

THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE M.DHANDAPANI

Writ Appeal No.1088 of 2017
W.M.P.Nos.15162 and 15163 of 2017

N.S.Saravanan

... Appellant

-vs-

1. The Government of Tamil Nadu,
Ministry of Labour and Employment Department,
Secretariat, Fort St. George,
Chennai-9.
 2. The Joint Director (Craftsmen Training),
Directorate of Employment and Training,
Training Wing, Guindy, Chennai-32.
 3. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-3.
 4. R.Kartheeswaran,
No.3/2, Viswanathan Nagar,
1st Street, Dharmaraj Nagar,
Karambakam, Porur,
Chennai-116.
- सत्यमेव जयते ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 12.07.2017 in Petitions praying that in these circumstances stated therein and in the respective affidavit filed therewith the High Court will be pleased to grant an interim stay for forthwith proceedings in the recruitments of Junior Training officer conducted by the 2nd respondent (in WMP.No.7458/16)

Prayer in WP.8420 of 2016: to call for the records in G. O. Ms .No. 156 Labour and Employment (P2) Department dated 28.09.2015 and quash the Para 4 Clause - 9(VI) and (VII) of G.O.Ms.No: 156 Labour and Employment (P2) Department dated

28.09.2015 and Clause - 6 of the recruitment notification dt 12.01.2016 issued by the 2nd respondent as these clauses gives 60% marks for interview and the same is against the constitutional bench Judgement of the Honourable Supreme Court reported in AIR 1981 SC - 487 (1) and cancel the Written examination conducted by the 2nd respondent on : 21.02.2016 consequently direct the 2nd respondent to hand over the selection of Junior Training Officer to the TNPSC and it should be purely based on the Written examination and adding of Technical qualification marks, practical experiences and period of wait after registration in the employment exchange.

For Appellant : Mr.T.Mohan,
for Mr.A.Suresh Sakthi Murugan

For Respondents 1to3: Mr.V.Jayaprakash Narayanan
Special Government Pleader

JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Writ Appeal is filed, challenging the order, dated 12.07.2017 in W.M.P.No.7458 of 2016 in W.P.No.8420 of 2016, by which, this Court has vacated the interim order granted on 08.03.2016.

2. Short facts leading to W.P.No.8420 of 2016, are as follows:

The Ministry of Labour and Employment Department, Government of Tamil Nadu, 1st respondent herein, has issued G.O.Ms.No.156, Labour and Employment (P2) Department, dated 28.09.2015, to fill up the vacancies in the post of Junior Training Officers in the Directorate of Employment and Training, Chennai, 2nd respondent herein, by direct recruitment. Pursuant to the same, the 2nd respondent issued a notification on 12.01.2016, for direct recruitment to the said post in Government Industrial Training Institutions.

3. Writ petitioner has applied to the said post and appeared the written examination conducted on 21.02.2016. According to him, three hours of examination, mentioned in the Hall Ticket, has been reduced to two and half hours. In the examination, wrong questions were asked and in this regard, the petitioner has sent representations to the official respondents. As there was no response, the petitioner has approached this Court, by way of W.P.No.8420 of 2016.

4. At the time of admission, this Court, vide order, dated 08.03.2016 in W.M.P.No.7458 of 2016 in W.P.No.8420 of 2016, has granted interim stay, as hereunder:

"2.It is submitted by the learned counsel appearing for the petitioner that though the Government Order No.156 Labour and Employment (P2) Department dated 28.09.2015, shows that 20 marks will be given for practical skill test and another 20 marks will be given for teaching skill test, respondents have not given any details regarding skills going to be assessed by the interview committee. Therefore, awarding of 40 marks for practical skill and teaching skill is arbitrary and against the law. It is contended that when the respondents in the notification has mentioned that the duration of the examination will be for a period of 3 hours and the hall ticket also clearly shows 3 hours duration, the written examination have been conducted only for a period of 2½ hours instead of 3 hours, which is also arbitrary and against the law. It has been contended that the marks for interview cannot exceed more than 12.5% from the total marks, therefore, awarding of 60% marks for practical skill cum teaching ability test and oral interview is also arbitrary and against the law. While concluding his argument, he would submit that the respondents, totally allocated 60% marks for oral interview, which is against the judgment of the Hon'ble Apex Court reported in AIR 1981 SC 487.

3.Considering the submission made by the learned counsel appearing for the petitioner, there shall an order of interim stay for a period of two weeks."

