

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HON'BLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29873 of 2016 and

W.M.P.Nos.25864 and 25865 of 2016

R.Kanagapriya

...Petitioner

vs.

The Secretary,
Tamilnadu Public Service Commission,
Chennai - 600 001.

Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus, to call for the records in Madras High Court service exam Rejection List Sl.No.623, and the Registration No.610021786 and quash the same as illegal and direct the respondent to permit to write the High Court Service Exams to be held on 27.08.2016.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Ms.C.N.G.Niraimathi

Standing Counsel

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O R D E R

(delivered by NOOTY.RAMAMOHANA RAO,J.)

This writ petition is instituted calling in question the legality and sustainability of the action of the respondent viz., Tamil Nadu Public Service Commission (for short "the TNPSC"), in not considering the candidature of the writ petitioner, pursuant to the Notification No.10/2016.

2. The writ petitioner claims that she has obtained Post-Graduate degree in English Literature. She also possesses technical qualifications of Shorthand in English and Tamil (Higher grade) and Typewriting in English and Tamil (Higher grade). It is also her claim that she has completed Diploma Course in Office Automation. She claimed her social status as Backward Class.

3. The respondent has taken out Notification No.10/2016 proposing selection for various posts in the service of Madras High Court. The writ petitioner has responded for the post of Personal Assistant to the Hon'ble Judges of the Madras High Court. In her application, she has claimed exemption from payment of examination fee, as she is a member belonging to Backward Class. Upon verification, the TNPSC has found that she is not eligible to seek exemption from payment of examination fee, beyond the third attempt.

4. As per Rule 5 of the Tamil Nadu State and Subordinate Service Rules, candidates belonging to Backward Class are exempted from payment of the examination fee only for three attempts and beyond third attempt made by such candidates, there is no exemption from payment of examination fee. The TNPSC has pointed out that the writ petitioner has already appeared for Group IV examination in 2013 seeking exemption. Once again, she appeared for Group II Selection in 2013 securing examination fee exemption. She has also appeared for the third round of selection in 2013, for which she was also granted exemption of fee payment. Thus, the writ petitioner has exhausted the three permissible chances from payment of examination fee, prior to Notification No.10/2016.

5. It is a fact that the TNPSC has clearly pointed out that the writ petitioner has availed the three fee exemptions by creating one time ID No.12540247. The writ petitioner, being conscious of her exhausting the permissible three fee exemptions, when applied for Group IV - 2014 selection, with Registration No.19022078, she paid the examination fee by creating a new One Time ID and thus, she is conscious of her exhausting the limit of exemption from payment of examination fee. Yet, she has now claimed exemption from payment of such examination fee. The TNPSC, taking a serious view of the writ petitioner creating a new ID, for evading payment of the examination fee, treated her application as "non-responsive" and rejected the same.

6. It is pointed out in the counter affidavit filed by the TNPSC that in response to the notification for filling up 317 vacancies in the Madras High Court services, several candidates have applied. However, 57,569 candidates were provisionally admitted. The writ petitioner was also provisionally admitted, in view of the interlocutory order passed by this Court earlier. The applications of as many as 1593 candidates were rejected for various reasons. Therefore, the learned Standing Counsel would urge before us that the writ petitioner alone cannot be picked up from out of all the rejected cases and shall not be granted any relief by this Court.

7. When once a Rule framed under the Proviso to Article 309 of the Constitution of India by the Governor, has clearly brought out the limit for seeking exemption from payment of examination fee, it is wholly impermissible for anyone to seek further exemption, after exhausting the limit prescribed under the Rules. The Court exercising its jurisdiction under Article 226 of the Constitution of India, cannot re-write or re-frame the Rule. Therefore, the writ petitioner, is certainly bound by the limit of three attempts for securing free exemption in the recruitment process of public employment undertaken by the TNPSC.

8. Further, the right to apply for consideration of the candidature itself is not denied; only the right to seek exemption from payment of examination fee beyond three attempts, is denied. In the absence of any challenge to the validity or the sustainability of the limit so fixed under the Rules, it is not open for us to pronounce on the merit of any such ceiling of attempts for seeking exemption from payment of examination fee. It is a policy decision of the rule making authority. As to what extent appropriate assistance should be extended to candidates belonging to Back-ward classes is a policy choice of the State and it is not open to the court it's opinion in respect thereof. However, in the instant case, pursuant to the interlocutory order, the writ petitioner has remitted the examination fee. No doubt, such a remittance has been made after the last date for receipt of applications and after the application of the writ petitioner was found to be "non-responsive" by the TNPSC for the defect pointed out supra.

