

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.01.2017

Delivered on : 12.01.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.28653 of 2016

and

WMP.Nos.24723 and 24724 of 2016

K.Rekha

... Petitioner

Vs.

1. The Secretary,
Dept. of Personnel and Administrative Reforms,
Govt. of Tamil Nadu,
Fort St.George, Chennai-600 009.

2. The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to reevaluate the answer papers of the petitioner vide Register No.001051054 of the Main Exam held in June 2015 for the Direct Recruitment to Group-I Services for the year 2013, conducted by the second respondent pursuant to the Notification No.17/2013 dated 29.12.2013 and consequently consider the petitioner candidature for selection.

For Petitioner : Mr.Om Prakash
for M/s.Ramalingam Associates

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader
for R1

Ms.C.N.G.Niraimathi for R2/TNPSC

O R D E R

The petitioner, who is unsuccessful in the selection process for filling up the vacancies by direct recruitment to the posts included in Group-I Services conducted by the second respondent/Tamil Nadu Public Service Commission (TNPSC), has filed this writ petition.

2. The petitioner would state that he holds B.Sc. Chemistry degree and she is the first graduate in her family and remains as Spinster, presently working in a private sector organization and she belongs to a notified Backward Class community. The petitioner would aver that she is hailing from a very poor family having aspiration to enter into Government service by merit through competitive examination and trying for various employment opportunities by writing competitive examinations. The petitioner would further state that the second respondent, vide notification No.17/2013 dated 29.12.2013, had invited applications through online mode for filling up the posts of Deputy Collector, Deputy Superintendent of Police, Assistant Commissioner (Commercial Tax) and Assistant Director of Rural Development Department in Grade-I Services and the petitioner had applied and was issued with an Hall Ticket with Reg.No.001051054. The petitioner had cleared the preliminary examination and she had also written her main examination very well and was anticipating that she would get a minimum of 500 marks out of 900 marks in all the three papers put together and eagerly awaiting for declaration of the result and when it was published on 17.06.2016, to her shock and surprise, her name did not find place on the ground that she has not cleared the main written examination and as a consequence, she do not come within the zone of consideration.

3. The petitioner has sent a representation to the second respondent on 03.08.2016 requesting to revalue her answer scripts and include her name in the list of candidates selected for oral interview and she has also sent a petition dated 13.08.2016 under Right to Information Act, seeking copies of the answer sheets of certain successful candidates by giving their roll numbers. However, the said request is yet to be disposed of. The petitioner has also submitted an online petition to the Hon'ble Chief Minister Cell on 02.07.2016 and it was followed by a reminder and she was informed that her complaint was wrong. The petitioner also submitted a fresh representation to the Hon'ble Chief Minister Grievance Cell on 11.08.2016 and also sent an e-mail. The petitioner came to know from the website of the second respondent that final list of candidates will be published and counseling will be held on 19.08.2016 and till date, the second respondent not published the marks of the unsuccessful candidates including her marks to know where she stand in the merit list and she found that candidates who have secured less than 500 marks in the main examination got selected and therefore, she developed suspicion that there are discrepancies in the evaluation of the candidates. The petitioner, on enquiry also, reliably came to know that various malpractices are being followed which was also put to criticism in the judgment rendered by the Hon'ble Supreme Court of India in Secretary, Tamil Nadu Public Service Commission v. A.B.Natarajan and Others [(2014) 14 SCC 95]. The

petitioner also expressed apprehension that the second respondent had not published the entire marks of the candidates who undertook the examination and the marks of the selected candidates alone has been published and therefore, prays for revaluation of the answer scripts of the main examination held for Direct Recruitment to Group-I Services for the year 2012-2013, conducted by the second respondent and consider her candidature for selection to the posts advertised as per Notification No.17/2013 dated 29.12.2013. Hence, this writ petition.

