Rule 2 of Section 19 of the Special Rules for Tamil Nadu Basic Service denotes the cadre “Cooks”. Rule 5(1) of the Special Rules contemplates “age” as follows:

“(1) Age: Candidates for appointment by direct recruitment to any of the posts other than those in Classes I and II must not have completed 30 years of age on the date of appointment.



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Explanation:-

For the purpose of the sub-rule, the age limit, in the case of candidate appointed through Employment Exchange, be reckoned from the date of sponsoring of the candidate by the Employment Exchange concerned for appointment to the post.

Provided that a candidate belonging to the Scheduled Caste or the Scheduled Tribe shall be eligible for appointment to the above classes if he has not completed 35 years of age on the date of appointment.”

6.3. Sub-Rule (2) to Rule 5 of the Special Rules contemplates educational qualification, which reads as under:

“a) No person shall be eligible for appointment by direct recruitment to any category of the service in class I, II and III unless he has passed the III form or the VIII Standard or the E.S.L.C) of a recognized school (i.e.) a school maintained by or opened with the sanction of the Government of Tamil Nadu or to which recognition has been accorded by the Director of School Education under the Educational Rules of the State.

aa) Candidates for appointment by direct recruitment to any of the categories in class IV must be able to read and writ in Tamil.”



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6.4. The Special Rules unambiguously stipulate that the maximum age limit fixed for the General Category candidates is 30 years and five years extension is granted to the SC/ST candidates (35 years). That being so, the question arises, whether further extension of five years of age limit upto 40 years is permissible or not.

6.5. Let us now consider the applicability of the General Rules relied on by the learned counsels appearing for the respective respondents and Section 20(8)(i) & (ii) of the 2016 Act.

6.6. The adhoc rules issued in the year 1986 cannot be applied in view of the Special Rules, which is in force and applicable to the post of Cook. The reliance placed on by the learned counsels appearing for the respondents that the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules are to be applied is also incorrect. Pertinently, the Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules are not applicable to the post of “Cook”, which is falling under the Special Rules for Tamil Nadu Basic Service. The Tamil Nadu Adi-Dravidar Welfare Subordinate Service Rules deal with various other categories, including Headmasters of Adi Dravidar Schools etc. The post of



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“Cook” is not falling under the said Rules. Therefore, the arguments advanced on behalf of the respondents that the provisions of the Tamil Nadu Adi-Draavidar Welfare Subordinate Service Rules are to be applied to the case on hand is unacceptable and it is rejected.

6.7. Regarding the arguments advanced by the learned counsel appearing for the respondents relating to Section 20(8)(i) & (ii) of 2016 Act, preliminarily we have to consider Section 20(1) of the 2016 Act, which stipulates that the minimum general educational qualification wherever referred to in the Special Rules shall mean the qualification specified in Schedule III. The Schedule III with reference to Section 20(i) of the 2016 Act reads as under:

“MINIMUM GENERAL EDUCATIONAL QUALIFICATION

(1) A pass in the Secondary School Leaving Certificate Examination with the eligibility for admission to College Course of studies in the Universities in this State;
or

(2) A pass in the Secondary School Leaving Certificate Examination of this State.

Explanation-(i) A person who had appeared for 11 year S S L C Public Examination and obtained 35% marks



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in each subject either in one sitting or compartmentally, shall be deemed to have passed the S S L C Public Examination.

Explanation-(ii) A person who had appeared for 11 year S S L C Public Examination and had failed to obtain 35% marks in one or more subjects, but who has appeared and obtained 35% marks in the corresponding subject or subjects in 10 year S S L C Public Examination, shall be deemed to have passed the S S L C Public Examination.

Explanation-(iii) A person who had studied optional subjects in 11 year S S L C and failed in the optional subjects but had obtained 35% marks in all other subjects except the optional subjects in 11 year S S L C Public Examination shall be deemed to have passed the S S L C Public Examination.

Explanation-(iv) A person who had appeared and passed the X standard Government Examination conducted by the Board of Open School, Tamil Nadu shall be deemed to have passed S S L C Public Examination.”



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6.8. Section 20(8)(i) of the 2016 Act denotes that the maximum age limit prescribed in the Special Rules shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Classes, Backward Class Muslims, Most Backward Classes and De-notified Communities or of destitute widows of all castes to a post included in a service for which the Special Rules prescribe a qualification lower than a degree of any University recognized by the University Grants Commission, if such candidate possesses a general educational qualification, which is higher than that referred to in sub-section (1) and he is otherwise qualified for appointment.

