IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.NO.86 OF 2017
AND CMP NOS.1383 AND 1384 OF 2017

1.A.Veeramuthu
2.T.Selvam
3.N.Jayadevan
4.M.Jaya
5.P.Venkatesh Kumar
6.K.Palanisamy .. Appellants

VS.

1.The State of Tamil Nadu
Rep. By Secretary to Government
Animal Husbandry and Fisheries Department
Fort St. George, Chennai - 600 009.

2.The Commissioner of Milk Production and
Dairy Development
Rep. By Commissioner
Madhavaram, Chennai - 600 051.

3.The General Manager
Salem District Milk Producers Union Ltd.,
Chittanoor, Thalavaipatty,
Salem - 636 302. .. Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.01.2017 passed by this Court in W.P.No.25856 of 2016.
Prayer in WP.25856 of 2016:
Writ Petition filed under Article 226 of Constitution of India, praying for insuance of a writ of Mandamus Directing the 3rd Respondent herein to permit the petitioners herein to appear for the Written test scheduled to be held on 27.07.2016 pursuant to the Employment notification dated 05.02.2016 of the 3rd Respondent in Advertisement No. 8/2016 for the post of Extension Officer Grade-II consequently select and appoint the petitioners taking into account their experience in the 3rd Respondent Co-operative Milk Producers Union.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Appellants : Mr.Venkataswamy Babu

For Respondent-1 : Mr.L.P.Shanmugasundaram
Special Government Pleader

For Respondent-2&3 : Mr.T.K.Ashok Kumar

J U D G M E N T

(Judgment of the Court was made by NOOTY. RAMAMOHANA RAO, J.)

This writ appeal is directed against the judgment rendered by our learned Brother Mr.M.Sathyanarayanan.J disposing of two writ petitions viz., W.P.Nos.25856 and 37364 of 2016 by his order rendered on 12.01.2017. The present writ appeal arises from and out of W.P.No.25856 of 2016. The six petitioners in that writ petition are the appellants before us.

2. The facts lie in a very narrow compass. Through advertisement No.08/2016 dated 05.02.2016, the Salem District Cooperative Milk Producers' Union, Salem, has invited applications in the prescribed format for various posts such as Extension Officer Grade-II - 13 posts, Junior Executive (Office) - 4 posts and Junior Execuitve (Lab) / Technician (Lab) - 3 posts. Annexure - I contained a detailed format of the application form. The required qualifications for the post of Extension Officer Grade - II have been specified as under:-

> "Must be a graduate in any discipline and must have passed Cooperative Training and must have completed 10 years of service in any Multi Purpose Cooperative Societies (MPCS)
>
> (or)
>
> 1. A pass in 10th Std / SSLC exam or its equivalent and have passed in Cooperative Training with 15 years experience in Multi Purpose Cooperative Societies (MPCS).
>
> 2. Should have remaining service of minimum five years exemption for holders of degree in B.A (Co-op) or B.Com (Co-op) from passing the Co-operative Training."

Serial No.24 of the application form dealt with the details of previous employment if any, such as name and address of the institution, designation held, scale of pay and the period of such employment.

3. Annexure - III to the application form furnished the additional information and instructions to the candidates. Para 2 of Annexure - III has spelt out that if a candidate is eligible for more than one post, he/she should send seperate

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

application for each post. The next sentence therein is of some importance for our enquiry and hence we quote it : -

> " The filled in application, complete in all respects along with xerox copies of required documents particularly mark sheet and other enclosures as mentioned in S.No.8 should be sent to the address mentioned in the advertisement either by Registered Post or Speed Post on or before last date.... " .

Paragraph 8 of Annexure – III has listed out the documents to be produced at the time of Certificate Verification / Oral Test. The list contains (i) Evidence of Date of Birth; (ii) Community Certificate from the competent authority; (iii) Evidence of Educational Qualifications; (iv) Experience Certificate ; and (v) Evidence of Tamil qualification. Thus, Clause 4 of Paragraph 8 of Annexure – III and Para 2 of the Annexure – III, when read together, make it abundantly clear that the candidates who are responding to the Advertisement No.08 of 2016 dated 05.02.2016 are required to enclose the Experience certificate.