9. In a country, where vast number of people are still languishing below the poverty line, notwithstanding the great efforts put in by the State for elevating and improving the social standing of citizens of this country, considerations based upon equity, particularly, in matters relating to payment of examination fee, still deserve a serious consideration.

10. We feel that in a welfare state like that of ours, persons with financial distress cannot be prevented from competing with others and establishing their merit, in the matter of securing public employment. Public employment, being one of the certain sources of movement upwards from below the poverty line, to the extent possible and feasible, persons with financial distress should be allowed, particularly, to establish their merit along with others, by making them pay the examination fee a little later even, but, before the selection process could begin. That was, obviously, the reason that weighed with this court, when it passed an interlocutory order to permit the writ petitioner to appear for the written test, subject to payment of the fee. We are, therefore, of the considered opinion that the Division Bench of this Court has rightly exercised its discretion at the interlocutory stage, while passing the interim order on 26.08.2016 by directing payment of examination fee on or before 28.08.2016, which has since been paid by the writ petitioner. By virtue of this order, the writ petitioner has already appeared for the written test.

11. Further, during the course of debate at the Bar, our attention was pointedly drawn to impropriety indulged in by the writ petitioner by generating a different ID. When we have drawn the attention of the learned counsel for the petitioner to the fact that generating a second ID is likely to be viewed with disfavour by the TNPSC, as an attempt to camouflage her identity, the learned counsel for the writ petitioner realised the potential risk and danger associated with creating a different ID. Advisedly, the writ petitioner has conveyed to the Secretary of the TNPSC, Chennai, her sincere regret for having created a second ID. She has also apologised for the inconvenience caused to the TNPSC by making them verify her past history and identity that she is the same person, who has already exhausted the three examination fee exemptions in the past. The writ petitioner has also apologised for her inadvertence in the matter. A copy of the communication dated 15 December 2016 sent through Registered Post by the writ petitioner

addressing the Secretary, TNPSC has been placed before us, which we accept and direct the Registry to place it on record of this case.

12. It is also equally true that all the candidates have been warned in the instructions furnished to them along with application form, not to indulge in any misrepresentation or mis-statement of facts and that any such detection later on, would disqualify them. It is hardly in doubt that all candidates are bound by the instructions furnished to them and no candidate can be allowed to turn around and point an accusing finger towards one or the other of such instructions.

13. Is every infraction liable to be viewed very seriously is the question which we need to answer.

14. When Articles 14 and 16 of the Constitution of India hold out a great promise in the form of fundamental rights to the citizens of this country, minor and non-substantial infractions indulged in by the candidates should not be considered or treated to have come in the way as an impediment for exercise of such fundamental rights. Insignificant or minor lapses that have occasioned, while filling up the application forms should not result in frustrating the very fundamental right altogether. This apart, we take note of the fact that there is an acute dearth of good shorthand writers. The institutions like that of the Courts in general and the High Courts/Supreme Court in particular, cannot carry on with the huge volume of work, which they turn out on a day-to-day basis without even the basic infrastructure of providing the assistance of a shorthand writer.

15. Viewed in that perspective and also in view of the fact that the writ petitioner is a Post graduate in English Literature, we consider that the ends of justice would be more fully met with in the peculiar facts of this case, by treating her application as 'responsive'. But, at the same time, we should also be conscious enough in noticing that when as many as 1,593 applications have been rejected by the TNPSC for one reason or other, including the one of the writ petitioner and she alone cannot be picked up for a more favourable treatment.

16. Hence, keeping the above aspect also in mind, we direct the candidature of the writ petitioner to be considered for the post for which she applied and the respondent will now process the case of the writ

petitioner for the next stage of selection process, provided, the following conditions are satisfied:-

- i) she is qualified in the written examination;
- ii) she comes up in the merit list among Back-ward class candidates, who are shortlisted for the next process of selection, which might include testing her technical skills or an oral interview.

17. Before parting with the matter, we place on record our appreciation for the dispassionate assistance rendered by the Standing Counsel for the TNPSC.

18. In the above terms, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
The Secretary,
Tamilnadu Public Service Commission,
Chennai - 600 001.

+1CC to Mr.Sankarasubbu, Advocate SR.74066

mg (CO)
sk(22/12/2016)

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W.P.No.29873 of 2016