4. Mr.Om Prakash, learned counsel appearing for the petitioner has invited the attention of this Court to the materials placed and would submit that there was absolutely no transparency in the selection process and despite announcement of results, answer scripts and the marks of the candidates have not been uploaded at all. It is the further submission of the learned counsel appearing for the petitioner that if the second respondent feels that the selection process is fair and transparent, nothing prevented them from disclosing the marks obtained by the petitioner in her main examination. It is also the submission of the learned counsel appearing for the petitioner that publication of the marks would enable the unsuccessful candidates like the petitioner to value their performance and for the purpose of preparing better for the ensuing competitive examination and the second respondent ought to have considered the economical and family background of the petitioner especially being a first graduate to the family and acceded to her request and however, they have failed to do so and therefore, deprived of the fundamental right of being employed on fair play, justice and equity and therefore, prays for appropriate orders.

5. Per contra, Ms.C.N.G.Niraimathi, learned Standing Counsel appearing for the second respondent/TNPSC has drawn the attention of this Court to the counter affidavit and would submit that when the writ petition came up for admission, a direction was issued to the second respondent to produce the petitioner's original answer sheets for the purpose of finding out as to whether all the answers are valued and totals are put correctly and it was produced and orders came to be passed on 22.08.2016 granting permission to the petitioner to peruse the answer scripts at the office of the second respondent/TNPSC and after perusal, the petitioner was given liberty to file affidavit. The learned Standing Counsel appearing for the second respondent would contend that as per the procedure being followed, candidates will be permitted to peruse the answer sheets only after completion of selection process and the selection process is complete only when the select list is forwarded to the Government and it was forwarded to the Government on 06.09.2016 and 07.09.2016 respectively and the selected candidates were also deputed for training. It is the further submission of the learned Standing Counsel appearing for the second respondent that the last

candidate selected from Backward Class Women Category for admission to oral test has secured 476.50 marks and whereas the petitioner has secured 358 marks and therefore, she has not reached the zone of consideration for oral test and in compliance of the interim order passed by this Court, she was permitted to peruse a true copy of her Xerox answer sheets along with copy of individual mark list of two valuations on 08.09.2016. Insofar as the submission made by the learned counsel appearing for the petitioner that she has been denied of original answer sheets and evaluation sheets, it is the submission of the learned Standing Counsel appearing for the second respondent that as per the order of the second respondent, any candidate is permitted to peruse only the copy of her answer sheet and if the original answer sheets are furnished to the candidates for perusal, there is a likelihood of tampering and in order to avoid the same, the said practice is not followed and would contend that fair and transparent procedure is being followed and answer sheets are subjected to two valuation by two different set of examiners and if the difference of marks between the two valuation exceeds 15%, such answer sheets will be subjected to third valuation and so far as the petitioner is concerned, it does not exceed 15% and hence, answer sheets of the petitioner have not been subjected for third valuation.

6. The learned Standing Counsel appearing for the second respondent has also made a submission that the petitioner was awarded zero marks for question Nos.8, 15, 17, 18, 20, 22 & 23 in both the valuation and in 8 marks question, she has scored zero marks for question No.49 and in 15 mark questions, scored zero mark for question No.57 in both the evaluation and in General Studies Paper-III in Section B (8 mark question), for the question No.37 answered by the petitioner relates to some other question i.e., question No.38 and likewise, answer written against question No.38 relates to question No.39 and therefore, the petitioner has failed to note the correct question number and also failed to follow the instructions given in the Hall Ticket. The learned Standing Counsel appearing for the second respondent has also invited the attention of this Court to the "Instructions to Candidates issued by TNPSC" which contains relevant guidelines and particulars and would submit that the instructions to the candidates and the procedure contemplated have been strictly adhered to and as such, it is not open to the petitioner to make allegations and would further state that the petitioner, having participated in the selection process, cannot turn around and make a complaint that the conditions stipulated in the application form and other related documents have not been followed. In sum and substance, it is the submission of the learned Standing Counsel appearing for the second respondent that since, fair, transparent and correct procedure has been followed by the second respondent in the selection process which includes evaluation of the answer sheets and the petitioner, having failed to substantiate the allegations of

malafide, is not entitled to any relief and prays for dismissal of this writ petition.