4. Unfortunately, though the writ petitioners / appellants have filled Serial No.24 of application form in Annexure – I faithfully and truthfully, by furnishing the necessary information relating to their experience, they have failed to enclose any of the necessary certificates vouching for the said experience claimed by them, which made the respondents to treat the applications of the writ petitioners / appellants as non responsive and hence, declared them as ineligible. It is in this backdrop, the writ petition came to be instituted. Pursuant to the interim order passed by this Court, the writ petitioners/appellants were permitted to appear for the written test.

5. Today, the learned Standing Counsel for Salem District Milk Producers' Union Limited has produced the evaluated performance of the writ petitioners / appellants at the said written test. Upon verification, we found that only very few candidates have performed well or better than writ petitioners / appellants. We have also noticed that some of those candidates who are directed to appear for the certificate verification and oral interview test have fared better than the writ petitioners / appellants. But several of them interviewed have fared the same way as that of the writ petitioners or their performance was inferior to that of the performance of the writ petitioners/appellants at the written test.

6. The whole question which is now required to be addressed by us is whether not enclosing the necessary copies of the certificates vouching for the experience claimed by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respective writ petitioners / appellants is a fatal error for consideration of their cases or is it a mere procedural irregularity, which can be condoned.

7. While it is true that the candidates, who respond to an advertisement calling for applications must be very careful and fulfill the requirements set out in any such advertisement. But substantially what is of importance is whether or not the candidate concerned, satisfies the eligibility criteria latest by the last date set up for receiving the application forms or not. There is no doubt that the writ petitioners / appellants have possessed the necessary academic background and the experience. The failure on their part to enclose the necessary copies, vouching for the experience, has now been considered by the respondent Society as a fatal one.

8. In similar circumstances, a three Judges Bench of the Hon'ble Supreme Court in DOLLY CHHANDA VS. CHAIRMAN, JEE AND OTHERS [2005 (9) SCC 779] has set out the relevant principles as under:

> "7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. "

9. In this view of the matter, though the writ petitioners / appellants are guilty of not following the instructions contained in Annexure – III to the application form faithfully and that they have failed to enclose the necessary copies of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

their experience certificates, but nonetheless we consider that the lapse on the part of the writ petitioners/ appellants is a condonable one.

10. Since there was no fault on the side of the opposite party and since this Court has permitted the selection of the other candidates to go on, we will not be justified in upsetting their selection at this stage and that too, at the behest of the writ petitioners / appellants, who have failed to properly notice the instructions to the candidates contained in Annexure – III to the application form. For the fault of the writ petitioners/ appellants, the unofficial respondents cannot be penalised. We are therefore, not justified in upsetting the selection of the unofficial respondents, which have already been finalised. Since all the vacancies of Extension Officer Grade – II are not filled in, we issue the following directions: -

(i) Each of the writ petitioner / appellant has to pay a sum of Rs.500/- as a token penalty to the respondent Corporation;

(ii) they shall also produce the original certificates vouching for the experience claimed by them;

(iii) the above said certificates may be verified and without in any manner disturbing the selection already made to the post of Extension Officer Grade – II, in so far as the remaining vacancies out of the 13 notified vacancies, the candidature of the writ petitioners / appellants be considered and their selection be finalised and the result should be communicated within a maximum period of 45 days from the date of receipt of a copy of this order; and

(iv) liberty is preserved for the respondent Corporation to suitably manage the next year recruitment process.

11. The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

TK

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1.The Secretary to Government
Government of Tamil Nadu
Animal Husbandry and Fisheries Department
Fort St. George,
Chennai - 600 009.

2.The Commissioner
The Commissioner of Milk Production and
Dairy Development
Madhavaram,
Chennai - 600 051.

+2cc to Mr.Venkataswamy Babu,Advocate sr.9849

+1cc to Mr.T.K.Ashok Kumar,Advocate sr.9552

W.A.NO.86 OF 2017

ss(2/3/2017)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/