

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-07-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18200 of 2017

And

W.M.P.Nos.19790 & 19791 of 2017

G.Gnanavel

...Petitioner

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

2.The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Pantheon Road, Egmore,
Chennai 600 008.

...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order passed by the 2nd respondent in proceedings - Nil - dated 12.07.2017 and to quash the same and further direct the respondents to select and appoint the petitioner as Grade-II Police Constable.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.K.Venkata Ramani - AA G-VII
Assisted by Mr.K.Dhananjayan
Spl. Govt.Pleader

ORDER

The relief sought in this writ petition is for direction to quash the order of non-selection issued against the petitioner by the second respondent on 12th July 2017.

2.The facts in nutshell required to be considered for the purpose of deciding this writ petition is that the writ petitioner is a graduate in Engineering and belongs to the Most Backward Community (hereinafter referred to as MBC). Pursuant to the notification dated 23.01.2017, inviting applications for recruitment of the Gr.II Constable (Armed Reserve and Tamilnadu Special Police), Jail Warders and Fireman for the year 2016. The total number of posts notified was 15,711, out of which 4615 posts are reserved for Tamil Nadu Special Police.

3.The writ petitioner submitted his application and appeared for the written examination. The petitioner had secured 49 marks in the written examination. The grievances advanced on behalf of the petitioner is that under the MBC community, the cut off mark for MBC community is 48. The candidates who had secured 48 marks in the written examination were selected but the petitioner was not selected, despite the fact that he had secured 49 marks in the written examination.

4.The Learned Additional Advocate General submitted a copy of the documents filed by the writ petitioner along with the application. On perusal of the copy of the application submitted by the writ petitioner on 20th February 2017 in Column 6, the writ petitioner marked the community as MBC but in another page Column 25, there is an instruction to enclose the copy of the community certificate along with the application but the writ petitioner failed to comply with the instructions.

5.The Learned Additional Advocate General strenuously stating that the non-compliance of the instructions prescribed in the application form is fatal and the authorities have no option except to reject the application. The competent authorities while dealing with thousands of applications cannot show any and leniency in favour of any candidate, when they have to strictly adhere to the stipulated instructions in the application.

6.The case on hand is one such case, where the authorities rejected the application itself and not selected the petitioner on the ground that he had not enclosed the Community Certificate along with the application form.

7.The fact is not disputed by the Learned Senior Counsel that, the candidates, who had secured 48 marks were selected. The writ petitioner has secured 49 marks, which is higher than the cutoff marks of 48. Thus

the writ petitioner has secured higher marks than that of the selected candidate. On these facts, this court has to consider the question whether the non-enclosure of the community certificate by the writ petitioner as per the instructions in the application, will dis-entitle him from selection.

8.The Learned Additional Advocate General is correct to the extent that the candidates who have submitted their application should be totally conscious while enclosing the required documents. One cannot dispute the proposition. But since the writ petitioner in Column 6 of the application has clearly mentioned that he belongs to MBC. Though he filled the application that he belongs to MBC community, he had failed to enclose the Community Certificate. Thus, it is an omission on the part of the writ petitioner. This court has to adopt a pragmatic view in this regard, considering various aspects.

9.At this juncture, it is useful to cite the judgment of the Supreme Court of India in the case of Dolly Chhanda Vs. Chairman reported in (2005) 9 SCC 799, his Lordship Justice G.P.Mathur, delivered the judgment while speaking for the Bench, elaborated in paragraph 7 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 certificate, degrees or mark sheets. 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 to 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 candidate”.

10.His Lordship while extracting the judgment rendered by the Supreme Court in the case of Charles K.Skaria and others Dr.C.Mathew and others Vs. Charan and State of Kerala & another Vs. Dr.K.U.Gopalakrishnan and others (1980) 2 SCC 752, extracted hereunder:

"8.It is fair to state, now that we have sketched the backdrop, what the further facts are and what the High Court's verdict is. We may abbreviate the narration because we substantially agree with the main legal point decided by the High Court. Regrettably, its ultimate direction has thrown the academic year in post-graduate ophthalmology into disarray and even wastage. Welfare-oriented judicial process must be constructive in its objective, must be geared to order as its goal and must pave the way for resultant contentment, avoiding negative writs which, in practice, prove to be congealing commands. Indeed, the High Court, on the crucial question, has more or less correctly stated

the law regarding denial of opportunity for 'outsiders' and consequently found the admission to the courses all wrong, but through its judgment, has jettisoned students who are half-way through their courses and directed fresh admissions on new policies yet to be evolved, with little chance of anyone getting through the examinations or even admissions during this academic year consistently with the university regulation and governmental tardiness. We cannot countenance such negativity without some effort at rescue through the court writ since a whole year of ophthalmology study at the post-graduate level may well be lost to the State, what with the enormous investment in running such courses that the universities have laid out and the people's need for such specialists. The Full Bench decision of the High Court, in its ultimate effect, has left behind it a fall out of demolition.