7. The petitioner has also filed an second additional affidavit dated 12.09.2016 as well as rejoinder affidavit dated 09.11.2016 substantiating her allegations and would state that she found lot of discrepancies in awarding marks for right questions and in both the valuation, the second respondent purposefully awarded low marks to her in respect of rightly answered questions in order to remove her from the selection list and therefore, prays for allowing of this writ petition.

8. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

9. It is a well settled position of law that so far as revaluation of answer scripts is concerned, unless the rule permits, a candidate, as a matter of right, cannot seek for revaluation.

10. It is relevant to extract the following clauses of the "Instructions to the candidates" issued by TNPSC:

"18. COMMUNICATION WITH THE TAMIL NADU PUBLIC SERVICE COMMISSION:

i. Any communication intended for the Commission must be made in writing and addressed only to the Secretary, Tamil Nadu Public Service Commission, No.3, Frazer Bridge Road, Chennai-600 003.

ii. If a reply is sought it must be accompanied by an envelope affixed with sufficient Postage Stamps with the address to which the reply is to be sent.

iii. Communications asking for reasons for non-selection and request for exemption from age limit or other qualifications will receive no attention.

iv. The Commission will receive communications only from candidates. Communications in the name of pleader or agent will receive no attention.

v. Requests for furnishing causes of failure in written exam or for non-selection on the results of the written exam/oral test or for revaluation of answer books will not be entertained.

vi. Details of marks of all candidates who appeared for the main written exam and oral test will be available in the Commissioner's website www.tnpsc.gov.in.

vii. Candidates asking for details of marks after finalization of selection should sent a

postal order/crossed Account Payee demand draft for Rs.10/- in favour of the Secretary, Tamil Nadu Public Service Commission.

24. Requests from candidates for furnishing of their marks or answer paper copy before the completion of the entire selection process, will not be entertained by the Commission."

11. It is the categorical stand of the second respondent that as per the procedure followed, answer sheets are subjected to two valuation by two different set of examiners and if the difference of marks between the two valuation exceeds 15%, it will be subjected to third valuation. Insofar as the petitioner is concerned, the difference between two valuation did not exceed 15% and therefore, the question of subjecting the answer sheets for third valuation did not arise at all. The second respondent, in the counter affidavit, has dealt with answering of the questions done by the petitioner relations to Question Nos.8, 15, 17, 18, 20, 22 and 23 in paras 13, 14, 16 and 17. Though the petitioner would contend that right answer given by the petitioner has been given low marks and therefore, she has been excluded from the list of candidates who have been selected for oral interview, she has failed to substantiate the same. The said specific allegation amounts to malafide act on the part of the second respondent Commission and it is also a well settled position of law that allegation of malafides, not only be averred, but to be strictly proved and however, the petitioner has failed to substantiate/prove the same.

12. The petitioner has also made a general allegation as to the comments made by the Hon'ble Supreme Court of India in Secretary, Tamil Nadu Public Service Commission v. A.B.Natarajan and Others [(2014) 14 SCC 95]. However, it is pointed out by the learned Standing Counsel appearing for the second respondent that the said decision was reviewed and the Hon'ble Supreme Court directed the Union Public Service Commission to appoint examiners to revalue the answer scripts of two candidates and it was also done and all of them are continuing in employment. Since the second respondent Commission is a statutory body entrusted with the duty of selecting candidates for public employment, the selection process is challenged often and it does not mean that the second respondent Commission is acting with malafide or favouring somebody for extraneous reasons.

13. It is also a well settled legal proposition that merely because the name of a candidate finds place in the select list, it would not give indefeasible right to get an appointment as well. [See Food Corporation of India v. Bhanu Lodh (2005) 3 SCC 618 and All India SC & ST Employees' Association v. A.Arthur Jeen, (2001) 6 SCC 380].