6.9. Section 20(8)(ii) of the 2016 Act stipulates that to the appointment to a post included in a service of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Most Backward Classes and De-notified Communities or of destitute widows of all castes who holds a degree of any University recognised by the University Grants Commission if the degree he holds is not lower than the degree prescribed in the special rules for appointment to such post and if he is otherwise qualified for appointment. Provided that for direct recruitment to a



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post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by five years in respect of candidates belonging to Scheduled Castes or Scheduled Tribes or in respect of destitute widows of all castes, who do not possess a general educational qualification, which is higher than the minimum general educational qualification. Provided further that for direct recruitment to a post included in a service for which the minimum qualification required is not higher than the minimum general educational qualification, the age limit prescribed shall be increased by two years in respect of candidates belonging to Backward Classes, Backward Classes Muslims, Most Backward Classes and De-notified Communities who do not possess a general educational qualification, which is higher than the minimum general educational qualification.

6.10. In the above context, we have to consider Rule 68 of the 2016 Act, which provides overriding effect of special rules as under:

“65. Overriding Effect of special rules.-If any provision of this Act is inconsistent with any provision of the special rules applicable to any particular service, the special rules shall, in respect of that service, prevail over the provisions of this Act.”



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6.11. With reference to Sections 20(8) and 68 of the 2016 Act, interpretation of inconsistency is to be taken note of. The 2016 Act speaks about the general service conditions such as general qualifications, such as age and education, recruitment, commencement of probation, declaration of probation, etc. But the special rules governing the particular post to which recruitment is to be made will speak about the specific age and educational qualifications, method of appointment and specific period of probation, etc., for that post. However, for appointment to a post, both the provisions in this Act and special rules governing the particular post have to be applied. While doing so, inconsistency may arise. **We may see as to how the inconsistency as contemplated in this Act will arise. The following hypothetical illustration will explain such inconsistency:**

6.12. “A” belongs to Scheduled Caste Community has applied for the post of Deputy Collector which has been classified in the special rules for the Tamil Nadu Civil Service. His age is 36 years at the time of applying for the post. The Specific Rule for the Tamil Nadu Civil Service specifically states that for appointment to the post of Deputy Collector, one should not have attained more than 35 years of age.



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6.13. But, Section 20(8) of the Tamil Nadu Government Servant (Conditions of Service) Act, 2016 stipulates that the maximum age limit prescribed in any special rules or in this Act shall not apply to the appointment of a candidate belonging to any of the Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities and Destitute Widows.

6.14. “A” in the above illustration is 36 years old and over aged as per the Special Rule for the Tamil Nadu Civil Services governing the post of Deputy Collector vis-a-vis the provisions under Section 20(8) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The inconsistency in respect of age is cropped up in this case. **In such circumstances, the provisions in the special rule for the Tamil Nadu Civil Service will prevail over the provisions in the above Act. As such “A” is not eligible for appointment to the post of Deputy Collector as per the provisions of the Special Rules for the Tamil Nadu Civil Service on account of over age.**



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6.15. The legal position is that the Special Rules will prevail over the General Rules in the matter of appointment. In the event of inconsistency, the rule is to be interpreted holistically to understand that no discrimination is caused upon amongst the candidates, who all are aspiring to secure public employment. In the present case, age relaxation of five years for the SC/ST candidates has already been granted under the Special Rules for Tamil Nadu Basic Service and in the recruitment notification. Thus, the question of extending the age limit further would not arise at all. When the Special Rules contemplate age limit specifically by providing extension of five years to the candidates belonging to Scheduled Caste and Scheduled Tribe communities, further extension of five years of age limit under the General Rules is impermissible and the General Rules, in such circumstances, would have no application.

6.16. Concession of age limit of five years granted to SC/ST candidates for appointment cannot be further extended to another five years by the Court based on the General Rules, which is otherwise not applicable for appointment to the post of “Cook” under the Tamil Nadu Basic Service.



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7. Conclusion:

7.1. In view of the discussions made in the aforementioned paragraphs, we are not inclined to agree with the view taken by the learned Single Judge that the maximum age limit of 35 years contemplated under the Special Rules for Tamil Nadu Basic Service and the recruitment notification is to be further extended for further five years upto 40 years for the candidates belonging to Scheduled Caste or Scheduled Tribe community. Such extension of five years of age limit is beyond the scope of the power of judicial review and the Courts, by exercising the powers, cannot extend the age limit fixed by the employer under the Rules in force. Once the Special Rules are made applicable to a particular category for appointment and five years of extension has already been granted to the candidates belonging to Scheduled Case or Scheduled Tribe community, application of General Rules would not arise and therefore, the orders of the learned Single Judge to that extent is to be set aside.

7.2. Accordingly, the writ appeals are allowed and the orders dated 24.11.2022, 07.02.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023, 15.03.2023 & 30.03.2023,



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passed in W.P.(MD) Nos.15743, 29235, 23709, 23717, 23718, 23719, 23720, 23721, 23722, 23723 & 25306 of 2022 respectively, by the learned Single Judge, insofar as it relates to extension of five years age limit upto 40 years is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[R.K.M., J.]

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PRE-DELIVERY COMMON
JUDGMENT

IN

W.A.(MD) Nos.416, 1405, 1719, 1810,
1936, 1937, 1938, 1939, 1949, 1941
& 1942 of 2023

and

C.M.P.(MD) No.4524, 10970, 13157,
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