As a result of our above discussion and conclusions we allow W.A.222 of 1979 and set aside the judgment of the learned Judge and the rank list for admission to the post-graduate courses in ophthalmology, and quash the selections made on the basis of the said list.

We were rather distressed at having to quash the selections of budding youngsters to the specialised courses. Such thoughts prevailed with us in the Full Bench decision in State of Kerala V.Rafia Rahim. While the petitioners in those cases won the battle, they were denied the fruits of victory. We see no ground for a repetition of the same treatment to the petitioners before us. Particularly it is so, because some of them had filed the writ petitions in this Court. We cannot lightly pass over these aspects. We would accordingly quash the selections made and direct a fresh selection in the courses, in accordance with law and in the light of the observations contained in this judgment.

11.Yet another judgment rendered by the Division Bench of our Madras High Court in the case of the Secretary, Tamil Nadu Public Service Commission Vs.M.Chitra and another, reported in (2010) 2 MLJ 146 paragraph 7 & 8 held as follows:

"7. There can be no controversy that the instructions to candidates and the brochure bind the candidates and the Service Commission, according to which, the candidate are bound to produce all the necessary documents / certificates along with the application. In general, the application shall be rejected for non-production of such certificates / documents. But, in our considered opinion, an exception can be carved out to the same. At this juncture, it would be worthwhile to clarify that all certificates, which are required to be produced along with application, cannot be treated equally. There are some certificates, like certificates relating to the basic qualification etc., which are essential, without which the applications cannot be entertained at all. On the other hand, there are certain other certificates, like Community Certificate, certificates relating to special consideration, like sports certificates, NCC, NSS Certificates, etc., which are not essential for entertaining the application of the candidates. So, there can be no controversy that non-production of the former kind of certificates within the cut off date, shall be a ground to reject the application summarily, as mentioned in the instructions to the candidates and information brochure, because, they relate to the essential qualifications for making application. To put it otherwise, unless the Service Commission is satisfied about the eligibility criteria based on the said certificates, it cannot entertain the applications, and therefore, the applications in such an event are to be necessarily rejected.

8. Insofar as the later kind of certificates are concerned, for entertaining the application, these certificates, which relate only to special qualifications or consideration, are not that much material. Even in the absence of these certificates, the applications are to be entertained and when the question of considering the special qualifications or status arises, it would be suffice, if the certificates are

made available to the Commission. For example, if a candidate claims that he / she is entitled for being considered under the quota reserved for Schedule Tribe Community and if the required Community Certificate is not produced, his / her application cannot be rejected but instead he / she has to be treated under the open quota. For any reason, if such a Community Certificate is produced before the date of finalisation of the provisional selection list based on the cut off marks secured in the written examination, in our opinion, the same would be suffice.

12.The above case is similar to that of the case of the petitioner, wherein the candidate therein had not submitted the Community Certificate, the court considered the same and granted relief in favor of the candidate.

13.Another Division Bench consisting Hon'ble Justice Nooty. Ramamohana Rao and Myself (SMSJ) delivered the judgment on 19.12.2016 in the case of R.Kanagapriya Vs. The Secretary, Tamil Nadu Public Service Commission as under:

"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".*

14. Considering the legal principles laid down in this regard, this court is of the firm opinion that the writ petition deserves to be considered and accordingly the order impugned issued by the second respondent on 12.07.2017 is quashed. Mr.P.K.Prakash, Dy. Superintendent of Police who is present in this court is served with the attested copy of the community certificate of the writ petitioner by the counsel to the writ petitioner and the same is received by him.

S.M.SUBRAMANIAM, J.
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15.Thus, the respondents are directed to reconsider the case of the writ petitioner and select him if he is otherwise qualified in accordance with law.

16.Accordingly, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

18.07.2017

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Speaking Order/Non-Speaking Order.

Index : Yes/No.

Internet : Yes/No.

To

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