14. The terms and conditions of the notification as well as "Instructions to the Candidates" bind the candidate participating in the selection process as well as the agency which involves in the selection process. In the considered opinion of the Court, as per the "Instructions to the Candidates", request from candidate for furnishing answer sheets before completion of selection process will not be entertained by the Commission and the said view/stand has also been upheld by a decision rendered by a Division Bench of this Court in W.P.No.10010 of 2015 dated 15.4.2015 [Vidya Devarajan v. The Secretary, Tamil Nadu Public Service Commission, Chennai]. It is represented that the said decision has been referred to a Larger Bench and a decision in that regard is awaited. In the light of the position of law, the Instructions to Candidates published in the notification are to be scrupulously followed by the candidate as well as the TNPSC and the stand of the petitioner in that regard is unsustainable.

15. Though the petitioner made allegations of nepotism, malafide and favouritism against the second respondent Commission, but unfortunately failed to substantiate the same. Interference by the Court is warranted only when there are oblique motive or there is a miscarriage of justice and in the present case, there is no oblique motive on the part of the second respondent Commission and there is no miscarriage of justice. The petitioner, being the first graduate from family and having poor economic background, aspiring to become Grade I officer, but unfortunately failed in her endeavour despite her attempts as enumerated in para 4 of her affidavit. In the light of the contents of the notification and Instructions to the candidates coupled with the legal position as enunciated above, she is not entitled to the relief as prayed for by her in this writ petition.

16. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

To

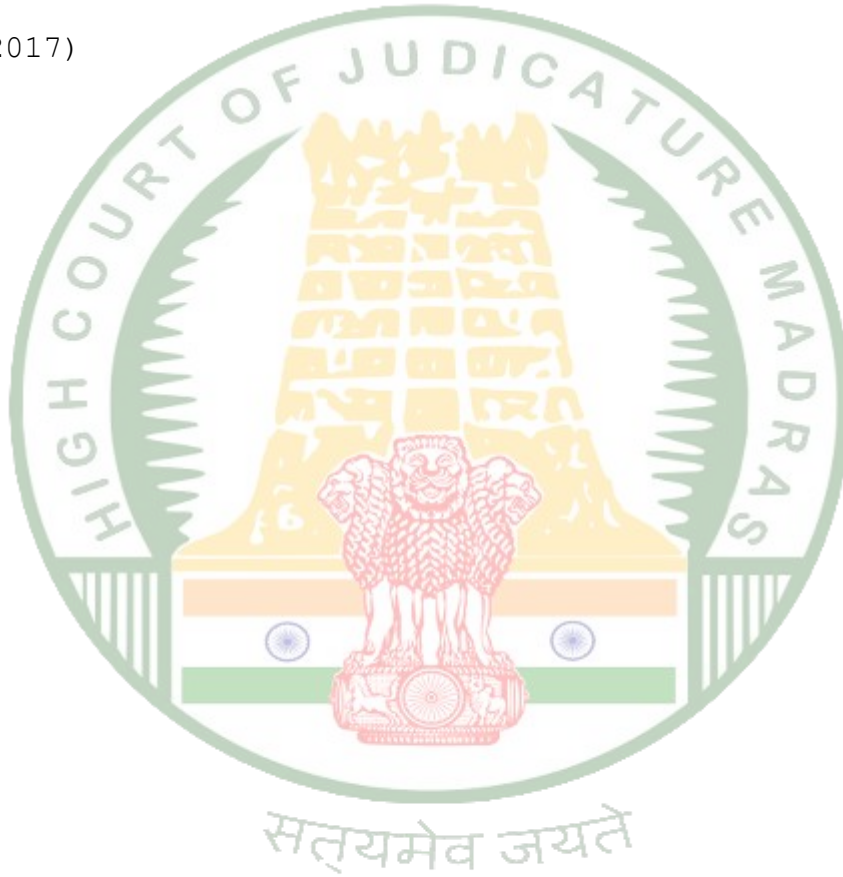
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+2cc's to M/s.Ramalingam Associates, Advocate, S.R.No.3317
+1cc to the Government Pleader, S.R.No.3549

W.P.No.28653 of 2016

KJ(CO)
CA(25/01/2017)



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