5. The Additional Secretary to the Government, Labour and Employment Department, Fort St. George, Chennai, on behalf of the 1st respondent, has filed a detailed counter, along with a vacate stay petition in W.M.P.Nos.6870 and 31740 of 2017. On 12.07.2017, when the matter came up for hearing, learned counsel on record submitted that he had handed over the case bundle, along with the change of vakalat to the writ petitioner. Learned Additional Advocate General made submissions. This Court, vide order, dated 12.07.2017 in W.M.P.Nos.31740 of 2016 and 6870 of 107 in W.M.P.No.7458 of 2016 in W.P.No.8420 of 2016, vacated the interim order, as hereunder:

"Mr.D.Muthukumar, learned Counsel appearing for the writ petitioner submitted that he had handed over the case bundle along with the Change of Vakalath to the writ petitioner. However, Mr.K.Venkatramani, learned Additional Advocate General submitted that the writ petitioner participated in the process of

selection and obtained 69 marks in the written examination.

2.The cut off marks for B.C. category for the written examination is 85 marks. Since the writ petitioner has secured only 69 marks which is not even standing nearer to the zone of consideration. Therefore, the continuance of interim stay is not justifiable. Accordingly, this Court is of the view that in the event of succeeding in the Writ Petition, the rights of the writ petitioner's and all other grievances will be considered. In that view of the matter, the interim stay granted by this Court on 8 th March 2016 in W.P.No.8420 of 2016, stands vacated.

3.Accordingly, WMP.No.7458 of 2016 stands dismissed, consequently, WMP.Nos.31740 of 2016 and 6870 of 2017, filed for vacating the interim stay, stand allowed."

6. Assailing the correctness of the writ Court, Mr.T.Mohan, learned counsel appearing for the appellant/writ petitioner submitted that the Writ Court ought to have considered the submission of the learned counsel, who represented that he had handed over the cause papers to the petitioner for engaging some other counsel and ought to have either adjourned the matter, to facilitate appearance or shown the name of the petitioner, in the cause list and thus, provided an opportunity to the petitioner.

7. Learned counsel for the appellant further submitted that the petitioner has already sent a letter on 08.07.2017, to the Registrar (Judicial), High Court, Madras, requesting the Registry not to list the writ petitions, since his counsel had returned the case bundle to him and that he is in need of time to engage a new counsel. Even though the said letter was received by this Court on 10.07.2017, petitions were listed for hearing on 12.07.2017 and that the impugned order has been passed, considering the request made by the petitioner.

8. Placing reliance on the decisions of Patna High Court in Civil Writ Jurisdiction Case No.7890 of 2013, dated 17.06.2014 [Md.Arshad v. Union of India] and Allahabad High Court in Civil Misc. Writ Petition Nos. 1822 of 2004 and Writ Petition Nos. 12149, 13724, 14301, 14594, 14617, 14618 and 15128 of 2006, dated 08.08.2006 [Upendra Narain Singh v. State of U.P.], learned counsel for the appellant has made submissions on merits. He further submitted that since the interim order has been vacated, the respondents would commence the further process, by issuing call letters, in which event, the rights of the appellant would be affected.

9. Per contra, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, appearing for the respondents submitted that the appellant has not secured the required cut off marks in B.C. Category. He further submitted that call letters have been issued to the candidates within the zone of consideration. He also submitted that pleadings in the writ petition are completed and while vacating the interim order, interest of the appellant is protected. He prayed for dismissal of the writ appeal.

10. Though we are in agreement with the submission of the learned counsel for the appellant/writ petitioner that an opportunity of hearing could have been given to the writ petitioner to engage a counsel or to have posted the matter to some other date, by directing the Registry to print the name of the writ petitioner, before the interim order was vacated, on the ground that the writ petitioner did not secure the minimum cut off marks, fixed by the 2nd respondent. The writ Court, while vacating the interim order, has observed that in the event of succeeding in the Writ Petition, appellant's right and all other grievances, would be considered.

11. Having regard to the observation of the writ Court, we dispose of the appeal, by requesting the Writ Court to take up the main writ petition and finally dispose of, as expeditiously as possible, considering the contentions raised therein. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Government of Tamil Nadu,
Ministry of Labour and Employment Department,
Secretariat, Fort St. George, Chennai-9.
 2. The Joint Director (Craftsmen Training),
Directorate of Employment and Training,
Training Wing, Guindy, Chennai-32.
 3. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,VOC Nagar, Park Town,Chennai-3.
- + 1 cc to Mr.A. Suresh Sakthi Murugan, Advocate Sr.67126

W.A.No.1088 of 2017

SSI(CO)

EU(07/11/2017)